

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD1311/09

- claimant 1

EMPLOYEE

UD1312/09

- claimant 2

against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr. D. Winston
Ms. N. Greene

heard this claim at Dublin on 2nd June 2010.

Representation:

Claimants: Mr Brendan Archibold, 12 Alden Drive, Sutton, Dublin 13

Respondent: Mr. Eddie Keenan, Construction Industry Federation,
Construction House, Canal Road, Rathmines, Dublin 6

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent is engaged in construction work. In 2009 due to a downturn in the construction industry redundancies were necessary across all grades in the company. Last in first out was adhered to. Two bricklayers were let go in March 2009, eight in April 2009 and fifteen in June 2009. The two claimants were let go in early June 2009. The respondent had no issue with the claimants' work. A genuine redundancy situation existed. By the 19 June 2009 no bricklayers were directly employed by the respondent as no further bricklaying work was required to be carried out on the respondent's construction sites located in the Dublin vicinity. Remaining work on these sites consisted of restoration work, sandblasting, and chemical cleaning which was not the type of work

ordinarily carried out by bricklayers.

When a project came on stream in October 2009 the respondent was permitted under the Registered Employment Agreement for the Construction Industry to engage sub contractors and duly engaged them. The claimants were not replaced by sub contractors to carry out work. The October 2009 project was a new contract.

At the time of redundancy, the agreement in place was that each individual contact the respondent to receive their redundancy payment. In addition to a redundancy payment, each person was given an ex gratia payment and asked to sign a document accepting a full and final settlement. The claimants were treated in the same way as others. The respondent was prepared to make a redundancy payment to each of them.

Claimants' Case:

Claimant 2 commenced employment in March 2003 and his employment was terminated on 5th June 2009. He was employed as a bricklayer. He did not receive a redundancy payment. He had been advised not to request his redundancy payment and only accept it if there were no strings attached. If he sought his redundancy payment he would therefore be accepting that there was a redundancy situation and he clearly believed there was not.

He contended that bricklaying work still remained to be done on several sites in the Dublin vicinity. Both he and claimant 1 staged protests on some of these sites. He contended the respondent had a requirement for bricklayers but chose to engage sub contractors. Instead he felt if work was available he should be offered it.

He had been told that an advertisement for new projects in the UK did not apply to him.

He has not worked since his employment was terminated. He circulated flyers in the general area of his home and also advertised in the local newspaper. As his partner now works part time it is necessary for him to look after his school going child.

Claimant 1 commenced employment March 2003 and his employment was terminated on 5 June 2009. He was employed as a bricklayer. He did not receive a redundancy payment. Approximately 9/10 weeks ago he contacted JS and asked what the procedure was to request his redundancy payment. He was asked to send in a written request. He did so. As he had received no response from the company some 4/5 weeks later he subsequently telephoned JS again. The amount owing to him was confirmed. JS explained that the respondent was paying one to two employees per week. She also referred to his unfair dismissal case pending and told him that he would have to firstly drop the case before payment would issue.

He visited several sites where the respondent had carried out construction work and saw bricks being laid. He witnessed work being carried out that he felt he could have done as a bricklayer.

He is actively seeking employment since the termination of his work. He circulated flyers in his local area.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal finds that a genuine redundancy situation existed at the time the claimants were let go. Project work had come to a conclusion and employees were made redundant. The Registered Employment Agreement for the construction industry permitted the respondent to engage sub contractors. When the respondent secured a new project in October 2009 they subsequently engaged sub contractors.

The Tribunal finds the claimants were not unfairly dismissed and accordingly their claims under the Unfair Dismissals Acts, 1977 to 2007 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)