

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO. UD203/2008

Employee

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms E Daly BL

Members: Mr D Winston  
Mr P McAleer

heard this claim at Cavan on 4th September 2008

Representation:

Claimant: Mr Michael Egan BL instructed by:  
Mr Sean Sheehan, Aaron Kelly & Co, Solicitors, 8 Palace St, Drogheda

Respondent: Michael J. Ryan, Solicitors, Athbara House, Cavan

The determination of the Tribunal was as follows:

Respondent's Case:

A company manager and accountant (CM) gave evidence for the respondent company, a building contractor. The claimant was hired as a general operative in May 2003 at a site in Navan. The claimant moved to different sites in the Louth/Meath area as jobs finished and new ones began. The claimant earned overtime opening and closing the sites. This was a suitable arrangement as he lived locally and was trustworthy. The last site he worked on was in Drogheda, which began in January 2007 and ended in November 2007. As there were no vacancies at the company's other sites it was necessary to make the claimant and some others redundant when this job ended.

The claimant was notified on the 15<sup>th</sup> October 2007 of his redundancy and ceased working on the 30<sup>th</sup> October with two others, a general operative and a carpenter. One of the other employees made redundant was a relative of the Managing Director. The architect certified the site on 19<sup>th</sup> October and after that it was a matter of cleaning and snagging the site. Others still on site had more skills than the claimant. By 6<sup>th</sup> November a digger driver and a pipe layer had moved on to another site leaving three employees at the Drogheda site, which finished a week later. The company does not operate a last in first out policy, but operates a site-specific policy when deciding on redundancies.

CM denied the allegation that agency workers were hired to do the claimant's job in Drogheda at a lower rate of pay. CM had no record of agency workers at the site and argued that it wouldn't make sense to make people redundant and then bring in agency workers to a site with three people on it. A skilled labourer was hired for a Dublin site on 28<sup>th</sup> November, but this position required more experience than the claimant had and was not a like with like situation. The claimant had no qualifications or certificates and was not employed as a skilled labourer. This employee had also been made redundant since.

CM was not aware that the claimant had left work early on 13<sup>th</sup> October 2007 to attend his doctor, but he attended work for full days thereafter.

Claimant's Case:

The claimant was surprised to receive a letter informing him of his redundancy on the 15<sup>th</sup> October. He believed it was connected to attending his doctor two days previously. The claimant had suffered with back pain since a car accident he had on the way to work in 2005. This was why he had attended his doctor on the 13<sup>th</sup> October, but he took his medication and continued working.

A week after being made redundant he saw two people working on the site in Drogheda who he didn't recognise. He saw them again a week later, though he didn't contact the company about it, or ask the workers what they were doing there or who was employing them. The claimant accepted that he had been hired as a general operative, but believed he had the skill to do everything necessary on the site and had his Safe Pass. He had worked fitting windows in Tel Aviv, and this counted towards his experience.

Determination:

Having heard the evidence adduced, the Tribunal is satisfied that a true redundancy situation existed and that the claimant received a redundancy payment. Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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