

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

- **claimant** UD1063/2008

Against

Employer -**respondent**

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. M. Flood  
Mr B. Byrne

heard this claim at Dublin on 21st January 2009

Representation:

\_\_\_\_\_

Claimant(s): Mr. James O'Mahony, Solicitor, 16 Stoneybatter, Dublin 7

Respondent(s): Mr. Stephen Sands, C.I.F., Construction House, Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

TOH told the Tribunal that he was construction director with the respondent and was responsible for the day to day running of the sites. The claimant worked in various sites and he wanted to work a flat week. It was agreed that the claimant could move to a site in North King Street. The claimant had an issue regarding travel allowance and the respondent paid him some travel time. Circumstances forced the respondent to make the claimant redundant due to a downturn in work in late 2008. The construction director could not guarantee work for employees. At one stage the respondent had approximately three hundred and eighty employees and it now has a maximum of sixty staff. The claimant was employed as a banksman, which entailed guiding a crane to a certain position. Twenty banksmen were let go and the claimant was not the first to be let go. The claimant was paid a Grade A operator rate. The respondent operated site by site and if there was no work available on a site employees were made redundant. The claimant was aware of the policy and the respondent never operated LIFFO. The respondent had a good relationship with the trade union and the claimant received a redundancy payment, which he cashed.

In cross-examination he stated that the claimant was selected for redundancy as the crane was

coming down on site and there was no work for him. He did not accept that the claimant was victimised and he never had issues with the claimant. The claimant raised issues regarding safety and this was dealt with expeditiously. The claimant did not want to work overtime and the claimant was not constantly moved. The witness would not and did not guarantee work for eighteen months in North King Street. He did not believe there was consultation regarding the claimant's redundancy. The union was aware that work was spiralling downwards. There was an agreement with the union that if the crane shut down that employees would undertake other work. The claimant refused to undertake light duties or brushing up and if he had to do those duties he would clock out. He gave evidence that the claimant was made redundant and was paid time in lieu. The claimant had a ticket to drive a dumper and a forklift. As the claimant was a banksman there was no site to relocate him to.

In answer to questions from the Tribunal the construction director stated that he was not sure if there was a written agreement with the trade union. If a general operator had ten years experience the respondent always paid him Grade A wages. It was not unusual for an employee to commence employment as a banksman. Presently four sites had crane operators and all four had banksmen. Trained banksmen could work on any site and were moved from site to site. The claimant exercised his right to appeal the decision to make him redundant and the HR manager dealt with the appeal. Two hundred and fifty to three hundred employees were let go from April 2008 to mid January 2009 and sites were closed. Prior to April 2008 he discussed with the union that he was going to have to let employees go and there was ongoing dialogue with the union.

### **Claimant's Case**

A union representative on behalf of the claimant JM told the Tribunal that the minutes of a meeting held on 21 June were an accurate account of the issues. The claimant and a shop steward contacted him regarding the claimant's transfer. In 2005 the claimant was transferred to various sites in Dublin and then transferred to North King Street. There were no complaints regarding the claimant's ability to undertake his work. Whenever the claimant raised issues on site he was transferred. The respondent had another support company and the claimant had worked there as an operator. The claimant asked to be upskilled on a number of occasions. The claimant was an active shop steward.

In cross-examination he stated that as far as he was aware the respondent did not operate LIFFO. The claimant had a ticket to drive a dumper and teleporter. He was aware that the claimant received an RP50. He was not aware if the claimant raised issues regarding health and safety at the appeal hearing but he did raise these issues at various meetings. The claimant felt he was unfairly selected for redundancy and staff on other sites had less service than he had. There was no dispute regarding redundancy, it was the selection criteria. It was never indicated to him that the claimant refused to undertake duties but he was made aware that some employees refused to carry out light duties.

The claimant told the Tribunal that he commenced employment with the respondent as a skilled operator. Four years later he undertook work as a banksman and he had his own business for twelve years. He was willing to undertake any type of work and he was always flexible. He did not ask to be moved to a site in North King Street. He stated that TOH, the construction director told him that there was a job in North King Street for eighteen months. The first indication of redundancy was on a particular Friday evening at 4.30pm. He could not recall the appeals procedure. His wife is ill and he had difficulty in remembering. He was a shop steward and there were issues regarding health and safety. He was selected for redundancy as the respondent wanted

to get rid of him.

In cross-examination the claimant stated that he was employed as a general operative in 2000. He undertook work as a banksman for five or six years and it was not fair to say he was employed as a banksman as he operated a teleporter also. He worked as a banks-man 90% of the time when he was working on the Tallaght site. When he was working on the North King Street site 50% of the time he was working as a banksman. He told fellow employees who were banksmen if they did not undertake other duties they were liable to be sacked. He told the construction director that he wanted to work from 8a.m. until 5.30p.m. and he agreed to that. He gave evidence that he worked on the site in North King Street for approximately three to five months but during further cross-examination he agreed that he worked there for ten to twelve months. The claimant was informed that the reason for transferring him to this site was it was more convenient and closer to home.

The claimant stated that he was not a full time banksman. He signed form RP50 and took the money, as he believed the respondent wanted him out. When asked if he believed he was unfairly dismissed and why he accepted payment he replied that he was in debt. He disagreed that he refused to undertake other duties when the crane came down and he never refused to do overtime. He did not ask for extra travel time when he was transferred to the site in North King Street, he was told that either way he was going.

### **Determination**

There was no agreement with the Trade Union in relation to the selection process being used in a redundancy situation. The Tribunal believes that the Respondent's consultation with the claimant regarding his redundancy left a lot to be desired and it was not discussed with him individually or collectively. However the Tribunal are satisfied that it was clear that there were redundancies in the company because of the downturn in the construction industry. The selection of the claimant for redundancy was not unfair, therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

