EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:	CASE NO.
EMPLOYEE	RP22/2009 UD24/2009
MN30/2009	WT14/2009

against

EMPLOYER

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr J. Goulding
Mr. N. Broughall

heard this claim at Naas on 3rd July 2009

Representation:

_____

Claimant :
Mr Cian Moloney, B.L., instructed by Wilkinson & Price, Solicitors,
53 South Mall, Naas, Co. Kildare

Respondent :
Stephen Sands, Construction Industry Federation, Canal Road, Dublin 6

The determination of the Tribunal was as follows:-

At the outset Counsel for the claimant withdrew the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act 1997.

The claimant worked as a crane driver in the main yard. This yard is used as a depot for the distribution of machinery to sites nationally. The respondent lost a number of contracts and had to let a number of employees go including the claimant. As far as the claimant was concerned this was not a genuine redundancy and his trade union activity was a factor in his selection for redundancy. In 2008 there were 1,050 employees and in 2009 the employee numbers were down to 850. The number of employees in the yard were reduced from 38 to 28 and the number of crane drivers were reduced from 16 to 7.

Respondent's case:

The respondent is a building and civil engineering construction company. The Plant Manager (PM) in his evidence stated that at the beginning of 2008 there was a decline in their business. 75% of the business was in roads and civil projects and these projects were coming to an end, which meant they had to reduce costs. There was no longer a need to have a full time crane driver. There were three categories of cranes: mobile, crawlers and tower. The claimant had a mobile ticket only whereas the majority of their crane drivers have more than one ticket. The claimant was selected for redundancy on the basis of skills and service. A carpenter and mechanic were also made redundant. They were reducing the number of crane drivers and while the claimant could do spray-painting another spray painter was also a carpenter. Where there were 38 staff in the yard in 2008 this number was down to 28 in 2009. The general foreman gave the claimant his notice and as far as witness was aware the claimant did not appeal the decision to make him redundant. The claimant was a good worker and a couple of days following his redundancy, at his request he was given a reference. Witness spoke to the claimant in February 2007 and they discussed the major shift in their work and they were re-organising the structure in the yard. Witness spoke of the reporting structure and to his knowledge the claimant did not raise any issues. As far as witness was aware the claimant did not raise any trade union issues. The respondent deals with the trade union all the time and as far as he is aware SIPTU is the trade union that dealt with the crane drivers.

The Tribunal also heard evidence from the General Foreman (GF). On Thursday 7th August 2008 he asked the claimant to come to the office. There had been rumours in relation to redundancy and the claimant was told his redundancy was due to the downturn in work and as a result there was not sufficient work for a full time crane driver. The details of his redundancy package were outlined to him and he was told he would be paid in lieu of notice or he could work through the notice period if he wished. The claimant choose to be paid in lieu, signed the relevant forms and they shook hands. Witness could not recall if the claimant was given his cheque at that time or some time later. That was the last contact he had with the claimant. They got on very well and had no issues.

In cross-examination PM stated that there were signs of a reduction in work in 2007 and the respondent missed out on a few jobs. 75% of their work came from big road projects and while there were building sites in operation they did not need the same amount of materials as for the road projects. The yard was the depot for their sites nationally where the machinery goes to a location and is then returned. Once the material stops going out the work is reduced. The containers/portakabins could be on site for two to three years and some would have to come back to the yard to be cleaned. When it became apparent in August 2008 that there was no need for a full time crane driver the management had a meeting in or around a week prior to making the claimant redundant. When deciding on staff to be made redundant they looked at skills and service. The claimant drove the mobile crane and did not have the required skills to drive the other cranes. The yard is not now as busy as it had been and from time to time if there is a need for a crane driver someone from the site who has the ticket would drive the crane. PM stated that he never saw the claimant drive the crawler crane. While the mobile crane did occasionally break down GF did not

recall it being broken for two weeks. The claimant used to get a bonus when he worked unsocial hours as a spray painter but the necessity to work these hours then ceased. If the claimant was a member of a trade union there was a facility to have the subscription deducted from his wages.

Claimant's case:

The claimant commenced his employment with the respondent in 1999 as a crane driver. He had a ticket for the mobile crane and forklift. Prior to joining the respondent the claimant had served his apprenticeship as a spray painter. Where there had been contractors doing the spray-painting it was agreed with Mr P that the claimant would do this work and he would be paid for it. This work was sometimes done after normal working hours. When Mr P left the claimant continued to do the spray painting and he arranged to meet with PM in 2007 to let him know he was still doing the painting but was not receiving any extra payment. PM told him he would no longer get the payment in respect of the painting and the claimant told him that he would not then continue to do the spray-painting. The claimant sought legal advice and it was suggested that he seek a contract of employment. While the claimant sought the contract he was not given one. The following day he received a letter informing him that he would now have two foremen instead of one. The claimant then went to SIPTU and was told that the union could not represent him unless he could get some of the lads from the yard to also join. He got together twenty-six names and word then came from the office that a clocking system was to be installed. When this happened names began to be taken off the list. Remarks were made that the claimant was now on his own. He believes that the union activity was the reason he was selected for redundancy.

At the time he was made redundant he was busier than ever. The situation did not change in relation to the level of work other than maybe for an hour or a half day. The work remained constant. No crane driver works eight hours flat out. For three weeks prior to his redundancy he was driving the crawler and he did not make any mistakes or cause injuries. He did not have a ticket to drive the crawler and in order to get one you had to do only a two-day course. The yard could not operate without a crane and the mobile crane was sometimes out of order. Since he was made redundant his colleagues told him that they are very busy. On 7th August 2008 he was told that due to the economic downturn he was being made redundant. He was offered a package and four weeks pay in lieu of notice and was told the respondent would appreciate if he left that day. He was not given the option to work out his notice.

In cross-examination witness stated that while he does not have a ticket to drive the crawler he drove it when asked by his foreman and did so for two weeks prior to his being made redundant. While he accepted that others had both tickets and more service he stated that he never refused to drive the crawler. He stated that employees in the yard were not allowed to join the trade union while those on the site were allowed to do so. He received a good reference from the respondent.

Determination:

On balance the Tribunal is satisfied that there were redundancies within the firm in general as well as locally within the plant depot. There was a genuine redundancy. The claimant raised issues that he was not redundant but was selected for redundancy because of his trade union activity, however he has failed to satisfy the Tribunal in this regard. The claim under the Redundancy Payments Acts, 1967 to 2007 fails as the claimant was paid his full entitlements. The claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed. The claims under the Organisation of Working Time

Act, 1997 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 were withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)