

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD326/2008

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy SC

Members: Mr. M. Murphy  
Ms. A. Moore

heard this claim at Dublin on 10th July 2008

Representation:

Claimant: Mr. Andrew McGuinness, SIPTU, Liberty Hall, Dublin 1

Respondent: Mr. Oisin Quinn BL, instructed by Ms. Anna Broderick of O'Donnell,  
Sweeney, Eversheds, Solicitors, One Earlsfort Centre, Earlsfort Terrace,  
Dublin 2

The determination of the Tribunal was as follows:

The Tribunal exercised its discretion and received the T2 form from the respondents.

#### **Claimant's Case**

The claimant contended that he was unfairly dismissed by virtue of unfair selection for redundancy. The claimant gave evidence. He was employed by the respondent for a period of about 14 months before he was made redundant.

When he started work at the site, the major construction work was finished. He worked as a rigger. He had a van and went to other sites occasionally as the need arose.

His supervisor said that he would be kept on until the site was finished. Nine people were let go during the summer.

The claimant felt that he was unfairly selected for redundancy as his colleague who was kept on had less service with the respondent. This colleague was later also made redundant.

### **Respondent's Case**

The representative for the respondent made a submission to the Tribunal. Before the downturn in the industry, when work finished on one site the employees moved on to the next one. However when this site finished there was no next site.

According to the claimant's contract of employment, no selection procedure was in place, in the event of redundancy. LIFO (last in, first) does not apply. The employer has prerogative to decide who is selected.

The claimant's colleague had more service with the respondent than the claimant, but this service was not continuous.

### **Determination**

There is no dispute that the work was coming to an end. The Tribunal finds that in this case it was the prerogative of the respondent to decide who would be selected for redundancy. Accordingly the claim for unfair dismissal under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

