

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee

CASE NO.  
UD241/2008

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. M. O'Connell B.L.

Members: Mr. M. Flood  
Mr. A. Butler

heard this claim at Dublin on 19th June 2008

#### **Representation:**

Claimant: In person

Respondent: Mr. Breffni O'Neill, Construction Industry Federation, Construction House, Canal Road, Dublin 6

The determination of the Tribunal was as follows:

#### **Respondent's case:**

In his sworn evidence, the HR manager told the Tribunal that the claimant had worked on the respondent's site in Cherrywood as a slinger/banksman since December 2006 and prior to this, he had worked on other sites for the company. Working as a slinger/banksman meant working closely with a crane driver, as crane drivers cannot operate without the assistance of a banksman.

The HR manager explained to the Tribunal that the Cherrywood site had three separate projects, which were treated as three separate entities and were run on a separate basis. Each project has its own site manager, crane drivers and banksmen. On the project on the Cherrywood site where the claimant had worked, there had only been one crane driver and one banksman – the claimant.

The company operates a policy of selection for redundancy on a site-by-site basis rather than an overall policy of "last in, first out", and the claimant would have been aware of this policy from his contract of employment. Other employees with less service than the claimant had not been selected

for redundancy as they had been working on different projects and sites to the one worked on by the claimant. A document containing a list of employees who had been made redundant by the company since December 2007, was opened to the Tribunal. The claimant's name was on this list.

While it was normal for employees to work on different sites, this depended on the availability of work on the different sites. The HR manager agreed that if vacancies arose, personnel were moved between sites. At the time that the claimant was made redundant, there was no further work available for him on the other sites in Dublin, including on the ongoing work on the different projects in Cherrywood. The crane driver with whom the claimant had worked had also been made redundant on the same day as the claimant. Furthermore, the claimant accepted the redundancy payment.

An appeal against the selection for redundancy was initiated by the claimant's Union representative by email dated 4 March 2008 and a reply to same was sent by the HR manager on the following day inviting a hearing date and time to be set for the appeal. However, he received no further contact from the claimant or his representative regarding the appeal. Responding to the Tribunal's question, the HR manager explained that his email replied on 5 March 2008 requested therein that a time and date for the appeal be suggested, had only been directed to the claimant's Union representative, as it was the Union representative who had initiated the appeal.

The Tribunal referred to the list of employees who had been named as being made redundant since 2007, and in reply, the HR manager confirmed that some of the employees had less experience than the claimant but had been made redundant after the claimant because they had worked on a different site to the claimant and the redundancies had been carried out on a site-by-site basis.

The construction director made the decision as to who was made redundant having regard to the availability of work on other sites and the suitability of an employee to do such work on the other sites. Unfortunately in this instance, transferring the claimant to an alternative site had not been an option.

Answering the Tribunal's question, the HR manager also confirmed that since February 2008, due to the downturn in the construction industry, the company had not recruited other crane drivers or banksmen.

### **Claimant's case:**

The claimant believed that his selection for redundancy was unfair because it had not been done on a "last in, first out" basis. In his sworn evidence, he confirmed that he would not have had a difficulty with moving to another site in Dublin, but this had not been offered to him. He also said that he had never had any disciplinary difficulties when working for the company and same was confirmed by the HR manager.

The claimant said that on a previous site in Tallaght where he had worked for the company, he believed that a policy of "last in, first out" had operated in relation to redundancies. However, he accepted that an overall policy of "last in, first out" did not operate within the company, that he had not been offered work on an alternative site after completion of the project on the Cherrywood site and that he had accepted the redundancy payment.

In cross-examination from the respondent's representative, the claimant also accepted that, per his contract of employment, the company was able to make an employee redundant due to a downturn

of work on a site. He also accepted that the projects on the Cherrywood site were run as separate entities but added that there had been a lot of movement between the sites.

Answering questions from the Tribunal, the claimant accepted that no one from the project on the Cherrywood site on which he had worked and who had more experience than him had been retained after he had been made redundant.

In relation to the appeal that had been initiated in March 2008 by his Union representative, the claimant explained that he had not received any correspondence from the company regarding such an appeal.

**Determination:**

The Tribunal having carefully considered all of the evidence accepts that the claimant was dismissed by virtue of redundancy. At issue in this case was the fairness or otherwise of the selection process. From the circumstances outlined, the Tribunal holds that the selection of the claimant for redundancy was not unfair, therefore the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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