

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD773/2008, RP665/2008  
MN717/2008

Against

Employer

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr P. Pierce  
Ms. E. Brezina

heard this claim at Naas on 25th November 2008

### **Representation:**

Claimant : Mr Stephen Maher, Solicitor, Main Street, Newbridge, Co Kildare

Respondent : Mr Fergus Feeney, Solicitor, Bailalee Road, Longford, Co Lonford

The determination of the Tribunal was as follows:

The respondent is a construction company, which in this case contracted out one of its drivers together with a machine to a larger enterprise, John Sisk & Son Ltd., for the purposes of working for several years on a major road-building project. According to the plant manager of Sisk, safety is the number one issue in all their undertakings. In that regard this machine was mechanically checked for this operation and was declared to be in proper working order. The driver who is the claimant in this case was also eligible to operate that machine.

However, and from Sisk' point of view, it soon became clear that safety on the site had been compromised through the actions of the driver and defects in the machine. As a result the plant manager mad it clear to the respondent that the driver be removed from the site.

A director of the respondent's reluctantly agreed to that request. At that time in May 2008 the respondent was unable to provide alternative work to the claimant and had to cease his employment. The claimant confirmed his employment was terminated under those circumstances.

## **Determination**

The Tribunal finds that the main contractor operated within its rights to request that the applicant be removed from the relevant site due to the safety issues specified.

Unfortunately the Applicant's employer was not in a position to offer alternative employment to the Applicant and was obliged to make him redundant.

Having heard and considered the evidence the Tribunal finds that the claimant was dismissed by way of redundancy and accordingly awards him a statutory lump sum under the Redundancy Payments Acts, 1967 to 2007 and based on the following:

Date of Birth: 29 February 1976  
Date of Commencement: 15 March 2004  
Date of Termination: 21 May 2008  
Weekly Wage: € 650.00 (gross pay not stated)

Statutory redundancy payments are subjected to a weekly ceiling of €600.00.

This award is made subject to the claimant having been in insurable employment for the purposes of the Social Welfare Acts at all material times.

Since unfair dismissal and redundancy are mutually exclusive it follows that the claim under the Unfair Dismissals Acts 1967 to 2003 must fall.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 succeeds and the Applicant is awarded €1300.00 as compensation for outstanding notice entitlements.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

