

EMPLOYMENT APPEALS TRIBUNAL

Claim of:
Employee

Case No.
UD1100/2007

- claimant
MN852/2007
WT369/2007

against

Employer - respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. O'Connor

Members: Ms. M. Sweeney
Mr. K. O'Connor

heard this claim at Killarney on 9th October 2008 and 15th December 2008

Representation:

Claimant: Mr. Conor Murphy, Murphy Healy & Company, Solicitors,
Market Street, Kenmare, Co. Kerry

Respondent: Ms. Noirín Browne, Pdraig J. O'Connell Solicitors, Glebe Lane, Killarney,
Co. Kerry

The determination of the Tribunal was as follows:

Respondent's Case:

Ms. S gave evidence to the Tribunal. The claimant commenced employment with the respondent as a labourer. Through his own initiative and training provided by the company the claimant became a basic scaffolder.

In the height of its business the respondent employed 120 direct employees as well as engaging sub-contractors. During 2006 the respondent suffered a slow down in its business. At that time the company had work on three sites in Kerry. The houses at one site were not selling and no further houses were built. There was still some building continuing on the second site and the respondent's employees were moved there when work finished on the first site. Once work was completed on

the second site, only the third site remained. The work was completed there in August 2007.

From January 2007 the respondent reduced its staff. All staff were made aware of the possibility of redundancies within the company. A letter dated the 27th April 2007 was inserted into the envelope of every payslip. The letter outlined that the method of selecting individuals for redundancy would be based on qualifications and trade.

On the 18 May 2007 a formal notification of redundancy was issued to a number of employees who were made redundant effective from the 31st May 2007.

Ms. S gave evidence of an incident, which had occurred, on the third site where the claimant was working. A letter was written to the claimant on the 21st June 2007 stating that *"As you are aware our clients,...have contacted the company requesting that you be removed from the Parknasilla site following the HSA inspection on the 6th June 2007."* The letter outlined a number of concerns the respondent's client had about the scaffolding on that date. Ms. S stated that the respondent had not had any previous problems with the claimant's work. As a result of the client's request the claimant and his colleague had to be removed from the site and another company was brought in to complete the scaffolding. The company required the claimant to attend a meeting in relation to this matter on the 26th June 2007.

The claimant was given formal notice of his redundancy by letter dated the 20th July 2007, which informed the claimant that he was being made redundant effective from 27th July 2007. Once the scaffolding was dismantled from the third site there was no further work for the scaffolders. The letter of the 20th July 2007 stated, *"Because your continuous service with the company is less than the requisite 104 weeks necessary to attract a Statutory Redundancy Payment, you will not be entitled to any redundancy payment on termination of your employment with the company. Attached to this letter is a schedule breaking down your final entitlement with regard to any outstanding holiday pay which you will receive with your final monies and P45 on Thursday 2nd August."*

Following the summer of 2007 the apprentices were employed for as long as possible so that they would get their apprenticeships. The respondent has only one remaining employee who holds the position of Project Manager/ Quality Supervisor. Ms. S was also made redundant.

During cross-examination it was put to Ms. S that the letter of the 21st June 2007 regarding the inspection, referred to the claimant's employment. Ms. S replied that the letter referred to the fact that if the claimant could not work on that site, the company had no alternative work for the claimant.

It was put to Ms. S that the claimant's fellow scaffolder was not made redundant until October 2007, whereas the claimant was made redundant in July 2007. If the claimant had not been made redundant until October 2007 he would have qualified for a redundancy payment. Ms. S replied that the claimant's colleague had longer service than the claimant and was more qualified than the claimant. The company employed the claimant for as long as was possible. A consultation was held with the claimant about alternative work but there were only small jobs available such as tidying the site and stacking the scaffolding.

It was put to Ms. S that the claimant did not receive the correspondence from the company in April and May of 2007. Ms. S replied that all staff were made aware firstly of the possibility of redundancies and then they were given formal notification. The letters from the company in April

and May 2007 were provided with the payslips.

Claimant's case:

The claimant gave evidence with the assistance of a Tribunal appointed translator. The claimant confirmed that he had commenced working for the respondent as a labourer in July 2005. He undertook more scaffolding duties as time passed.

The claimant stated that he had ongoing difficulties working with his fellow scaffolder. The claimant alleged that his colleague had pushed him and told him to clear the site while he built the scaffolding. His colleague continued in the company's employment after the claimant was made redundant.

The claimant stated that he did not receive the letter from the company on the 27th April 2007 nor did he receive the letter dated the 18th May 2007. The first letter the claimant received was the letter of the 21st June 2007, which informed him that he was to be made redundant. There was no consultation with him regarding the redundancy. Other employees were retained for a period of three or four months after the claimant was made redundant in July 2007. The claimant believes the company retained people with less service than him after he was made redundant.

During cross-examination the claimant stated that he had received his payslips but not the letters of April and May 2007.

The claimant gave evidence relating to loss.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal finds that a bona fide redundancy situation existed and that the selection process was fair. The person retained by the company until October 2007 had more experience than the claimant. The claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

The Tribunal is satisfied that the claimant was paid his entitlement under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, and the Organisation of Working Time Act, 1997, accordingly both claims under these Acts, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)