

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - *claimant*

UD368/2010

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr. J. Hennessy  
Ms. S. Kelly

heard this claim in Kilkenny on 7<sup>th</sup> September 2011

Representation:

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Claimant: Mr. Kevin Byrne BL instructed by Mr. Martin O'Carroll, Poe Kiely Hogan Lanigan, Solicitors, 21 Patrick Street, Kilkenny

Respondent: Mr. Adrian Twomey, Gallen Alliance Solicitors, Merrythought House, Enniscorthy, Co Wexford

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

NB the Chief Operations Officer gave evidence. The respondent is a housing charity based in the south east. The charity builds and maintains homes for people with special needs and people who are homeless. The claimant was employed as a site agent in 2004 and was well regarded by his colleagues. Each building project requires an architect who has overall responsibility for each site. The site agent ensures that the houses are built in accordance with the tender and reports weekly to the architect.

In 2009 the treasurer for the respondent told NB that the respondent was looking at a possible loss of over one million euro due to lack of funding and the economic downturn. Housing starts

generate a fee but as the number of builds dropped so did the income. The management team looked at every option to reduce costs. The respondent had 174 employees in 2008 which was reduced to 105 in 2011 through a mixture of redundancies and non renewal of contracts.

It became apparent in early spring 2009, that no new builds would be happening for the foreseeable future. The site agents worked to the architect and with the work drying up the architect could do their work. They gave consideration to redeployment but there were no vacancies available.

On the 10th June 2009, the regional manager (TP) met with the design team groups and told them about the possible loss of over one million euro to the respondent and that short time or a redundancy programme could be introduced. On the 11th June 2009, staff were offered career breaks and study leave to reduce costs.

It was decided to implement a redundancy programme which was done by region and seniority. NB met the claimant on the 28th July 2009 and confirmed that he was to be made redundant. He gave the claimant a letter outlining the sums to be paid. The claimant took the letter and said he would mull it over.

On the 12th August 2009, the respondent received a letter from the claimant's solicitors stating the claimant had an explicit term in his contract agreed at his initial interview that where his position as a site agent became redundant he would be offered a maintenance role with the respondent. NB never heard of this and it was not written into his contract of employment. NB said there was no discussion of redundancy at the time of the interview with the claimant and that the maintenance role was not created until 2008. The maintenance role is totally different to that of site agent. NB came to the conclusion that no promise was made. The claimant refused to sign the RP50 and has not taken his lump sum payment.

PMG was on the interview panel. He did not recall any promises made to the claimant.

TP is the regional manager with the respondent. He did not sit on the interview panel and was not aware of any redeployment promise made to the claimant. The respondent made considerable efforts to raise revenue and approached the local authorities about energy rating without success. He met the design teams in July 2009 and told them about the projected loss. TP and PMG met the claimant and explained the possibility of redundancy. The claimant said he was promised redeployment.

LF was on the interview panel. He said there was no promise of redeployment made to the claimant. The company was up the walls with work and no one thought of a downturn.

### **Claimant's Case**

The claimant is a qualified carpenter. He applied for a position with the local authority and with the respondent at the same time. On the day of the interview with the respondent he received news that he was placed 1st on the local authority panel. At the end of the interview he told the respondent he was 43 and this would be his last interview. He asked what would happen if there was no site work and was told he would be given maintenance work.

At the meeting he was told if work was not found in three months redundancies would happen. In September 2009 when he was made redundant he was working on three sites. He did

maintenance work for the respondent, exactly the same work as maintenance officer.

### **Determination**

A significant downward trend in the level of business activity of the respondent company necessitated an internal reorganisation and a number of redundancies. The Tribunal is satisfied that there ceased to be any significant role for Site Agents and that a number of such roles became redundant. The Tribunal is satisfied that fair selection criteria were applied.

The claimant was employed initially under a fixed term contract dated 13th October 2004 and subsequently under a permanent contract dated 11th December 2006. It was the claimant's case that an agreement was reached in 2004 to the effect that, should his role as Site Agent become redundant, he would be re-deployed to maintenance duties and that this was a term of his contract of employment. A number of witnesses for the respondent company disputed this claim. Faced with this significant conflict in evidence, the Tribunal feels that it must rely on the terms of the claimant's 2004 and 2006 contracts neither of which reflect such agreement or promise. The Tribunal feels that, had the parties understood from the outset that any such agreement existed, it would have been reflected in the written contracts of employment of 2004 and 2006.

The Tribunal finds that the claimant was made redundant and was, accordingly, not unfairly dismissed. The claim under the Unfair Dismissal Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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