

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD1076/2007

MN831/2007

against
Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr J. Horan
Mr F. Barry

heard this claim at Dublin on 20th March 2008
and 18th June 2008

Representation:

Claimant(s) : Ms. Susan Jones BL instructed by
Molloy Murphy, Solicitors, 4 Coolport, Coolmine Business Park, Dublin 15

Respondent(s) : Conor O'Connell, Construction Industry Federation,
Construction House, 4 Eastgate Avenue, Little Island, Cork

The determination of the Tribunal was as follows:-

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn on the first day of the hearing.

Respondent's Case:

A site supervisor (hereafter known as DS) gave evidence. At the time of the claimant's employment the witness had 70 staff on his site in Carrickmines. The claimant was employed as a metal fixer. There were other metal fixers employed with more service than him.

The witness said that he had never had any problems with the claimant. Due to downturn in business staff levels had to be assessed and the claimant and others were made redundant. Two weeks before news had come from head office that they had now won the contract for the next phase on

the site. The claimant was informed that he would finish up if there was no other work for him.

The witness was in the office at another site at Glenamuck with its site supervisor (hereafter known as NM) when the claimant entered and requested for a reference. He told them he was attending an interview the following day. The witness told there was no problem getting the time off.

When asked, he stated that there was a selection process for redundancy. If work could be sought on another site staff were moved if not, they were let go. He told the Tribunal that staff levels had reduced over a period of 12 months from 170 to 40.

On cross-examination he said that he was aware that the claimant had worked on 5 or 6 of the respondent's other sites. When asked, he stated that the owner had made the decision who was to be dismissed. When asked, he said that he was not aware if the claimant had a contract of employment or if he was aware of a grievance procedure.

When asked how he phased down from 170 staff he replied that the claimant was let go in week 22. When asked how work was scheduled he replied that it was mainly repetition work and it was known how long it would take to carry out a job. When asked, he said that he was not aware of any other staff transferred to another site. When asked, he said that there had been work for the plasterers after the claimant was let go.

The second site supervisor (NM) gave evidence. His site was across from the first witness's site. He explained that the claimant worked on his site for the last week of his employment. He was present in the office with DS when the claimant requested a reference and told them he was attending an interview for a driving position the following day. The witness stated that he thought the claimant was leaving the construction industry as he was applying for a position as a bus driver.

The witness told the Tribunal the construction industry had declined and the developer on the site he was working was selling the houses off "piece by piece".

On cross-examination he stated that he had supervised the claimant on another site in Kildare. He stated that the claimant worked his notice on his site but that there had been very little work for him to carry out. The witness told the Tribunal that the claimant had worked from Monday to Wednesday but had not come to the site on Thursday or Friday. He said that he had heard the claimant had been told to get certain work completed in two days or he had no job. When asked, he stated that he could not comment if the claimant had contacted his union. He had no recollection of saying that the "boss man" didn't like people going to the union.

When asked by the Tribunal if he had responsibility for the Carrickmines site, he replied no but shared an office with DS. When asked who he consulted with to give the claimant a week's work, he replied that he could not say. When asked, he said that the respondent had about five sites on the go at the time. His site finished up in November 2007. When asked, he explained that all the named sites had finished up by that time but a new site opened up around the same time. There are 8 metal fixers employed on that site which had transferred from other sites.

The owner and Managing Director gave evidence. He explained that he had 25 years experience in the business. In 2007 he had 170 employees and now he only had 35. 15 to 20 of these are metal fixers.

The witness stated that 30 other employees were let go at the same time as the claimant. Most of

these were metal fixers as that part of the job was completed. He stated that he had not spoken to the claimant in his last week of employment. NM and DS would inform him how work was progressing on-site. If needed he would ring around and try to get work for his staff and if not they would be let go. At that time 3 other sites were winding up. The criteria used for the redundancies were on a site-by-site basis.

The witness stated that he had no bad reports of the claimant. He said that his company was 100% unionised and he had dealt with the unions all the time. Staff were all paid their full entitlements.

On cross-examination he stated that there had been no contract of employment or grievance procedure. When put to him that he had given the claimant a 2-day deadline to complete a task, he replied that this was news to him. When put to him that the claimant had spoken to an official in SIPTU, he replied that the claimant was not a member of that union or another union mentioned to him at the hearing.

When asked what was his basis of letting staff go, he replied that he tried to keep the longest serving staff as it would cost him more to pay their redundancy. He would also try to keep the more experienced staff. The dismissals were on a site-by-site basis. He told the Tribunal that he did not think he paid 30 of his 170 staff redundancy, as they did not have the eligible service of 2 years but that he had paid them notice. DS had given the claimant his notice. When asked, he said that the union had spoken to him about this matter.

On re-examination he said that the claimant had worked for 16 months mainly on the same site.

When asked by the Tribunal the witness said that he barely knew the claimant and had not imposed a deadline on the claimant. When asked, the witness stated that union subscriptions were deducted at source. When asked, he stated that DS had made the decision to dismiss the claimant. The witness told the Tribunal that if he had a good employee with extra skills he might change the rules and try to keep them. When asked why he had not written to inform the claimant he was dismissed, he replied that it was on oversight and that in the old days it was always given verbally.

Claimant's Case:

The claimant gave evidence. He stated that he had commenced employment as a metal fixer on January 9th 2006. The owner of the respondent hired him and had worked on a few different sites.

On May 7th 2007 he began 2½ days work on a different site in Dublin with a colleague. The first day (Monday) was spent checking out the complex work that had to be completed. He met with the owner of the respondent company on the Wednesday who wanted to know why so little work had been carried out and told them that he did not think they would expect him to pay them for taking 3 days to erect 45 boards. They were told if they did not complete the work in 2 days they would be let go. He rang an official in BATU and told him what had occurred. The official said he would go to the site. His colleague received a call from DS telling him there was no problem and to come back to the Carrickmines site. He also received a call from the union informing him that their jobs were okay. He spoke to DS and told him that they were happy to return. The claimant told the Tribunal that he was aware of the owner's tactics of giving people deadlines so they might leave. He never spoke to the owner again.

They returned to the Carrickmines site. A couple of days later NM informed them that they were to let go. On May 21st 2007 he asked NM why he had been chosen when he was doing his best. The

claimant told the Tribunal that he and his colleague were given isolated work so they could not speak to other staff. He again spoke to NM about the work he was given to do but was told that it was not his (NM) fault and that it would not be a good idea to speak to a union. The claimant decided that he could no longer work there. His colleague was looking for alternative employment. He told NM that he would go to court. The claimant said that there had never been any complaints about his work in the past.

The claimant gave evidence of loss. He was 3½ months out of work and was now earning less wages per week. While out of work he returned to country of origin for one week to obtain his C and D licences to order to obtain his present job.

On cross-examination he said that he had had no problems with NM and DS. When asked he said that he had asked to be kept on for a little while longer but if there was no work he would get another job. When asked, he stated that he had been told that he would be sacked if he had not completed the job in 2 days. When asked he said that everyone on-site knew he had been in contact with a union.

When asked why the union official he had spoken to was not present at the hearing, he replied that his solicitor had been unable to make contact with him. When asked why he had not contacted another union, he replied that the owner of the respondent company was very long in the business and had plenty of connections. When asked was he aggrieved for being told to work in an exposed area, he replied no.

When asked by the Tribunal he explained that it had taken half of May 7th 2007 to set up the job. He explained that 45 boards were fitted in 2½ days but 200 were required to complete the job. 80% of the boards were very heavy. When asked, he stated that on a good day 40 to 45 boards could be fitted per day. When asked, he stated that he completed the job the following Tuesday. The claimant told the Tribunal that plenty of metal fixers remained working for the respondent after he was let go.

On the second day of the hearing submissions were made by both parties regarding the claim and evidence adduced.

Determination:

The Tribunal are mindful that there is a registered agreement in place but the agreement does not deal with the issue of redundancy and therefore does not bind parties.

It was custom and practice to use a combination of the last in last out (L.I.F.O.) policy and to select on a site-by-site basis and a skills based criteria in order to determine whom to make redundant.

The Tribunal finds that the system was not transparent in that the reasons for which he and the other comparable employees who were made redundant were not apparent at the time the redundancies were made. As such it falls foul of Section 9 (2) of the Protection of Employment Act, 1977 as amended by paragraph 8 of the Protection of Employment Order, 1996 (S.I. 370 of 1996). This respondent must give the relevant information as set out:

1. The reasons for the proposed redundancies;
2. The number and descriptions or categories of employees whom it is proposed to make

redundant;

3. The number of employees and descriptions or categories, normally employed;
4. The period in which it is proposed to effect the redundancies;
5. The criteria proposed for the selection of the workers to be made redundant, and
6. The method for calculating any redundancy payments other than those methods set out in the Redundancy Payments Acts, 1967 –1991, or if an ex-gratia payment is made, then the basis of the calculation must be given; for example, x weeks' pay per year of service.

The Tribunal accepts that there is a downturn in the industry and accepts this downturn affected the respondent and the conditions of redundancy did pertain.

However the manner in which the redundancy was executed was flawed. Accordingly the Tribunal awards the claimant the sum of € 12,600 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)