

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD218/2008

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S C

Members: Mr. L. Tobin
Ms. A. Moore

heard this claim at Dublin on 1st September 2008

Representation:

Claimant: Mr. Brendan Carr, SIPTU, Construction Branch, Liberty Hall, Dublin 1.

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

The determination of the Tribunal was as follows:-

Respondent's Case

The company supplies workers to construction sites. They operated on numerous sites in the Dublin area. The claimant worked on a particular site for about two years. He was laid off when the work there ceased. There was no next site for him to go to, workers were made redundant.

Workers were made redundant on a site-by-site basis. As sites ceased the workers were made redundant.

Claimant's Case

The claim made by him in his T1-A was: 'I worked for the company for over 5 years, during this time I was moved from site to site when the company dictated. I believe it was unfair of company to select me for redundancy without giving me option to transfer to other sites. Other employees should have been selected ahead of me'.

At the Hearing it was argued on his behalf that selection for redundancy should have been on a company wide basis, rather than on a site-by-site basis.

Determination:

It was clear that there were redundancies in the company because of the downturn in the construction industry. This situation is consistent with the definition of redundancy in Section 7 (2) of the Redundancy Payments Act, 1967:

- (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased or intends to cease, to carry on that business in the place where the employee was so employed, or*
- (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish.*

The claimant argued that his selection for redundancy was unfair. Section 6 (3) (a) of the Unfair Dismissals Act, 1977 provides:

- (a) the selection of that employee for dismissal resulted wholly or mainly from one or more of the matters specified in subsection (2) of this section or another matter that would not be a ground justifying dismissal.*

There was an argument over whether selection for redundancy within the company was site specific. There were discussions with the unions but it was not clear that there was an agreement. No agreement was shown to the Tribunal; therefore the Tribunal finds that there was no agreement to breach. Therefore the conditions of Section 6 (3) (b) of the Unfair Dismissals Act, 1967 do not apply to the claimant.

As there was no agreement with the Trade Union he could not have been selected "in contravention" of one. Moreover it was not established that there were ever other employees to whom "the circumstances constituting the redundancy" applied equally.

The Tribunal finds that the claimant was dismissed by reason of redundancy and that his selection for dismissal was not unfair, within the meaning of Section 6 (3). Therefore the case under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

