

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
UD2012/2009

Against

EMPLOYER – *respondent*

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P O'Leary BL

Members: Mr T O'Sullivan
Mr O Nulty

heard this claim at Monaghan on 20th May 2011

Representation:

Claimant(s): Mr Richard Grogan
Richard Grogan & Associates, Solicitors,
16 & 17 College Green, Dublin 2

Respondent(s): Company representative

The determination of the Tribunal was as follows:

Background:

The claimant contended that he was unfairly selected for redundancy.

Respondent's Case:

A witness for the respondent company, a construction business, gave evidence that by the end of 2008 and into 2009 the company was in financial difficulties. Jobs were coming to an end and there were no new jobs to start. They had a job at a school, where the claimant worked, a golf club and a shopping centre, which was at the snagging stage. The company made 34 employees redundant prior to making the claimant redundant. Eight employees were made redundant afterwards, mainly from the golf club job, two of those were foremen with longer service than the claimant. A foreman from that site was issued with notice but was retained by the company. He

had been with the company for 30 years.

The claimant was employed as a foreman. He was served with notice of termination on February 12th 2009 and finished on March 12th 2009. He supervised the snagging of the school towards the end of his employment. There was further snagging of the school after the architect's report in June 2009 which was carried out by other employees.

During cross-examination the witness disputed that the claimant was employed as a carpenter/foreman. He was with the company for six years and was a foreman for the last three years. The witness was not involved in the selection process. The golf club job was supposed to finish in June 2009, but because of the financial difficulties of the client it was drawn out until March 2010.

The Managing Director (MD) gave evidence that the company was in financial difficulties and that redundancies were required. He selected the claimant for redundancy. He selected employees based on the workload and the skills required to complete the jobs they had. The claimant joined the company as a carpenter and was promoted to foreman after three years. In January 2009 there was only the claimant and a painter on the school job. The claimant asked to be made redundant, which took the pressure of deciding off the MD. The claimant was worried that the company might not be able to pay his redundancy payment. The claimant was given six weeks' notice and was at home for the last two weeks.

During cross-examination the MD confirmed that the company had recruited a carpenter two weeks before the claimant was dismissed, but this employee could carry out a variety of tasks including plastering and block-laying. He didn't ask the claimant if he wanted to do the job. He didn't believe he wanted to do it.

In answer to the Tribunal the MD stated that the claimant didn't specifically ask to be made redundant, he asked for clarification. The claimant was paid his redundancy payment.

Claimant's Case:

The claimant gave evidence that he commenced his employment with the respondent company as a carpenter in 2003. Two weeks prior to his employment terminating the company hired a carpenter. He would have been happy to take a carpentry job in order to keep working. He contended that he also carried out carpentry jobs while working as a foreman. He denied that he asked to be made redundant.

During cross-examination the claimant contended that he only received four weeks' notice of termination and that he was not at home for the last two weeks. The new carpenter was put on the golf club site where he had previously been a foreman.

Determination:

The Tribunal determined that the claimant was employed as a foreman with the respondent and the three other foremen had longer service with the company. The position made redundant was that of foreman and the claimant was the last into that category. Therefore, the claimant was fairly selected for redundancy and the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)