

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE-*Appellant*

CASE NO.
UD1344/2010, MN1300/2010

against

EMPLOYER-*Respondent*

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr W. Power
Mr T. Brady

heard this claim at Dublin on 18th November 2011

Representation:

Claimant : Mr Brendan Liddy, Hughes & Liddy, Solicitors, 2 Fitzwilliam Street, Dublin 2

Respondent : Mr Eddie Keenan, Construction Industry Federation,
Construction House, Canal Road, Dublin 6

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn at the outset of this hearing.

The determination of the Tribunal was as follows:

Respondent's Case

The respondent is involved in the construction industry specialising in architectural glazing and cladding. Its workforce peaked at around two hundred during the building boom but by the end of 2011 it only expected to employ around fifteen staff. Prior to the claimant's termination of employment by way of redundancy in April 2010 he had been employed as a site manger on a project located at the new sports stadium on Lansdowne road in Dublin. The claimant worked alongside an overall manager of that project and several general operatives. The completion date for that project was 13 April 2010 which the respondent had to adhere to. By that time it had one further contract in Dublin and it was the respondent's custom and practice was not to displace its team in that contract. By that time the respondent's tendering for new contracts had not proved fruitful.

The human resource manager and the claimant's direct manager met the claimant on 31 March and

gave him notice of his redundancy. Up to then there had been no prior consultation with him and the respondent was unable to offer him alternatives to redundancy due to lack of suitable vacancies. The company had an unionised workforce and it was not appropriate to offer a site manager the position of a general operative. At the time of that notification the claimant accepted, signed and subsequently received a statutory payment together with a modest *ex-gratia* amount. In acknowledging that the claimant had earlier emailed her with a complaint about named colleagues the human resource manager indicated that this event had no bearing on the redundancy decision. She also stated that the company did not operate a last-in, first –out basis but applied a skills matrix in their selection process. The company retained the services of the overall manager and moved general operatives to a new site at Enniskillen later that year.

Claimant’s Case

The claimant commenced employment with respondent in August 2008. Prior to moving to the Lansdowne Road stadium site in November 2009 the claimant worked on a site in central Dublin. He described the respondent as one of the best employers he had worked for. While he knew that the stadium project was to finish it was far from completion in April 2010 as snagging heeded to be done. Earlier that year he informed the respondent that the needed to undergo a medical procedure in April. By that month he got the impression from the company that a job in Enniskillen was available to him. He was certainly competent and capable and available for taking on any job offered to him.

Determination

The claimant’s competency and capability is not an issue in this case. There is no doubt he was a dedicated employee and a real asset to the respondent. In this case, however, the respondent had no further suitable employment for him and in effect he was a victim of prevailing economic and business circumstances. Having heard the evidence the Tribunal does not accept the claimant was unfairly dismissed. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

