

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD1370/2008

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S C

Members: Mr J. Browne  
Mr P. Trehy

heard this claim at Wexford on 29th July 2009

### Representation:

Claimant: In person

Respondent : Mr. Alastair Purdy, Purdy Legal, Solicitors, New Docks, Lough Atalia, Galway

The determination of the Tribunal was as follows:

At the outset of this hearing an application by the claimant to adjourn proceedings was sought. The respondent objected to the granting of this application. Having considered the reasons and circumstances of that application the Tribunal refused it.

### Claimant's Case

The claimant commenced employment at the XXXX plant in Inch, county Wexford as a maintenance electrician in August 2001. His employer at that time was XXXX and that enterprise had a contract with XXXX to provide certain maintenance work. The respondent acquired that contract and retained the services of the claimant in January 2003 to work as a maintenance technician. He was one of a dozen or so employees engaged by the respondent to undertake work there.

Due to operating and cost considerations the respondent only had four personnel, including the claimant, at this plant by early 2008. Several of the departed staff had been made redundant including a former named colleague in late 2007 who the claimant identified as the one who was wrongly reengaged by the company in June 2008. It was the witness's contention that he should not have been either let go in May 2008 or, if so, then he should have been recalled to work instead of that employee some three weeks following his termination of employment. The witness felt he had the more appropriate qualifications and experience to perform instrumentation tasks asked of the respondent by XXXX shortly after his departure from the company.

The claimant changed his attitude towards his redundancy from acceptance to contesting it when he learned of the re-engagement of that former colleague. He then felt that his redundancy was a cover to allow the respondent to recall that person. In other words his job at the respondent was sacrificed in order to facilitate the redeployment of that other person.

In addition to that issue the claimant said he experienced a lot of bullying at work between January and May 2008. He maintained that his complaints about this treatment went unaddressed. It was his belief that there was “a concentrated effort (by the respondent) to show me up in a bad light”. That belief stemmed partially from a work review carried out on him in February 2008, which he described as a sham.

Two further witnesses gave brief evidence. A former employer of the claimant said that he performed general duties at the time of that employment which included instrumentation work. However this witness had no knowledge of the nature of that work as requested by XXXX in the summer of 2008. The second witness who was a self-employed fitter and technician said he was aware that the claimant had made complaints of bullying at work to the respondent.

### **Respondent’s Case**

The factory or plant manager at XXXX from February 2007 to February 2009 explained that XXXX had a contract with the respondent to supply manpower at their plant. During the course of those two years the witness said that due to competitive pressures their requirements for manning levels decreased over that time. This witness spoke to the respondent’s operations director in 2008 about this situation with a view to further reducing the number of electricians by one employed by the respondent at the plant. The respondent in turn chose the claimant as the one to go. XXXX had no issues with the behaviour or performance of the claimant at their plant and did not advocate that he be made redundant.

The witness explained that instrumentation had at least two strands to it. XXXX needed somebody to undertake the calibration of this work which had to be certified by those qualified to do that in order to fully complete that task. At the time of the claimant’s redundancy XXXX had not made such a request to the respondent for that work.

### **Determination**

Having carefully considered the evidence adduced in this case the Tribunal finds that the claimant was properly made redundant by the respondent. Objective criteria were used in this process at the time of its operation. That process was initially accepted by the claimant and his change of attitude was based more on his perception of subsequent events rather than on the reality of those events.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

