

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE - *claimant*

CASE NO.

RP704/2009

UD2398/2009

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T. Gill
Mr. T. Kennelly

heard this claim at Ennis on 9th November 2009

Representation:

Claimant(s) : Mr Michael Kiely, SIPTU, 4 Church Street, St John's Square,
Limerick

Respondent(s) : Mr. Stephen Nicholas, Nicholas Nolan, Solicitors, Parnell
House, 50/52 Parnell Street, Ennis, Co. Clare

The determination of the Tribunal was as follows:-

Preliminary Point

The claimant's representative made an application to have a claim for unfair dismissal added to the hearing. The respondent's representative acceded to this request. Accordingly the Tribunal added a claim for unfair dismissal to the hearing under the Unfair Dismissals Acts 1977 to 2007. The claimant's representative then withdrew the claim under the Redundancy Payments Acts 1967 to 2007 and the Tribunal proceeded to hear the case under the Unfair Dismissals Acts 1977 to 2007.

Respondent's Case

The Managing Director for the respondent company gave evidence that the company supply, erect and dismantle scaffolding in a number of counties on the western seaboard. The company

concentrates on big, bulk work with major building contractors. The company's labour force is divided into teams located in Galway, Ennis, Kilrush, Abbeyfeale and Limerick city. The workforce in these locations covered all areas where work was carried out and it is financially prudent for the company to employ each team of workers within their locality. The geographical spread of employees was very important to the company and it was also important that employees were multi disciplined.

Since the beginning of 2008 the company's turnover has decreased by 70% and the company has experienced a further rapid decline in 2009. Due to this downturn the company has reduced its workforce from 83 employees and currently employs 21 people. The company has paid redundancy entitlements to all workers who were let go. As the work dried up teams of workers were made redundant. The claimant was originally hired as a general operative and through a period of induction and training became a scaffolder. He was based in Co. Clare and as no work was being carried out in the Limerick/Clare area he was made redundant. It would not have been financially feasible for the company to employ him in the Galway region due to travel costs that they would have incurred. The company would also have had to make an employee in the Galway region redundant if it employed the claimant in that region.

The witness went on to give evidence that the respondent continued to employ people on a site in Limerick hereinafter called VC site. The same workforce have been employed on that site for the past 8 years. This involves specialist work with chemicals and gases and all employees on that site have been trained by VC personnel in relation to dangers that exist on that site.

Under cross examination he agreed that no alternative option such as reduced pay or reduced hours was offered to the claimant. He confirmed that employees with less service than the claimant have remained in employment. He agreed that the claimant had worked on the VC site but only as assistance to other employees. He was employed at various stages when back up was required. If he employed the claimant on the VC site he would have had to make some other employee redundant.

The next witness gave evidence that he was the wages clerk for the respondent company. He gave evidence that one further employee has been made redundant since the claimant was made redundant. In 2006 the company employed 107 people. This increased to 116 in 2007 but decreased to 69 in 2008 and has since decreased to a current figure of 21.

Claimant's Case

The claimant gave direct evidence that he commenced working for the respondent in October 1995. He was never provided with a contract of employment. On the 26 January 2009 he received a phone call from the Managing Director informing him that he was being made redundant. He was not given any opportunity to appeal that decision and was not offered any other alternative. He would have been open to other alternatives such as reduced hours, reduced pay or temporary lay off but none of these were offered to him. He had worked in practically every village and town in the Munster region for the respondent and no issues were ever raised about his work performance. A couple of months before he was made redundant he had worked on the VC site in Limerick and no issues were raised about his work performance on that site.

Under cross examination he accepted that other scaffolders had been made redundant. He was never given the opportunity to meet with management of the company when he was made redundant. He was made redundant on the 9 March 2009 and was unemployed until the 9 October 2009.

Determination

This case must be viewed against the dramatic decrease in activity in the general construction industry and this company in particular which ultimately resulted in a substantial decrease in the respondent's workforce. This assertion was given in evidence by the Managing Director for the respondent and was not contested by the claimant's representative.

While the claimant had been working for the respondent since 1995 the Tribunal notes that other employees with longer service were made redundant prior to the claimant being made redundant. The respondent's legal representative clarified and illustrated how the economic conditions adversely affected the staffing levels within the company. A document produced in evidence by the respondent's representative clearly showed the number of people who were laid off by means of redundancy, and listed their residence, work location and length of service. These latter factors were, in the view of the respondent decisive in the selection of employees for redundancy. In relation to the claimant's assertion that the selection for redundancy should be on a last in first out basis, the Tribunal is satisfied that no such clause exists in the Registered Employment Agreement for the construction industry.

Taking a global view of the evidence given and produced the Tribunal finds by majority decision that the claimant was not unfairly selected for redundancy and accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

