

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.
UD819/2009

EMPLOYEE *-appellant*

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE

-v-

EMPLOYER *-respondent*
EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe
Members: Mr D. Moore
Mr. S. O'Donnell

heard this appeal at Dublin on 22nd February 2010

Representation:

Appellant: Brendan O'Sullivan, Batu, Arus Hibernia,
13 Blessington Street, Dublin 7

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

The determination of the Tribunal was as follows:

Background:

The respondent company is a general building contracting company. The appellant was a brick/blocklayer with the respondent.

Respondent's case:

The Tribunal heard evidence from a director of the respondent company. The company is a general building contracting company. All of the building work was sub-contracted with the exception of the brick/blocklaying work. A downturn occurred and the revenue of the respondent company declined year after year. Eventually the company had to effect redundancies.

The company had an agreed listing system of seniority for the employees. The list system was agreed with the Trade Union. The list system was in use for at least ten years. When they made the brick/blocklayers redundant they did so by reference to the list of seniority.

Eventually all of the brick/blocklayers were made redundant with the exception of two brick/blocklayers and one apprentice. The two brick/blocklayers were on the top of the list of seniority, and these were eventually also made redundant. They retained the apprentice to allow him to finish his apprenticeship. All across the organisation other staff were also made redundant. None of the staff that were made redundant were re-hired. There was no custom in the respondent of temporary lay-off. After all of the brick/blocklayers were made redundant any new work that involved brick/blocklaying was sub-contracted.

The witness explained that he had no problem with the appellant; he was a “fine worker, a good tradesman”.

The witness was asked by the Tribunal how the redundancies were decided and he explained that it was on seniority and using the list system that had been agreed with the Trade Union. He also explained that at the present time they have no brick/blocklayers.

Appellant’s case:

The Tribunal heard evidence from the appellant. He worked as a brick/stonelayer by trade for 35 years. The respondent had no issues with his performance.

The respondent did not notify him that it was going to change the way that it did the brick/blocklaying work, (subcontracting the work). He was never asked to take a cut in his wage, (to retain his employment).

The witness agreed in cross examination that the two brick/blocklayers that were left in that company had longer service than him and that last in first out and the list system was used. He agreed that there was a downturn and that there was no work.

Determination:

Having heard the evidence from all the parties of the situation at the time the appellant was let go, the Tribunal is satisfied that a redundancy situation arose at the time the appellant was let go. The dismissal was because of redundancy. Accordingly, the dismissal was not unfair. The Tribunal upholds the Recommendation of the Rights Commissioner, ref: r-070064-ud-08/EH. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)