

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee
-**Claimant**
against

UD1057/2008

Employer -**Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. N. Ormond
Mr. P. Trehy

heard this appeal at Dublin on 17 December 2008

Representation:

Claimant:

Ms. Martin Moran, Martin Moran & Co, Solicitors,
12 Stephens Lane, off Upper Mount Street, Dublin 2

Respondent:

Mr. Peter Somers B.L., instructed by Mr. John Sheedy, Solicitor,
Unit 3, Broomhill Business Complex, Tallaght, Dublin 24

The determination of the Tribunal was as follows:

The respondent operates a waste recycling business, specialising in building waste. The claimant was employed from 15 January 2003 as part of a three-person team involved in the issuing of statements and collection of monies from clients and the various premises at which the respondent operates. He also dealt with customer complaints. The claimant and the then managing director (TMD) had known each other for a considerable time before the employment commenced. The respondent's position is that a friend of the claimant approached TMD and asked TMD to hire the claimant. The claimant's position is that he was offered a position by TMD some two years prior to joining the respondent but at that time was involved with a project in the UK. He had joined the respondent on his return from that project.

The claimant undertook a course of training in health and safety matters that was paid for by TMD. The claimant's position is that following his completion of the health and safety course he was appointed to a position as health and safety officer in the respondent in or around September 2005. The respondent's position is that the claimant was never appointed health and safety officer as it was the express wish of TMD that the claimant should not fill that position. Notwithstanding this the claimant is described as safety officer in the respondent's safety statement. The Health and Safety Authority wrote to him at the respondent in connection with health and safety issues. The

respondent's position is that the three-person team of which the claimant was part carried out the investigation of health and safety issues jointly and the respondent had a safety consultant.

On 25 August 2008 the general manager informed the claimant and another of the three-person team that their positions were being declared redundant following a serious downturn in business. The member of the team with the longest service was retained. The claimant maintained that he should not have been selected as a candidate for redundancy as his position as safety officer was a statutory requirement under the Safety, Health and Welfare at Work Act 2005 and nobody else in the respondent was qualified to fill the position.

Determination:

Whilst accepting that the claimant was the safety officer for the respondent the Tribunal finds by majority, with Mr. Trehy dissenting, that a genuine redundancy situation did exist in the respondent and that, of the three employees in the section where the claimant was employed, those two with the least service were selected as the candidates for redundancy. In these circumstances the Tribunal finds, by the afore mentioned majority, that the dismissal was not unfair. Accordingly the claim under the under Unfair Dismissals Acts, 1977 to 2007 fails

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)