

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant 1*

UD398/2010

RP602/2010

MN371/2010

EMPLOYEE – *claimant 2*

UD444/2010

RP627/2010

MN406/2010

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. P. McGrath BL

Members: Mr. G. Mc Auliffe
Mr. P. Woods

heard this claim in Dublin on 25th May 2011

Representation:

Claimant(s): Mr. Paul Henry, SIPTU, Construction Branch, Liberty Hall, Dublin 1

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

The Tribunal has carefully considered the evidence before it. The claimants have brought a claim under the Unfair Dismissals Acts in circumstances where they say they were unfairly selected for redundancy.

The respondent gave evidence to the effect that there was a downturn in business in the course of

2009, and that at the end of the year he made the claimants redundant as part of a routine redundancy programme which saw a reduction in the workforce from 50 to 18.

Significantly the respondent stated he offered the two claimants alternative employment on a site in Co Wexford which was still operational. The claimants say they were never asked to consider an alternative place of employment and were simply notified by letter of the date of redundancy some three days before the termination was being made.

In circumstances where the onus rests with the respondent to demonstrate that he acted reasonably and fairly in all the circumstances, the Tribunal finds that the respondent failed to satisfy the burden of proof. There was no evidence of any consideration being given to who should be selected, what criteria was being used and what efforts were being made to restructure so to retain employees who had given over 5 years service.

Determination

The Tribunal finds the claimants succeed in their claims and in assessing compensation, the Tribunal accepts that if a fair programme of redundancy had been implemented, the claimants would ultimately have been made redundant from the Wexford plant had they been offered work there in the first place.

In those circumstances the Tribunal awards **claimant 1** (T.K), compensation of €8,299 under the Unfair Dismissals Acts, 1977 to 2007, and awards **claimant 2** (M.K), compensation of €9146.00 under the Unfair Dismissals Acts, 1977 to 2007.

Loss having been established, the Tribunal awards **claimant 1** (T.K) the sum of €1440.56, and **claimant 2** (M.K) the sum of €1587.52, these being two weeks gross pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The appeals under the Redundancy Payments Acts, 1967 to 2007, fall because the Tribunal made awards under unfair dismissal legislation and the Tribunal does not have power to make an award to an employee under both redundancy and unfair dismissal legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)