

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NOS.

Employee – *claimant*

UD1430/2008

RP1279/2008

against

Employer– *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. O’Connell BL

Members: Mr. R. Murphy
Ms. M. Finnerty

heard this appeal at Dublin on 13 July 2009

Representation:

Claimant: Mr. John Murphy, SIPTU, Construction Branch,
Liberty Hall, Dublin 1

Respondent: Ms. Edel Kennedy, ESA Consultants, The Novum Building,
Clonshaugh Industrial Estate, Dublin 17

The decision of the Tribunal was as follows:

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn.

Respondent’s Case

A director of the respondent company gave evidence. The Company went into examinership in 2007. To resolve that issue 2 directors took a holding in the company's major creditor. However the company is still struggling. Staff numbers have been cut to the bone.

The claimant worked as a finishing foreman. The role disappeared. Finishing was done by directors or by the site manager. No finishing foreman was taken on since the claimant left.

He called the claimant to a meeting and told him that he was being made redundant. The only alternative was to give the claimant a job labouring. That option was not acceptable to the claimant. The claimant had an argument with his site manager before he was made redundant, but that was not a factor in his selection.

When the claimant appealed the decision to make him redundant the director did not respond because he felt that the matter had been dealt with.

The claimant's former site manager gave evidence. There had been no role for the claimant on the site; he just turned up on site. He has no recollection of an argument with the claimant. There are incidents on site everyday.

Claimant's Case

He was on a particular site for 2 or 3 weeks before he was made redundant. He had no advance knowledge of the proposal to make him redundant. He was shocked when it happened because there was a year's work on the site.

Before he was made redundant he saw someone who did not have the appropriate ticket driving a dumper and told him to get out. The site manager wanted the man to drive the dumper but he insisted that without a ticket no one was driving the dumper.

Alternative positions were not discussed with him. If he had been offered a job as a labourer he would have taken it. He phoned the director on a number of occasions but was never invited to an appeal meeting.

Determination

The Tribunal carefully considered the evidence adduced in this case. The Tribunal accepts that a redundancy situation existed for the claimant's role. However alternatives to letting the claimant go were not properly explored. More importantly there were defects in the procedures, in particular the denial of an appeal, which were significant, so significant as to render the claimant's dismissal unfair. In this regard, the Tribunal considered Section 6(3) of the Unfair Dismissals Act, 1977 as amended by Section 5(b) of the Unfair Dismissals (Amendment) Act, 1993. Accordingly, the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The Tribunal awards the claimant €9,500.00.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)