

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE - claimant

CASE NO.  
UD1198/2009  
RP1388/2009  
MN1207/2009

against

EMPLOYER - respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. D. Hegarty  
Mr. D. McEvoy

heard these claims in Cork on 2 June 2010

Representation:

\_\_\_\_\_

Claimant :  
In person

Respondent :  
Mr. Donal Dunne, Eugene F. Collins, Solicitors,  
Temple Chambers, 3 Burlington Road, Dublin 4

The determination of the Tribunal was as follows:-

## Summary of the Evidence

The respondent is a civil engineering company. It mainly works on contracts for government agencies and local authorities. Following the placement of an advertisement in a newspaper for a site technician, a general foreman and a site manager for the Buttevant contract the claimant was employed as the site technician and commenced work in September 2006. TR, a qualified engineer, started as site manager there some time later and ultimately a director, with decades of experience, became the general foreman on the site. Until a site manager was appointed to the Buttevant site the Managing Director would be on the site for the most of two or three days per week as would another senior member of the respondent's workforce. The claimant's primary duties related to the setting out of works and taking of levels, obtaining site records and requesting supplies of materials as required for a site. The clients' consulting engineers will only deal with a contractor's engineer. The claimant did not have an engineering qualification.

The claimant was taken on specifically for the Buttevant contract. However, he wanted to stay with the company and in or around November 2008 when the Buttevant contract was substantially completed a contract had arisen in Clonakilty and he was sent to work there. When this contract was nearing completion in March 2009 no new contract was coming on line and as the respondent had only part-time work for the claimant on the Clonakilty contract he was sent back to Buttevant working on calculations in the office until his work permit expired. The Managing Director's evidence was that he had given the claimant this latter work to help him as it had no other work available for him. The respondent's tenders for a number of contracts were unsuccessful but the Managing Director was hoping that some contract might come on stream.

It was the respondent's evidence that before the Clonakilty job commenced everyone knew that the economy had collapsed and the Managing Director had told his employees that he would be letting them go. On 5 May 2009 the claimant was notified that his position was being made redundant. No other employee with a similar job description or level of experience to that of the claimant was retained by the respondent upon completion of the Clonakilty contract other than TR (the site manager) who had both more experience and a qualifications in engineering and relating to all aspects of site management and programming. The respondent's other contracts in Roscrea and Co. Offaly were finishing within a few weeks of the completion of the Clonakilty contract. Over a few months the respondent had to let 15-16 workers go.

The claimant contended that DB, the site technician on a Co Offaly contract, should have been selected for redundancy. It was the respondent's position that DB had been employed in January 2009 for that contract which in any event was finishing in mid June 2009. The claimant's job in Clonakilty was ongoing when DB was taken on for the Co. Offaly contract and the respondent does not move workers mid contract. Every time a contract finished workers had to be left go; some workers who had been with the respondent for 40 years had been made redundant.

The claimant alleged that during his employment with the respondent he had to put up with various forms of bullying and harassment.: when a certain senior figure was transferred to the site where he worked things changed drastically for him. work ethics changed; the claimant's authority regarding instruction (and execution of duties) to the workforce was challenged and undermined and many times, the claimant was belittled in the presence of others either because of his race, colour, creed,

position of authority. Slowly but surely the claimant felt he was “losing the game” on site and was ultimately confined to an office to do final accounts that were not part of his initial job description.

It was the respondent’s case that the claimant had not made any complaint regarding the alleged on-site bullying and harassment to site management for either of the Buttevant or Clonakilty contracts or to the respondent’s Managing Director. It was further the respondent’s evidence that had such a complaint been made it would have been fully investigated. The claimant’s evidence was that he told the site engineer.

The claimant felt let down by the respondent because at the last minute it had not renewed his work permit and he was now residing in Ireland under very difficult conditions for himself and his family. He had forwarded the required documentation for the renewal of his work permit well in advance but was only informed, two weeks before his existing permit expired, that the respondent was not pursuing it. Because of this many doors had closed to him such as new employment, social welfare and schooling for his children. He now saw the future in Ireland for himself and his family as really bleak. The claimant felt that he had been led along by being told that the respondent had tendered for contracts. The claimant’s work permit expired the day he was made redundant and he that the respondent got the most out of him by having him work right up to the expiry date of his work permit. Despite numerous requests from him the respondent had not applied for a work permit for him. The respondent’s evidence was that it could not apply for a work permit for the claimant as all its tenders had been unsuccessful and no new contracts were coming on line; it would have been a serious breach of the regulations to apply for a work permit when it did not have any work available for the claimant. The respondent sent claimant him back to Buttevant to give him work for as long as possible. By letter dated 11 May 2009 the respondent advised the claimant that Garda at the Immigration Office had indicated that he should be able to obtain a work visa given the time he had already worked in Ireland.

## **Determination**

In all the circumstances of this case, the Tribunal does not accept that the claimant was unfairly selected for redundancy. The contracts on which he had worked had come to an end and no further contracts were available to the respondent in the Munster area. No other person with a similar job description or level of experience to that of the claimant was retained in the Munster area by the respondent upon completion of the Clonakilty contract other than TR (the site manager) who had engineering qualifications. DB who was taken on after the claimant worked in the Leinster area. Furthermore, the Tribunal is satisfied that the selection of the claimant for redundancy was not for any personal reason.

Indeed the Tribunal notes that the respondent could have made the claimant’s position redundant some two months earlier when the Clonakilty contract ended but it gave him alternative work thereby keeping him in paid employment until the date of expiry of his work permit.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The Tribunal is satisfied that a genuine redundancy situation existed and that the claimant was fairly selected for redundancy. The claimant’s entitlement to a redundancy lump sum

payment is based on the following criteria:

Date of Birth:	2 February 1961
Date of Commencement:	26 September 2006
Date of Termination:	26 May 2009
Gross Pay:	€ 810.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Please note that there is a weekly ceiling of €600 on all awards made from the Social Insurance Fund.

The claimant was given two weeks' notice of the termination of his employment in accordance with the respondent's statutory obligations. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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