

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee

CASE NO.  
UD717/2007  
MN580/2007

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. Kearney BL

Members: Mr G. Phelan  
Dr. A. Clune

heard this claim at Ennis on 14th July 2008

Representation:  
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Claimant(s) :

Mr. Dermot O'Loughlin, SIPTU, O'Connell Street,  
Ennis, Co. Clare

Respondent(s) :

Mr. Conor O'Connell, Construction Industry Federation,  
Construction House, 4 Eastgate Avenue, Little Island, Cork

The determination of the Tribunal was as follows:-

### **Respondents Case**

The witness for the respondent gave direct evidence that he is a construction director with the company. The company is involved in general building works and tenders for public and private works. It has a total workforce of approximately 90 employees of which 30 are specifically employed in construction. The profile of the company has changed from general building to civil engineering due to the dramatic downturn in construction in the past 12 to 18 months.

The witness gave evidence that the claimant was employed as a teleporter driver and his main place of work was on Croi an Bhaile site in Kilmihil, Co. Clare. He drove a 12 metre reach teleporter. It is the policy of the company to assign teleporter drivers to a specific teleporter. The aim of this

policy is to develop expertise and to foster good practice maintainance. The claimant worked on other sites for short periods of time doing general labouring duties when the teleporter was not in operation but his primary duty was as a teleporter driver. Construction work finished on the Croi an Bhaile site in Kilmihil in April 2007 and the claimant was made redundant on the 5<sup>th</sup> April 2007 as no vacancies existed on that site or any other site for a teleporter driver. The company would have to have made some other employee redundant in order to keep the claimant in employment.

The company select people for redundancy on a site by site basis and a number of other employees have been made redundant since January 2008. It was submitted by the respondent that the claimant was paid in lieu of his notice.

### **Claimants Case**

The claimant gave direct evidence that he began working for the respondent as a teleporter driver in August 2003. His first construction site was in Kilmihil, Co. Clare but he also worked on other sites as general labourer. He drove a dumper and did a lot of snagging on other sites. Construction work continued to be carried out on other sites after he was dismissed and he was not offered employment on these sites. The teleporter that he operated continued to be operated by other employees after he was dismissed.

### **Determination**

The Tribunal having carefully considered the evidence is satisfied by a majority decision that the claimant was dismissed by reason of redundancy. Furthermore the Tribunal is satisfied that a genuine redundancy situation existed and the claimant was fairly selected for redundancy. Accordingly the claim under the Unfair Dismissal Acts 1977 to 2001 and the Minimum Notice and Terms of Employment Acts 1973 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

