

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE (*claimant*)

UD2478/2009

Against

EMPLOYER

EMPLOYER (*respondent*)

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly Bl

Members: Mr J. Browne  
Mr J. Flannery

heard this claim at Wexford on 6th July 2011

Representation:  
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Claimant(s) :

Mr. Martin G. Lawlor, Coghlan Kelly, Solicitors, Trinity  
Chambers, South Street, New Ross, Co. Wexford

Respondent(s) :

Mr. Conor O'Connell, Construction Industry Federation,  
Construction House, 4 Eastgate Avenue, Little Island, Cork

The determination of the Tribunal was as follows:

#### **Respondent's case**

The Contracts Manager for the respondent company stated that the claimant was a dozer driver with the company. In 2009 the bulk of heavy work was coming to a completion. There was also a huge turnover decline during 2009 within the business. There was very little work during the three months prior to letting the claimant go and there was no alternative work for the claimant's dozer. At the time there were three dozer drivers and one of those mostly drove the digger. The claimant

was chosen over the other dozer driver, as the GPS on the claimant's dozer required a new unit, which was too expensive. After the Foreman gave the claimant his notice, the claimant approached the Contracts Manager and asked about other work. The Contracts Manager told him that if anything came up he would contact him.

At the time the company had pipe layers putting in gas on the ground works and the claimant was not experienced for that work. That project was near completion.

Under cross-examination, the witness confirmed that the other dozer driver had a short break in service and returned to work within a two month period. Both employees were experienced drivers. The respondent had no other work for the claimant and could not justify training the claimant in pipe work. The claimant was the only employee made redundant at the time, as there was no work for his dozer. This was explained to the claimant along with the fact that there was no work on the ground. The respondent chose the claimant because of the dozer he was driving. There was no difference between the experience and skill of both drivers.

Representation for the claimant stated that the claimant will say up until his dismissal, his machine worked as often and as long as the other employee. The Contracts Manager denied this, as the tachograph shows the hours each machine was in use.

### **Claimant's case**

Giving evidence, the claimant stated that he had been working with bulldozers for 22 years. He worked on concrete for approx five years, which included some groundworks. He started working with the respondent in 2000 and worked a number of sites. The GPS was used in the levelling aspect of the work. The project he was working on came to an end in October 2009. The claimant stated that he was doing the same work as the other dozer machine and disputed the tachograph readings. There would never be one machine stopped and the other one operating.

He was approached by the Foreman, who told him he was being let go. The claimant told the Foreman that he was the longest serving and the Foreman said it had nothing to do with him. The claimant spoke with the Operations Manager about groundworks and he was told yes, but not at the same pay rate. Pipewelding was not mentioned. The claimant was prepared to take a cut in pay. He remained out of work until 2<sup>nd</sup> March 2011 and is now working in Poland with a gross wage of €1,049.86 per week.

The claimant maintained that the GPS on both machines were working. At times, the claimant drove the other dozer machine. It was a bigger machine but the same levelling equipment.

Under cross-examination, the claimant was questioned as to what previous groundwork experience he held. He stated he had pipe laying and concrete gang work experience. His GPS system was working and he worked on the regulation layer, sub soil and topsoil layers, all three layers. He did not accept the tachograph reading, as both machines were working the whole time. The claimant was aware the project was coming to an end. He thought his position would be ok as he was the longest serving.

Nobody had said anything to the claimant about pipe welding - they were laying pipes. He knew there was not much work left in the pipe laying. The claimant did not accept that there were no certified dozer drivers working at present and named a driver. The respondent stated that this driver is a digger driver. The claimant accepted that the other employee started before he did but

had broken his service. He received €11,400 in redundancy payment.

In reply to the Tribunal, the claimant confirmed that the GPS on the machine did break down but was repaired.

### **Determination**

The Tribunal finds that in relation to Redundancy, there were three dozer drivers and one was qualified to drive a digger, which left two dozer drivers. The Tribunal accepts the evidence of the respondent that the claimant's GPS system was at best unreliable and therefore that was the only differentiating factor and therefore a genuine redundancy situation existed. Accordingly the claim under the Unfair Dismissal Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

