

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
UD1678/2010

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan

Members: Mr J. Browne
Mr F. Dorgan

heard this claim at Waterford on 7th March 2012

Representation:

Claimant: SIPTU, Connolly Hall, Summerhill, Waterford

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

The determination of the Tribunal was as follows:

The claimant commenced employment with the respondent on the 30th November 1996 his employment was terminated by reason of redundancy on the 22nd January 2010. The respondents are main building contractors who work on both public and private projects. Both sides conceded that a redundancy situation existed at the time of the claimant's redundancy. However it was the claimant's contention that he was unfairly selected for redundancy. By way of background the respondent's contracts manager explained that in 2007 they had a turnover of 57 million with 270 employees while in 2010 their turnover was 15 million and their employees had reduced to 70.

It was the respondents case that in selecting the claimant for redundancy they had adhered to the agreement in place with unions "*in the event of dismissal due to redundancy, having regard to experience, skills and disciplinary record(all other things being equal), last in first out will apply*". Also those redundancies are normally done on a site to site basis. Occasionally

employees would be moved to another site on completion. However in 2010 no one got the opportunity to move to another site as work was not available. The contracts manager explained that firstly they would look at “LIFO” and then skill sets, for example the employee with more skill sets would be retained over the employee with one skill set. It was the claimant’s case that other employees with less service than him were retained; the claimant maintained that he was capable of carrying out the same tasks as these employees.

At the time of the claimant’s redundancy he was employed as a scaffolder on a site of houses that was nearing completion. On the day the claimant was made redundant 16 other employees, not all from claimant’s site, were also made redundant. The respondent explained that at the time of the redundancies he had looked at all of the employees’ skill sets on site and what skillsets they needed to retain to complete the site. At the time of the claimant’s redundancy they had four employees capable of scaffolding while only three more houses had to be roofed. A list of employees retained on the claimant’s site after he was made redundant was produced into evidence. This list was examined in detail and it was established that the claimant had difficulty with two of these employees being retained over him. Employee A who commenced employment on 18th August 2003 held a ticket for scaffolding, groundwork’s and also did snagging, while employee B who commenced employment 3rd February 2004 while listed as a general operative held ticketing to operate a teleporter and a 360° excavator. The claimant explained that he had previous experience snagging with the respondent, this was in early 2000, and he had never done snagging on a housing project. The respondent explained that employee A had his own van and tools and could travel between sites to do snagging. The claimant was not aware that this employee had his own van and tools. Employee A was made redundant on the 27th August 2010. There was another employee retained who commenced in 2003 and who had qualified as a safety officer; however at the time of the redundancies there was not enough work to keep him on safety full-time so he also did ground works.

The claimant gave a history of his employment within the construction industry and explained he had worked on groundwork’s, snagging and had many other skills. He held a ticket for scaffolding but while he was not required to scaffold he would do other jobs on site as instructed by the respondent. It was the respondent’s case that the claimant mainly did scaffolding and rarely were other duties assigned to him. There was a conflict of evidence between both parties as to where the claimant’s work was located over the course of his employment; however it was established that he was mainly based in Waterford.

On the day the claimant was told of his impending redundancy it was the respondent’s position that the claimant did not raise the fact that others with less service than him were being kept on. The respondent had explained to the claimant that they were retaining C who was a salaried safety officer and who could also do scaffolding while things were quiet. The claimant said he was shocked to hear of his redundancy and had challenged the decision on the day but was informed that the decision had already been made. C had informed the claimant before he was told of his redundancy that he would be doing scaffolding on two sites. The claimant while a safety representative on his site accepted that he was not qualified to do C’s safety

role. The claimant also maintained he had raised the issue of others with less service than him being retained.

The claimant in evidence was not specific as to who else was retained with less service than him within the company. The respondent confirmed that another employee let go around the same time as the claimant was brought back for about eight months work. The respondent has not recruited a scaffolder since the claimant's position was terminated.

Determination

Having considered the evidence adduced at the hearing the Tribunal finds that the respondent had a genuine need to make staff redundant due to a serious downturn in the respondent's business. The Tribunal finds that the redundancy selection criteria was last in first out all things being equal and which selection criteria had been agreed to pursuant to a collective agreement with staff. The Tribunal finds that all things were not equal in that the respondent had a need to retain skills in an effort to secure the future of the company and that employees retained with less service than the claimant were retained on the basis of their skills. In the circumstances, the Tribunal does not find that the claimant was unfairly selected for redundancy. Accordingly, the claim under the *Unfair Dismissals Acts 1977 to 2007* fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)