

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

MN654/2007  
UD830/2007

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

Members: Mr J. Hennessy  
Ms. P. Doyle

heard this claim at Waterford on 3rd July 2008

Representation:  
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Claimant :

Mr. Emmet Halley, M. M. Halley & Son, Solicitors, 5 Georges  
Street, Waterford

Respondent :

Mr Alistair Purdy, Purdy Legal, Solicitors, New Docks, Lough Atalia,  
Galway

The determination of the Tribunal was as follows:-

At the outset the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn by the claimant's legal representative.

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

The general manager in Waterford told the Tribunal that discussions were taking place regarding re-structuring and rationalisation prior to Christmas 2006. In the maintenance area the working times were reducing and the throughput was smaller therefore the maintenance requirement was smaller. In March 2007 he met with the claimant and told him he was being made redundant. He was selected on the basis of last in first out (hereinafter referred to as L.I.F.O.). The contractor N was not selected for redundancy as he had been with the respondent since 1999 and had been working in sister plants for twenty years. The claimant was very diligent and a very good worker.

In cross-examination witness said he has been working with the respondent company since 1982 and has been in the Waterford plant for the last four years. He and another person from the Cahir branch interviewed the claimant and he disagreed that he made a comment during the course of the interview regarding contractors being too expensive. There were no complaints in respect of the claimant's work record. The plant has a substantial turnover of staff, in particular general operatives. At Christmas 2007 they let ten employees go. When the claimant was made redundant he was the only one let go in the maintenance area. The claimant did not have the most experience in this area. This plant was old and intricate and contractor N would know the plant inside out. He was retained because of his valuable experience. The decision to make the claimant redundant was a collective one and he personally was in favour of redundancy for one of the maintenance people. It was not an easy task to have to tell the claimant of his redundancy. While the rationalisation was discussed prior to Christmas the claimant in particular was not looked at until a couple of weeks prior to the redundancy. He did not engage with the claimant prior to telling him of the decision to make him redundant.

In answer to questions from Tribunal members witness said that less than 10% of employees were made redundant in the plant in March 2007. Witness was not aware if the statutory notice regarding redundancies was given to Minister at the appropriate time.

The Tribunal also heard evidence from the now retired personnel manager for the Group. He joined the company in March 1984 and had been their representative from 1975 as an IBEC official. Section 32 of the document "Rules and Conditions of Employment" was referred to, and while L.I.F.O. is not mentioned in respect of lay-offs and redundancy, there was a history of L.I.F.O. in the group.

In cross-examination witness said that he now works as a consultant with the respondent. Notices concerning L.I.F.O. were displayed in the locker rooms. The claimant was sent to the Cahir plant for training but was employed in the Waterford plant and if he signed a document in respect of LIFO the respondent does not have a copy. The re-structuring programme is a group wide thing and has been going on for a number of years. Contractor N has worked in a number of their plants and he knows every nook and cranny of the Waterford plant. While he is not an electrician he can do electrical work. Management considered contractor N to be more valuable in terms of continuity. As part of the re-structuring and rationalisation the claimant's name was not mentioned until shortly before he was made redundant. Witness had never seen the claimant prior to the day

of hearing this case.

In answer to questions from Tribunal members witness stated that every plant is autonomous and the manager has group support. The manager is totally responsible for what happens on site and witness is there to help the managers. In his opinion contractor N has knowledge across the site which the claimant did not have. The claimant was not replaced. If they retained the wrong person and were not able to keep the job going they would have breakdowns.

**Claimant's case:**

The claimant is forty-one years old and has a partner and family. He had twenty-three years experience as maintenance fitter in the pharmaceutical and food industry prior to joining the respondent company. The post was advertised in the local newspaper in March 2005. During the course of his interview he asked how the position arose and he was told that the respondent was getting rid of contractors as they were costing too much money. He commenced his employment with the respondent in June 2005. He outlined the profile of the staff where one was there a number of years but never served his time as a fitter, another was upgraded to a fitter, another was a qualified electrician and there were two contractors. After two to three weeks training in Cahir the claimant started in the Waterford plant and a few days later one of the contractors, N said to him "you are taking my job". It was about six months later before he saw that contractor again.

Part of his job was to go in to the plant in the morning an hour to an hour and a half prior to the staff, do the start-ups, i.e. to get the machines up and running before the other staff arrive in which was usually 8am. He would work till about 5.30-6pm, which was a twelve hour day. L.I.F.O. was never mentioned when he started. On 21<sup>st</sup> March 2007 he received a telephone call from the respondent asking him to go to the office and said that the news was not good. He was told he was being made redundant and he had to leave that day. The next day he collected outstanding monies in the office. He then outlined to the Tribunal his efforts to obtain alternative employment and decided to set up his own sports nutrition business. The main contractor N still works for the respondent and the other contractor he believes is there from time to time. The standard rate of pay for a contractor is €35 per hour and the claimant was paid €16/16.20 per hour.

In cross-examination witness accepted he had the least amount of service. He agreed it would be logical from his perspective that contractor N should have been selected on the basis of money. In relation to L.I.F.O. and as to whether it was a reasonable method of selection for redundancy, he agreed it was what the unions went on and it was fair 90% of the time.

In answer to questions from Tribunal members witness said that no one else was let go at the same time and prior to that a general operative was let go in December 2006.

**Determination:**

The Tribunal is of the view that the claimant was treated badly by the respondent in being told he was being made redundant on 21<sup>st</sup> March 2007 and could have been placed on protective notice of redundancy to enable him to look for alternative work. He had to leave the plant that day at 4.30pm.

Be that as it may, the Tribunal is satisfied that a genuine redundancy situation existed and that the claimant was fairly selected for redundancy. The claim under the Unfair Dismissals Acts, 1977 to 2001 is therefore dismissed. The claim under the Minimum Notice and Terms of

Employment Acts, 1973 to 2001 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

