

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD637/2008

Against

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr E. Handley  
Mr G. Whyte

heard this claim at Dublin on 14th October 2008

Representation:

Claimant(s) Ms. Ursula Finlay BL instructed by T.J. Brabazon & Co., Solicitors, Brighton House, 29 Fairview Strand, Dublin 3

Respondent(s): Mr. Stephen Sands, Construction Industry Federation,  
Construction House, Canal Road, Dublin 6w

The determination of the Tribunal was as follows:-

### Respondent's Case

GS told the Tribunal that he was direct cost controller with the respondent. His duties included looking after block/bricklayers, carpenters, general operatives and the payment of wages. The respondent built private houses and undertook contract and local authority work. The projected turnover in October 2007 was €200 million. The claimant was employed as a block layer/bricklayer and was a member of a trade union as were all bricklayers. In 2006 it employed one hundred and ten bricklayers and in October 2007 fifty-five bricklayers were employed. The first lay off in the respondent occurred in 2006 and the claimant was given notice, which was rescinded. In relation to redundancies the respondent operated a system of "last in first out" with the exception of shop stewards. The respondent had discussions with the trade union in 2006 well in advance of redundancies and it informed the union of the downturn. Out of a total of fifty-five bricklayers thirty were made redundant before the claimant. The shop stewards, who were not made redundant at that stage, are now on notice and will be made redundant by the end of November 2008. The claimant was notified of his redundancy in March 2008 and he was not satisfied with the selection criteria. The claimant did not believe that he should be made redundant before the shop stewards. GS gave evidence that a verbal agreement was in place with the union that "last in first out" applied in respect of selection for redundancy but that

stewards would be retained irrespective of when they started. There was no formal agreement in place regarding this policy and this was the accepted policy with block/bricklayers. The claimant was made redundant on 24 April 2008. The claimant knew where he was on the list and the claimant refused to sign his RP50 redundancy form.

At this time a subcontractor was undertaking work in a site in Gorey. The trade union raised the issue of the subcontractor with the union and a meeting was held to discuss the situation. He spoke to the claimant about his notice and his P45 and the claimant would not accept it. He was given a copy of a letter dated 23 April 2008, which the claimant received from his trade union. All block layers were paid in accordance with the rates agreed by the union. All block/bricklayers moved from site to site. The three shop stewards who were blocklayers commenced employment in 19 March 2004, in 31 October 2001 and 15 May 2001. Two shop stewards had less service than the claimant.

In cross-examination he stated that he was employed with the respondent for over thirty years. He was involved in the claimant's redundancy and he informed him verbally of the unfortunate circumstances which the respondent found itself in. He could not recall the exact date that he notified the claimant of his redundancy but on recollection it was around 13 March 2008. The claimant was previously given notice in December 2006 as work had decreased but the notice was rescinded. In March 2008 the claimant was given notice, a project did not finish at the anticipated time and the notice was extended on a week-to-week basis. A number of projects are ongoing and the current turnover is less than €50 million. Eight block layers are currently employed and projects are at various stages of completion. The claimant did not volunteer to work on a project in Gorey. An agreement was in place with the union that the respondent employed direct employees. No written agreement was in place regarding shop stewards being retained. Trade union members appointed shop stewards. The claimant worked in Navan and the respondent did not have work outside of the greater Dublin area.

In answer to questions from the Tribunal when put to him why the procedure for redundancy was not included in the contract of employment he replied that the agreement with the union was implemented after the contract was issued. It was an agreement but no record was retained. When questioned if this was a serious breach by the respondent he replied that the terms and conditions frequently changed and it was not part of the registered agreement. In relation to the fairness and justification for this he stated that the trade union agreed with the policy. He did not inform the claimant of this agreement. He did not offer the claimant alternative employment in the Dublin area prior to making him redundant. The respondent had meetings on a regular basis with the union and it had discussions regarding statutory redundancy.

### **Claimant's Case**

The claimant told the Tribunal that he commenced employment with the respondent in 2001. He was first informed about redundancy in November 2006 when GS the direct cost controller gave him four weeks notice. He was due to finish work Christmas week 2006. He asked GS about the shop stewards and GS told him that they were going to be retained. The claimant told GS that he was not going to agree to it. He addressed his concerns regarding the criteria for redundancy in a letter dated 4 December 2006 to GS. He also wrote to his trade union. He received a reply from the trade union but he did not receive a reply from GS. If the claimant knew that there was work available he would have put forward his name. It was his understanding that trade union members elected shop stewards. One shop steward had less service than he had and he was unsure about the other two. Fair procedures were not adhered to.

In cross-examination he stated that he was employed in the building business for forty years and the respondent employed him for six and a half years. He was a member of a trade union since 1977. Regarding redundancy he heard that the shop stewards were given priority over other employees. There was no discussion with shop stewards and employees. Asked why he did not address this matter in writing he replied there were no discussions about it. He was aware of the registered employment agreement and that it was legally binding. He did not have discussions with GS in relation to the letter of 4 December 2006, which the claimant sent to him regarding the criteria for making employees redundant.

## **Determination**

The respondent's case is that because of the recession there was a downturn in business and that it had no alternative but to commence making block-layers redundant.

In relation to redundancies, GS on behalf of the respondent, gave evidence that the respondent operated a system of "last in first out" with the exception of shop stewards. The claimant gave evidence that he was dissatisfied with the fact that two shop stewards who are being retained had less service than him.

The claimant's Terms and Conditions of employment clearly set out the criteria on which the selection for redundancy is based. Under the heading "Layoff's and Redundancies" it states:

*"In the event of dismissals due to redundancy and all things being equal, relative to skill, experience, flexibility, attendance, timekeeping, value to the organisation and disciplinary record, the principal of seniority will apply".*

There was nothing in the claimant's terms and conditions of employment to indicate to him that seniority would not apply in respect of shop stewards who would escape redundancy. The respondent never advised the claimant that there was a fundamental change in the criteria on which selection for redundancy would be based.

The Tribunal is not satisfied that the respondent acted fairly and reasonably when addressing the need to reduce the number of employees. It blatantly ignored its own selection procedure. It is irrelevant that all block-layers, including the shop stewards, have been or will be made redundant before the end of November 2008. At the time the claimant was made redundant the respondent did not act fairly.

Accordingly the Tribunal determines the claimant was unfairly selected for redundancy and awards the claimant €22,500 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

