

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
8 Employees

CASE NO.

UD950/2008
UD951/2008
UD952/2008
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UD955/2008
UD956/2008
UD957/2008

Claimants-

against

Employer

Respondent

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. T. O'Sullivan
Mr F. Barry

heard this claim at Dublin on 8th December 2008

Representation:

Claimant(s): Mr. John Swords, Operative Plasterers & Allied, Trades
Society Of Ireland, 72 Shantalla Road, Beaumont, Dublin 9

Respondent(s): Mr Breffni O'Neill, CIF, Construction House, Canal Road,
Dublin 6

The determination of the Tribunal was as follows:-

Respondent's Case

POR told the Tribunal he was construction director with the respondent since 1990. Site managers reported to him. The claimants were employed as plasterers at various sites in the Dublin area. The claimants were last employed on a development in the Gallops and in Tallaght. Those employed in Tallaght were employed in the Gallops at one time. In 2006 it was difficult to recruit labour. A subcontractor commenced in January 2007 and one of the primary reasons for recruiting sub contractors was the market peaked in February 2007. In Autumn 2007 the respondent purchased a building and three hundred units were almost completed. These will take two to three years to unload. It was difficult to employ direct labour at all times. The respondent was one of the few

employers who employed direct plasterers but the method had changed. Four of the employees were given notice in January 2008 and a further four in March 2008. The claimants received their redundancy and minimum notice. The average earnings of the claimants were approximately €2,500 per week.

Sub contractors were employed in a complex comprising of one hundred and seventy three apartments, they started in January 2007 when the market was buoyant and were expected to be finalised in Spring 2008 but were not completed until October 2008. Due to a downturn in the market he was requested to reduce numbers and prices were reduced by twenty five percent. The apartments are now completed but are unsold. The situation in 2006 was how quickly the respondent could complete the apartments and many did not come to fruition. In 2006 the respondent had land and a number of developments in the pipeline but that has been postponed and will not commence before 2010. Currently the respondent has a development of forty-three one-bedroom apartments in social housing, which commenced recently, and it is expected that this will be completed by mid February 2009. At the moment there are one hundred and fifty units unsold out of two hundred and seventy. In April 2007 it employed sixty-six staff and in December 2008 it had forty-six employees. He stated that the Registered Employment Agreement Clause 120 allowed the respondent to employ subcontractors.

In cross-examination he stated that he met the claimants representative in December 2006 and he did not say there was a down turn at the time. The work that a subcontractor Stonewall and direct employees undertook was not linked to each other. He stated that in the future he saw no reason why direct plasterers would not be employed. The respondent was a very good employer and since it started in 1960 it had a good record regarding paying employees. The respondent had improved its method and changed from bricklaying to prefabrication and from precast to concrete walls. There was short-term employment on a social housing scheme in Ballinteer for three months for three to four plasterers. It was difficult to reemploy staff on a short-term basis.

The respondent had some work in May, June July of 2008. He did not accept that Stonewall had problems recruiting labour.

Claimant's Case

The seventh named claimant EOM on behalf of the claimants told the Tribunal he attended a meeting in December 2006 and the respondent started to subcontract to Stonewall. The claimants were informed that this would not affect direct employees. The claimants had a good relationship with the respondent. In February four employees were let go and were informed verbally on site. He attended a meeting with his union representative JS and POR, construction director. At this meeting the claimant and his colleagues were informed that Block D would not be completed until 2009. A meeting took place regarding enhanced redundancy. There was no attempt made by the respondent to negotiate with the claimants and the matter went to the Labour Relations Commission.

The claimants then discovered that Stonewall was on site and completing block D. They had no reason to believe that the respondent would negotiate with them. The employees trusted the respondent regarding subcontractors. There was a downturn in the business and the claimants were informed that Block D would not be finished. In April 2008 the other four claimants were let go. This was an opportunity to get rid of the claimants and employ a sub contractor and direct labour was always used.

In cross-examination he said he worked in Tallaght in April 2008. He was not sure if Stonewall were off site for three months in 2008. The claimant undertook a few mixers since he was let go.

The job situation at the moment is very bleak. Plasterers had to go for retraining. He stated that the respondent still had work.

The remaining listed claimants gave sworn evidence as to their loss and their efforts to secure alternative employment since the termination of their employment.

Determination

The key question that the Tribunal must ask itself in cases of unfair selection for redundancy being brought before it, is whether the job or type of work has been made redundant as against an individual being made redundant. The onus is therefore on the employer to establish that the work is no longer being carried out in the workplace.

Clearly, this is not the case as the employer had demand for plastering work to be carried out long after it had let go its own employees.

In its defence the employer stated that it could not breach its contractual arrangement with the sub-contractors though little evidence was adduced to outline what the impact of such a breach would have been.

The Tribunal note the position of the employer as it was caught between letting its own employees go and breaking a contractual agreement.

The Tribunal notes that some of these claimants had given over twenty years service to the respondent and that no consideration was given to temporary lay off or short week options or indeed to the options of re-negotiating the contract with the sub contractor who it seems went on to work a further contract at the affordable housing site in Ballinteer.

The Tribunal finds that the respondent has not demonstrated that the selection to make employees redundant was fair in all the circumstances. The respondent went for the easier option without having regard to the service it had received from each of these individual claimants.

The claimants therefore must succeed in their claim that they had been unfairly selected for redundancy and are therefore unfairly dismissed.

In assessing compensation the Tribunal is mindful of the fact that redundancy proceedings would have occurred before the end of the year in any event.

The Tribunal cannot say with certainty how many more weeks or months the claimants might have worked.

There might have been four months of work for eight plasterers or twelve weeks work for four plasterers. In the interest of fairness the Tribunal finds that there was up to twelve more weeks work available to each of the claimants before there would inevitably have been a redundancy situation.

The Tribunal notes that substantial redundancy packages have already been paid which must now be seen to comprise part of the compensation awarded under the Unfair Dismissal legislation and credit will be given in respect of such sums.

The Tribunal awards the first named claimant D McG the sum of €54,552.00 of which the sum of €28,440 has already been paid. The respondent therefore is still liable to pay €26,112,00 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal awards the second named claimant G O'R €37,332 of which the sum of €7,812. has already been paid. The respondent therefore is still liable to pay €29,520.00 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal awards the third named claimant C K €34,032 of which the sum of €7,548 has already been paid. The respondent therefore is still liable to pay €26,484 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal awards the fourth named claimant A McE €42,492 of which the sum of €13,692 has already been paid. The respondent therefore is still liable to pay €28,800 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal awards the fifth named claimant D F €58,344 of which the sum of which €28,344 has already been paid. The respondent is still liable to pay €30,000 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal awards the sixth named claimant. J OM €46,104 of which the sum of €17,904 has already been paid. The respondent is still liable to pay €28,200 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal awards the seventh named claimant E O'M €50,292 of which the sum of €20,292 has already been paid. The respondent is still liable to pay €30,000 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal awards the eighth named claimant LF €38,848 of which €28,848 has already been paid. The respondent is still liable to pay €10,000 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

