

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD545/2008

against

Employer

Under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. R. Prole  
Ms. P. Ni Sheaghda

heard this claim at Dublin on 18th September 2008

### Representation:

Claimant : Mr John Curran B L instructed by  
Dermot P Coyne, Solicitors, Liffey Bridge House, 1 Main Street, Lucan, Co Dublin

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

The determination of the Tribunal was as follows:

### Respondent's Case

The respondent is a firm of painting contractors with close links to the construction industry. All its employees are exclusively engaged in some form of painting and decorating. Its managing director and joint owner said its redundancy policy is centred on the skills, availability, and experience of its employees. Due to trading difficulties in the autumn of 2007 the respondent was forced reduce its work force of around twenty-five by eight employees. This redundancy process continued into 2008 and affected the contracts manager and the claimant among others. The claimant was given written notice of his redundancy on 7 March. The witness acknowledged that there had been no discussions either with him or his union representatives prior to that notice. He also added that neither a contract of employment nor a company handbook with details of its redundancy policy had been furnished to the claimant.

The witness together with another director met the claimant and his union representative on 15 April 2008. That meeting was at the union's request, as it wanted to address the claimant's forthcoming redundancy. The witness described the discussions as easy going and the meeting as amicable. Its main focus was the general state of the construction industry. The witness expressed surprise that there was little or no mention of the claimant's case at that meeting. There was a good

relationship between the respondent and the trade union. All employees were members of a trade union and the witness denied that the claimant was discriminated against in any way due to his union involvement. However there was no formal agreement between the union and the company on lay-offs and redundancy, and the witness was unable to give the union or claimant the criteria used in selecting him for redundancy. The respondent did not offer the claimant alternative employment in lieu of his redundancy which took effect on 25 April 2008. A statutory payment was made and accepted by the claimant at that time. .

The witness compared the Claimant's position with that of the other employees and explained that the employees retained had either more experience or skills or were more flexible and available than the claimant. Other than this however this witness emphasised that he had no difficulty with the workmanship of the respondent. The witness also listed certain sites where the respondent had a presence and outlined the work performed there. The claimant's input on those sites was not required and it was not feasible to lay-off subcontractors instead of the claimant.

Another director and co-owner of this enterprise said he was at a meeting with the claimant, his union representative and his fellow director in April 2007. He added that the claimant's imminent redundancy was not raised then and was surprised to see him there.

### **Claimant's Case**

The claimant outlined his experiences as a painter and decorator prior to his commencement with the respondent in early 1996. He also listed and gave a brief description of his work following that commencement and up to the notice of his redundancy. That notice was handed to him without comment by one of the directors. He was "taken aback" at this notice, as he did not see a downturn in the business. He then contacted his trade union about this matter. A meeting followed in which he attended and where his representative spoke on his behalf. As a result of the nature of the discussion at that meeting the claimant formed the impression that the company was "going to the wall" and there was no further talk of work there. While he was not happy with the situation he felt he had no option but to accept his redundancy. Neither a redundancy procedure nor a contract of employment issued to him during the course of his employment.

A trade union official who attended that meeting on 15 April stated he briefly raised the claimant's redundancy situation with the directors and sought clarification on it. That topic was the initial reason for the meeting, which he described as cordial. As part of a wider discussion the witness believed that the respondent was in danger of dissolving.

### **Determination**

The Tribunal is critical of the fact that the claimant had not been furnished with a contract of employment or a company handbook dealing with details of its redundancy policy. The Tribunal is also critical of the fact that there was no proper consultation with the claimant, or his representative, in relation to the impending redundancy.

However notwithstanding this the Tribunal, having carefully considered the evidence, determines that a genuine redundancy situation existed in this case. In the circumstances the claimant was not unfairly selected for redundancy. The claim under the Unfair Dismissals Acts, 1973 to 2001 therefore falls.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

