

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.  
UD854/2009

EMPLOYEE

*-appellant*

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

EMPLOYEE

-v-

EMPLOYER

*-respondent*

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: Mr Brendan O'Sullivan, Batu,  
13 Blessington Street, Dublin 7

Respondent:

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

#### **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 spoke about the list system and he was very happy that he had progressed up the list as he would be retained by the respondent, (that is he was third or fourth in seniority).

In cross-examination the witness explained that he felt highly annoyed and betrayed by the respondent.

**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-070172-ud-08/JC. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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