

EMPLOYMENT APPEALS TRIBUNAL

| CLAIM(S) OF: | CASE NO. |
|--|-------------|
| EMPLOYEE – <i>1st named claimant</i> | UD1475/2010 |
| EMPLOYEE – <i>2nd named claimant</i> | UD1476/2010 |
| EMPLOYEE – <i>3rd named claimant</i> | UD1478/2010 |
| EMPLOYEE – <i>4th named claimant</i> | UD1479/2010 |

against

EMPLOYER-*Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

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

heard this claim in Portlaoise on 1st November 2011

Representation:

Claimant(s): Mr. Jim Sheridan, SIPTU, Construction Branch, Liberty Hall,
Dublin 1

Respondent(s): Ms. Mairead Crosby, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

Preliminary Point:

At the outset of the hearing the representative for the respondent said that each claimant had signed a waiver form and that they could not bring a claim of Unfair Dismissal before the Tribunal. The Tribunal heard evidence on that point and ruled that the claims could proceed.

Claimant's Case:

The 1st named claimant gave evidence. He was working for the respondent for a number of years when he was put on temporary lay-off on the 27th April 2009. The respondent then organised for him to be employed by another contractor on a short term basis. At that time there were other employees working for the respondent with less service. Each month he received a correspondence from the respondent informing him that there was no work available. He worked for the other contractor until September 2009. When he phoned the Contracts Director (PE), and asked him about work, (PE) told him that the respondent had no intention of taking him back.

In December 2009, he received a letter from the respondent to say he was being made redundant. In the letter he was asked to ring (TP) to arrange a time to collect his redundancy payment. When he phoned he spoke to the lady in the office who asked him to collect the payment a week earlier as the office would be closed for the holidays. He called to the office, signed the paperwork and collected his cheque. It was Christmas time; he needed the money and felt he had no choice.

Under cross examination he said he trusted the respondent and he didn't read the paperwork. He accepted the downturn but said that the respondent had work that sub-contractors were doing.

The 2nd named claimant said he was put on temporary lay-off in April 2009. He received a letter from the respondent and called into the office to collect his redundancy money. He had no money coming in and was happy with the money. The paperwork was put in front of him and he signed it without reading it as he trusted the respondent.

Under cross examination he accepted that all staff on the site he had worked on were made redundant.

The 3rd named claimant said he was put on temporary lay-off in March 2009. He received a letter from the respondent and called into the office to collect his redundancy money. He had worked for the respondent for seven years and was not happy to be made redundant. He always thought it was last in first out. The paperwork was put in front of him and he signed it without reading it.

Under cross examination he said he was surprised to be made redundant despite the fact he was

on temporary lay-off from March to December 2009.

The 4th named claimant said he was put on temporary lay-off in April 2009 and went to work for another respondent until September 2009. He received a letter from the respondent and called into the office to collect his redundancy money. He was led to believe that the paperwork was for redundancy purposes and he signed it without reading it as he trusted the respondent. He did not know he was signing the waiver. He was unhappy to be made redundant but he needed the money. He was not happy with the selection process

Under cross examination he accepted that all staff on the site he had worked on were made redundant.

Respondent's Case:

The Contracts Manager (PE) gave evidence. The respondent is involved in the construction industry. In 2009 the respondent had 41 direct employees and today has 4 full time and 9 on temporary contracts. The respondent also hires sub-contractors for some projects. The respondent has a manufacturing plant and works on building sites. The work on the sites depends on the orders on the books of the manufacturing plant.

When the claimants were put on temporary lay-off the respondent hoped that the work would pick up again. The respondent was working on a joint venture and assisted some of the claimants getting work with the other respondent.

The economic downturn kicked in and it was decided to make the claimants redundant. (PE) met with the SIPTU representative in November 2009 and outlined the respondent's situation. The Managing Director wrote to the claimants on the 9th December 2009, to inform them the respondent would not be able to reinstate them from lay-off and that they were being made redundant. The claimants came into the office, signed the waiver form and signed for and collected their redundancy money.

The SIPTU representative wrote to the respondent appealing the redundancies on the 11th December but that arrived on the 14th December and (PE) did not see it until after the Christmas holidays. In January 2010 (PE) spoke with the SIPTU representative and told him the claimants had signed a waiver. The SIPTU representative said he did not know about this and would look into it. He heard nothing else until he received the papers from the Tribunal.

Under cross examination (PE) said the respondent did not use a matrix to decide on redundancies and redundancies were site based. He said staff are generally given copies of what they sign and he said that SIPTU were not given a copy of the waiver form.

Determination:

Having carefully listened to the evidence adduced by both parties, the Tribunal is satisfied that the claimant's were dismissed by reason of redundancy. The Tribunal is of the view that none of the claimant's made a case for unfair selection for redundancy.

In arriving at its conclusion, the tribunal has carefully weighed the evidence of each of the parties and accepts that the respondent's claim that the redundancies were applied on a site by site basis.

Accordingly the claims under the Unfair Dismissals Acts, 1977 to 2007 fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)