

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

Against

Employer

under

CASE NO.

UD415/2007, MN285/2007

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr J. Hennessy  
Mr D. McEvoy

heard this claim at Waterford on 16th April 2008

### **Representation:**

Claimant : Coghlan Kelly, Solicitors, Trinity Chambers, New Ross, Co.Wexford

Respondent : Mr Brefini O' Neill, CIF, Construction House, Canal Road, Dublin 6

The determination of the Tribunal was as follows:

### **Respondent's Case**

The claimant commenced working with the respondent as a general operative in January 2004. For twelve months, up until January 2005, the claimant was employed through an employment agency. In January 2005 the claimant transferred to working directly for the respondent. While the claimant was not given written terms and conditions of employment stating that Waterford was his base it was his de facto base because he worked ninety-nine percent of his time there during his employment with the respondent; he had worked occasional days outside Waterford. With the aid of documentation the respondent showed that the claimant had worked in various sites in Waterford throughout 2005 and until he was made redundant at the end of August 2006. The respondent's records did not show that the claimant had worked in Kilkenny for two weeks for the company as alleged by the claimant.

In April 2006 two block-layers were made redundant and the labourer tending them left of his own accord because he was aware of the situation and found employment elsewhere. The claimant was made redundant on 31 August 2006 because the project on which he was working was coming to an end. He was given seven to ten days' prior notification of his dismissal. Their parting had been amicable. The respondent had no alternative vacancies for the claimant as a general operative at that time in Waterford or elsewhere. While the respondent had another site coming up it was a small job and a general operative would not be budgeted for that contract. About eight months later the respondent took on some agency labourers in Waterford. General operatives were taken on, through an agency, for a few weeks in Kilkenny in November 2006. While the respondent was working on sites in Kilkenny, Carlow and Wexford at the time of the claimant's redundancy there were no vacancies on those sites. The recruitment of a general operative in Portlaoise was a direct replacement for a departing employee. The respondent's managing director was adamant that the claimant was based in Waterford.

The respondent was not responsible for providing transport for their staff to sites, except for engineers and site foremen. The respondent's managing director had no knowledge of the claimant's travel arrangements or any memory of speaking to him about arriving late for work. He insisted that the claimant did not have the necessary "ticket" to undertake the role of a banksman, whose role is to communicate with cranes drivers. The witness had no memory of the claimant returning to the company's office on 5 September 2006 to collect his paper work. He denied the claimant's allegation that a Czech national was employed on the site doing the claimant's work. He had no knowledge of any such person being employed by the respondent.

### **Claimant's Case**

The claimant confirmed the respondent's evidence as to his commencement with the respondent and his change of status to direct employee in January 2005. He also agreed he had no issue about his dismissal at the time it happened. The respondent had given him a week's notice of the termination of his employment. However, his attitude changed on 5 September 2006 when he called at the respondent's office to collect documentation and noticed a Czech national working on the site, doing the same work as he had been doing prior to his dismissal. The claimant agreed in cross-examination that he did not ask the worker who was his employer and accepted that the Czech national might have been the employee of a sub-contractor on site. He had worked a few times as a bank man's on the respondent's sites, both with the tower crane and the mobile crane. He had a banksman's ticket from the UK permitting him to do such work. He had worked for two weeks for the respondent in Kilkenny doing snagging work and travelled there with another employee; he had also worked for the respondent in Kilmacthomas and in the summer of 2005 he had worked in Carlow, replacing a floor. On one occasion when he had travelled to a site with another employee and was late for work the managing director told him that he might have to let him go if he did not get his own transport. In August 2006 the managing director told him that he was giving him a week's notice because he had no work for him and because he had no transport to go to jobs outside Waterford. The claimant accepted that he had worked ninety-five percent of his time with the respondent in Waterford.

### **Determination**

The Tribunal is satisfied that there was a downturn in the respondent's business and that a redundancy situation existed. It is further satisfied that the claimant's position was redundant and that his selection for redundancy was fair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2003 fails.

As the claimant was given due notice of his dismissal his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

