EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: CASE NO. EMPLOYEE

- *claimant* UD1570/2009

against
EMPLOYER
- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal (Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. J. Reid

Mr D. Thomas

heard this claim at Dublin on 28th June 2010

Representation:

Claimant(s): Mr Jim Sheridan, SIPTU, Construction Branch, Liberty Hall,

Dublin 1

Respondent(s): In person

The determination of the Tribunal was as follows:-

Respondent's Case

Witness for the respondent gave evidence that the company experienced a dramatic loss of turnover as a result of the economic downturn in the construction industry. Turnover in the company reduced from €45 million to €4.5 million. The labour force was reduced from 120 employees to 25 employees. The claimant, who was employed as a general operative was made redundant as part ofthis reduction in the company's labour force. He was made redundant in line with the company policy on a last in first out basis. No other general operative with less service than the claimant was retained in employment after the claimant was made redundant.

Claimant's Case

The claimant gave direct evidence that he was employed as a bricklayer's labourer with the respondent company for over 4 years. He also did other work on sites such as cutting steel. He operated con saw and a kango hammer. He was regularly asked to work on Saturdays and did not

attend a bricklayer on Saturdays but did general work. He never received a contract of employment and was made redundant in July 2008.

Determination

The Tribunal has carefully considered the evidence adduced. The burden of proof rested with the respondent who had to establish that the termination of employment was fair in all the circumstances. In evidence the Director of the respondent company stated that the company operated a last in first out policy and that the claimant was made redundant as a general operative in July 2008 in accordance with that policy.

On balance the Tribunal finds that there was a genuine redundancy situation and that the company's workforce was dramatically cutback in the course of 2008 and 2009. The claimant was not replaced, nor was anybody with his skill set and employed for a lesser period kept on in his stead.

The Tribunal has every sympathy for the claimant but must find that his redundancy was appropriate in considering all the circumstances. Accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 fails.