

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee

CASE NO.  
RP335/2006  
UD640/2006  
MN420/2006

Employee

RP336/2006  
UD641/2006  
MN421/2006

against

Employer

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney, B.L.

Members: Mr P. Pierson  
Ms H. Henry

heard this claim at Galway on 18th October 2007

Representation:

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Claimant(s): Mr. Michael Kilcoyne, Branch Secretary, Siptu, Galway No. 1  
Branch, Forster Court, Galway

Respondent(s) : Kieran Murphy & Co., Solicitors, 9 The Crescent, Galway

The determination of the Tribunal was as follows:-

The fact of dismissal was not in dispute.

#### **Respondent's case.**

The witness stated that the respondent was engaged in house construction, which was in operation from 1993. It employed a mix of staff, from those involved in the construction end of the business, to its administration staff. It was engaged on a mix of developments, from houses to apartments, in a number of areas in the region, in particular in Ragoon and Clare-Galway. He confirmed that the

respondent had sub-contracted a number of work areas, for example, block-work, to other contractors. He also stated that it was not unusual for a number of sub-contractors to work on the same site, stating that one of these sub-contractors approached the respondent and asked if they would engage the claimant and place him on a wage. He said that he agreed to do so, but also stated that that was the first occasion he had agreed to take on staff to undertake block-work. He confirmed that the claimant worked on block-work at the respondent's Clare-Galway development, comprised of building thirty-four units (planning permission having been refused for an additional ten units), prior to his being made redundant in the following April 2006.

Work on the main block-work pertaining to the development of the thirty-four units commenced in Clare-Galway, the witness repeated, in mid-July 2005. Work proceeded to completion stage and by January and February 2006, except for some work on the gables, most of the building work at the Clare-Galway development had finished. However, the other sub-contractor on site was working on the remaining incomplete four units for which they were responsible. The claimant worked on the boundary walls at this time. Apart from those two aspects as the work on site had all but finished by April 2006 there was no other work available to warrant retaining the services of the claimant. Moreover, problems relating to cables, which adversely affected the subcontractor, meant that work on the Clare-Galway site was suspended for six months between June and December 2006. In effect, this deferred the completion of the work on the outstanding four units by the other sub-contractor until January 2007. Thereafter, the work on the remaining stonework between the houses and fronting on to the main road commenced and continued up to March 2007. The respondent engaged the services of an experienced stonework sub-contractor to complete that work.

In cross-examination, the witness agreed that there were three elements to the work on the Clare-Galway site: the two other sub-contractors were responsible for two sections of the development, and the respondent was responsible for the remaining section. When one of the two other sub-contractors had completed their part of the development and left the site the respondent took over any outstanding tasks. He denied that he adopted the cheap option of employing the claimant. He agreed that the claimant was engaged on building stonewalls, a form of work also undertaken by the stonework sub-contractor but denied that he replaced his staff with those employed by the stonework sub-contractor. He stated that that company was engaged to complete the wall fronting on to the main road whereas his employees worked on other work, in addition to the back wall. The witness could not recall telling his staff that it was cheaper to engage the services of the stonework sub-contractor. He confirmed that that sub-contractor had between four to five staff but did not comment, when put to him, that two additional staff brought that total to between six and seven who were engaged to work on the job.

In reply to questions posed by the Tribunal, the witness confirmed that he paid the claimant the sum of €5,412.00. When asked if it was possible to inter-change staff between sites, he said that the stonework sub-contractor was brought in to finish the job and then moved on to other sites.

In re-direct evidence, the witness confirmed that other workers were made redundant, and from 2006, the respondent's policy was to sub-contract out the majority of the work.

### **Claimants' case.**

The **second** named claimant stated that he worked on various elements on building and completing work on the development operated by the respondent, ending on working on all of the walls between the units, as well as the back boundary wall. He stated that at the same time the stonework sub-contractor employees were working on the front wall.

He stated that, on 10<sup>th</sup> April 2006, the respondent told him that ‘it wasn’t working out and he had to let him go’ and that he made a further reference that it was cheaper to have the work completed by ‘them guys’, which he understood was a reference to the employees of the stonework sub-contractor. He stated that there was still work to be completed at the time he was let go by the respondent and further believed that the stonework sub-contracting company was only engaged to assist the respondent.

The claimant said that since his dismissal he had worked sporadically, had earned €4,000.00 in total over five and one-half (5 1/2) weeks, and that he was engaged on a FÁS scheme since 1<sup>st</sup> July 2007 at €355.00 per week.

In cross-examination, the witness maintained that there was still work to be completed on the units, and on the wall, when he finished on the site. However, when asked, he could not recall or say exactly how much of the work remained undone on either element, merely maintaining his belief that there was still work to be completed on some units. He denied he felt bad when a specialist company was brought in to complete the stonework.

The claimant confirmed that he had worked as a block-layer for twenty years. When asked to comment about his efforts to find other employment – given the regeneration of the area – the claimant said that he wouldn’t ‘work cheap’. He had tried to obtain employment at other establishments but could not recall when, or how many companies he approached. He stated that he had been unemployed from the date of the termination of his employment by the respondent until his engagement on a one-year contract on a FÁS scheme. He said that there had been one other period during his career when he was unemployed for one and a half (1 ½) years.

In reply to questions posed by the Tribunal, the witness said that he no longer had a C2 certificate, nor had sought one.

The **first named claimant** repeated the evidence of the second named claimant. When asked to comment on the circumstances of the termination of his employment, he stated that he found out from the second named claimant. He repeated the assertion that the respondent had said ‘that the lads are doing it cheaper’, and also maintained that there was work to be completed on the stonework at the time his employment was terminated. He said that he raised the issue of his dismissal with the respondent, whose only reply adverted to a previous alleged, and unresolved difficulty between them.

When questioned as to his efforts to find alternate employment, the claimant said that he had only worked for two separate periods: firstly, for two and one half (2 ½) weeks, and secondly, for one and one-half (1 ½) weeks respectively. His earnings amounted to €2,500.00 in total. His efforts to find other employment were unsuccessful, he said. He also maintained that there was still work on site at the time he was made redundant.

In cross-examination, the claimant said that he had not informed his representative about his contention that the respondent had made a reference to a previous unresolved difficulty between them. He could not offer any further information on his attempts to find alternative employment.

## **Determination.**

Based upon the evidence adduced at the hearing, the Tribunal is satisfied that the claimants were dismissed for reasons of redundancy and that a valid redundancy situation existed pursuant in this instance to Section 7(c) of the Redundancy Payments Acts, 1967-2003, as amended.

The respondent is entitled to re-organise and in his particular instance to sub-contract out the work the claimants did. Therefore, the Tribunal finds that the claims under the Unfair Dismissals Acts, 1977 to 2001 fail.

The Tribunal notes that the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Redundancy Payments Acts, 1967-2003 were withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_

(CHAIRMAN)

