EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF: CASENO.
Employee
UD740/2007

against

Employer

under
UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. O Riordain BL
Members: Mr. T. O'Sullivan
Mr. P. Trehy

heard this claim in Dublin on 3 March 2008

Representation:

Claimant: Mr. Brendan Archbold,
12 Alden Drive, Sutton, Dublin 13

Respondent: Mr. John Doyle, Dillon Eustace, Solicitors,
33 Sir John Rogersons Quay, Dublin 2

On the claim form it was stated that the claimant was an apprentice plumber who had worked for the respondent from November 2005 to 20 April 2007 when he was let go. It was alleged that people who had started after the claimant had been kept on. The cl aimant's gross weekly pay was stated to have been €320.00.

In a written defence to the claim the respondent's MD wrote that the claimant had been issued with a week's notice on 20 April 2007 due to a fall in production, that he had been one of sixteen people issued with this notice and that they had been given the option of working a week's notice or leaving on 20 April 2007. Though the claimant had chosen to leave on that day he nevertheless received a week's wages in lieu of notice.

Giving sworn evidence, the MD said that the respondent had been growing too quickly and that outgoings were not being matched by income. Consultants were

called in. They said to bring in a contract manager. The contract manager said that the respondent was "top heavy with employees" and that the respondent would have to make cuts because the respondent was being drained of resources. Foremen went back on their tools and the training department was also looked at. It was decided that all first and second year apprentices should go. This took place. The claimant was a second year apprentice at that time.

Under cross-examination, the MD accepted that some people had been reinstated. Asked about a named employee, he confirmed that this employee had worked from October 2006 to the start of May 2007 but had been reinstated at the end of May 2007. Asked to explain the saving for the respondent, the MD replied that the employee in question had been taken back on compassionate grounds due to a bereavement.

Asked about another employee who had been re-employed, the MD said that this employee was insured with the respondent with a full driving licence and that the respondent had realised that it had no other driver to drive a particular employee who could not drive. That was why the employee who held a full driving licence had been brought back.

Asked why yet another employee had been brought back, the MD said that this employee's father was a foreman who had asked that his son be taken back (because the son was just lying in bed)and had said that he would pay his son's wages whereupon his son could work under him.

Asked about a further employee, the MD said that this man had reapplied when the respondent had advertised.

It was now put to the MD that some of these employees had never ceased employment but had been taken off the books and paid by cheque rather than through the bank. The MD replied that this had not been the case and that the respondent had not wanted to let apprentices go because it had set up a training school. It was put to the MD that the claimant would say that certain employees had never ceased employment. The MD said that he disputed this.

It was put to the MD that employees who were alleged never to have left the respondent were not recorded as having received notice or holiday pay when their employment had supposedly ended. The MD replied that they must have worked their notice, that perhaps they had not been due holidays and that he could not explain further. He said that the men in question had indeed been made redundant.

Asked if the respondent had a written procedure for selection for redundancy, the MD conceded that there had been none in writing when the claimant had been there. It was put to him that the respondent was obliged to give employees a copy of the procedures to be used for redundancy. He replied that he had not done so. Asked if he had any documents regarding the respondent's need for redundancies, the MD conceded that he did not.

It was put to the MD that the claimant would say that he had had no contract. The MD replied that he had had no contract or terms and conditions for the claimant but that the claimant had been registered with FAS and that FAS arrangements for apprentices applied.

It was put to the MD that the claimant had been told by his foreman that his job was on the line if he did not get a car and that the claimant would now not have funds to pay off his car loan. The MD replied that he did not know about this but that the foreman (who was related to the MD) was not in a position to say anything about re-employment.

Answering questions from the Tribunal, the MD said that the respondent was "not a unionised house", that the statutory procedure for collective redundancies had not been followed and that no first or second year apprentices had been retained apart from those mentioned at the Tribunal hearing.

Giving sworn evidence, the claimant said that he had been a FAS-registered apprentice plumber with the respondent and that he had not received any contract that he knew of. He said that the foreman related to the MD had said that his job was on the line unless he got transport. Thereupon, he got a hire purchase deal within a week and proceeded to bring to work the three men with whom he worked. Nothing was said about working notice when he was let go.

Asked if there had been people junior to him who had not been let go, the claimant named men who had been said in the MD's evidence to have been very quickly taken back on. The claimant alleged that he had met such men after he had been let go and that he had been told that the said men had been taken off the books because he had complained.

At this point in the hearing the respondent's representative objected to the claimant saying what he had been told and offered to make available one of the said men to give evidence. The Tribunal acceded to this.

Giving sworn evidence, the witness said that he had been notified that he was let go because business had not been good. He had worked his week's notice. He subsequently got a phonecall asking him to go back to work as a driver. He was out of employment with the respondent for a few weeks. Asked why he had got to go back, the witness was told that another employee needed someone to drive him and that, hopefully, things would pick up and he would be back full-time. The witness told the Tribunal that he had a full driving licence, that he had got back, that he had gone on to Phase Two of his apprenticeship and that driving the other employee was part of his function.

Under cross-examination, the witness said that the MD had asked him to attend the hearing, that the claimant was already with the respondent when the witness started, that he (the witness) had been made redundant and that he had not worked with the claimant.

The witness said that the MD had told him by phone about being made redundant. He worked his week's notice and started looking for jobs.

It was put to the witness that he had kept working for the respondent. He denied this saying that he was out of work for what could have been four or five weeks and that the MD had then rung him and had asked him to go back as a driver. Asked if he had then done the same work as previously, the witness replied that he had primarily been a driver. He denied that he had been paid by cheque.

Further questioned about his work when he went back, the witness said that he had been basically the assistant of the abovementioned non-driver but that "in or around" the time he went back he was an apprentice again. He confirmed that his phases of apprenticeship were now continuing as before.

When cross-examination of the claimant commenced it was put to him that he had got notice and finished on that day. The claimant agreed saying that he had not been given the option to work a week and that he had got a week's wages in lieu of notice.

It was put to the claimant that the MD had tried to keep registrations for apprenticeships. The claimant disputed this saying that the MD had threatened to cut off his registration because he had threatened to go to a solicitor about being let go.

It was put to the claimant that he had stayed registered with FAS. The claimant replied that when he had got to FAS in August he had been crossed off. He stated that he had got paid through FAS.

Questioned by the Tribunal, the claimant said that he still did not have a full driving licence.

Determination:

Having carefully considered the evidence adduced, the Tribunal finds that the claimant was unfairly dismissed due to shortcomings on the part of the respondent in the redundancy selection procedure and the fact that other apprentice employees with less service and experience with the respondent were very quickly reinstated. In allowing the claim under the Unfair Dismissals Acts, 1977 to 2001, the Tribunal, having established loss, deems it just and equitable to award the claimant compensation in the amount of €2,000.00 (two thousand euro).

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN