

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
-claimant UD754/2009

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

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Hayes

Members: Mr. D. Moore
Mr. J. Maher

heard this appeal at Dublin on 13th January 2010

Representation:

Appellant: Mr. John Murphy, SIPTU, Liberty Hall, Dublin 1

Respondent: No appearance or representation on behalf of

The determination of the Tribunal was as follows: -

This is an appeal from a recommendation of a Rights Commissioner r-065104-ud-08/POB dated 13th February 2009.

There was no appearance by or on behalf of the respondent. The claimant's representative furnished a letter from the respondent's auditor addressed to the Secretary of the Tribunal. This letter had been sent in advance of another hearing involving the respondent in December 2009. The letter was dated the 19th November 2009. On that previous occasion, the Tribunal was told, there was no appearance by or on behalf of the respondent either. The Tribunal was informed by the letter that the respondent's parent company was in liquidation and, that while the respondent was not then in liquidation, it was inevitable that it would at some point do so. As of the date of the hearing that had not occurred. The auditor further informed the Tribunal that the respondent would not be in a position to discharge any liabilities to former employees.

The Tribunal was satisfied that the respondent had been properly put on notice of the hearing. Having taken account of the foregoing, it was the Tribunal's opinion that it should proceed to hear

the appeal.

Determination

The claimant was employed as a banksman. His employment began in September 2005. It ended in April 2008, purportedly by reason of redundancy. His gross weekly wage was €919.

The respondent operates a site-specific, rather than a company-wide, redundancy policy. This has been a matter of some dispute. The dispute was brought to the Labour Court. The Labour Court recommended that there should be some consultation between the parties to agree a system. It recommended that, in the absence of agreement, the matter should be discussed at industry level under the auspices of the National Joint Industrial Council for the construction industry. This issue has yet to be resolved.

A redundancy procedure must be fair and, to a very large degree, impersonal. There are circumstances in which a location-specific redundancy policy might be regarded as fair and circumstances in which it might not. For reasons set out below, the Tribunal does not require to make a determination on this issue in this case.

The claimant's work as a banksman involved him in attaching loads to a crane and supervising their movement. Each crane was operated by a driver and a banksman. As each crane was no longer needed on a particular site, the crane, driver and banksman would all be transferred to the site on which they were next needed.

The claimant worked on a number of sites in Dublin. On each occasion, bar the last, he moved to the subsequent site with the crane and driver. The claimant's second-last site was on East Wall Road. He told the Tribunal that each crane is fitted with an alarm, which sounds once wind speeds exceed 45km/h. The crane should not be operated in such conditions. The claimant told the Tribunal that there was pressure to have a particular piece of work completed. The alarm had sounded and he refused to allow the crane to be operated. The following morning he was told that he was being transferred to a site in Sherriff Street. Unusually, his crane and driver were to stay on East Wall Road. The Tribunal was told that it was well known that there was no more than one month's work left on the Sherriff Street site.

The work on the Sherriff Street site did finish about one month later and the claimant was made redundant. He received €3756 by way of statutory redundancy payment. The work on East Wall Road continued and the banksman who had replaced him there continued in employment.

The Tribunal is satisfied that the Claimant was transferred to the Sherriff Street site for the purpose of making him redundant. The Tribunal notes that a claim was brought to the Rights Commissioners' Service under the Industrial Relations Acts, 1977 to 1993 in respect of the manner of his transfer. The Rights Commissioner did not accept the respondent's contention that the claimant had been moved because of attendance and time-keeping issues. The respondent did not appeal this. The Tribunal is satisfied that the claimant's transfer arose out of his refusal to allow work be carried out in dangerous conditions. Given the risks to health and safety inherent in the construction industry and the potential criminal liabilities for an employer, one might have thought that an employee would be rewarded rather than penalised for such a stand.

The Tribunal is satisfied that the claimant's selection for redundancy and dismissal were unfair. The Tribunal is satisfied that compensation is the appropriate remedy. In assessing the appropriate amount the Tribunal must take account of the redundancy payment already received. Account must

also be taken of how much longer the claimant might have remained in the respondent's employment had he not been dismissed at the time that he was. The claimant very fairly told the Tribunal that he anticipated that his employment would have lasted no more than a further five months. The Tribunal also notes that the claimant secured alternative employment, albeit at a lower wage, seven months after his dismissal. In all the circumstances the Tribunal is satisfied that compensation in the amount of €14,624.00 is just and equitable.

The Tribunal is satisfied that the claimant's selection for redundancy and dismissal were unfair. In respect of the claim pursuant to the Unfair Dismissals Acts, 1977 to 2007, the Tribunal therefore upsets the recommendation of the Rights Commissioner and awards compensation in the amount of €14,624.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)