

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD534/2007

against

Employer  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. P. Pierson  
Mr. J. LeCumbre

heard this appeal at Tullamore on 8 May 2008

#### **Representation:**

Claimant:

Mr. Marcin Szulc, Maguire McClafferty Solicitors,  
8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent:

Mr. Joe Bolger, ESA Consultants, The Novum Building,  
Clonshaugh Industrial Estate, Dublin 17

The determination of the Tribunal was as follows:

The claimant was employed by the respondent as a general operative from 6 September 2005. The employment was uneventful until 14 August 2006 when the claimant suffered leg injuries in an accident. The claimant was off work as a result of his injuries until on or around 31 October 2006. The respondent paid the claimant's wages while he was off work. While the claimant was off work he instituted a personal injury claim against a third party, which he held responsible for the injuries to his leg.

The claimant, who was certified fit to return to work, after recovering from the leg injury, by a doctor acting on behalf of the respondent, sought light work on his return from injury. After a short time he was accommodated by being allocated to work on a bending machine. A colleague (AC) who commenced employment at the same time as the claimant received a pay rise while the claimant was injured. The claimant, while not receiving the pay rise on his return to work, did later receive the pay rise. It is the claimant's position that the atmosphere in the workplace deteriorated

over the time he was injured.

The respondent has over the last few years had between fourteen and eighteen employees. The respondent supplies reinforcing steel fabrications to the building industry and demand for product fluctuates from time to time. It is the respondent's position that in January 2007 there was a drop in demand for product and the managing director (MD) took the decision to reduce the number of employees by one. The claimant was selected as the candidate for redundancy as the most recent recruit with LIFO being their selection criteria. The claimant was given two weeks' notice of his dismissal by reason of redundancy in a letter from the general manager (GM) dated 26 January 2007. The employment ended on 9 February 2007. Around this time the respondent re-hired a former employee (FE) who had previously left the jurisdiction. FE had skills as a motor mechanic and an electrician, which the claimant did not have, and was able to perform work for the respondent which otherwise had to be contracted out. No new employees were taken on after the dismissal until September 2007. By this date four other employees had left. It is the claimant's position that his selection for redundancy was based on his having instituted a personal injury claim arising from the leg injuries he suffered in August 2006.

**Determination:**

The Tribunal is satisfied that there was a genuine redundancy situation existing in the respondent in January 2007. The Tribunal is further satisfied that LIFO was fairly applied as the selection criteria to choose the candidate for redundancy. No credible evidence was put before the Tribunal to show that the claimant was selected for redundancy based on his having instituted a personal injury claim arising from the leg injuries he suffered in August 2006. The claimant accepts that FE has additional skills to his own and that those additional skills reduce the need for the respondent to contract out certain services. In those circumstances the Tribunal must find that the dismissal was not unfair. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001 must fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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