

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE –**Claimant**

UD1321/2010

against

EMPLOYER- **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T.L. Gill
Mr T. Brady

heard these claims at Tullamore on 14 February 2012

Representation:

Claimant:

Mr Niall Philips, SIPTU, Unity Hall, Church Street,
Tullamore, Co. Offaly

Respondent:

Mr John Maguire, Irish Concrete Federation,
8 Newlands Business Park, Clondalkin, Dublin 22

The determination of the Tribunal was as follows:

The claimant was a machine operator in the respondent's concrete and concrete products business. Before his employment with the respondent he had been employed as a coach driver. The claimant commenced his employment with the respondent in May 2000 and chose not to drive on the road even though licenced to drive the respondent's vehicles on the road. Until February 2006 the claimant worked mainly on the production of concrete blocks.

The claimant suffered an illness and was off work for some eight months in 2006. Shortly before this period of illness the managing director (MD) began to have concerns over the claimant's attitude to his work. As a result of these concerns when the claimant returned to work towards the end of 2006 MD utilised the claimant as a loading shovel driver. The respondent's position is that the production of concrete blocks ran more smoothly once the claimant was no longer working in that area.

At the end of 2008 there were some 46 employees in the respondent. In early 2009 the respondent entered discussions with SIPTU over the need to downsize the workforce and to reduce working

hours. Four employees were selected for redundancy including two with insufficient service to qualify for lump sum payments under the Redundancy Payments Acts.

The respondent decided to declare seven more positions redundant at the end of 2009. Four people volunteered leaving the respondent to select three more candidates for redundancy. The selection criteria applied by the respondent in order to select criteria applied by the respondent in order to select candidates for redundancy were as follows:-

- Voluntary
- Length of Service
- Ability to achieve objectives
- Expertise/Knowledge
- Self-motivation
- Versatility/Application of knowledge
- Wider personal contribution to the company workforce

At no stage were these selection criteria, or the scores, made known to the claimant, or indeed any of the employees under consideration for redundancy.

At the time the claimant was selected for redundancy there were seven employees with less service than the claimant who were retained in employment. Two of these had skills the claimant did not have, one operated the rock-breaker and another is a fitter/mechanic.

Determination:

The criteria used in the selection of the claimant for redundancy were not objective and it is hard to escape the conclusion that the claimant was singled out for redundancy based on his performance on the block making plant in 2006. The Tribunal is satisfied that when the first positions were declared redundant at the beginning of 2009 LIFO was used as the procedure for selection. This was an objective procedure and, it seems to the Tribunal, established the custom and practice as set out in Section 6 (3) b of the Unfair Dismissals Acts such that the selection of the claimant as a candidate for redundancy was in contravention of that procedure and, accordingly, unfair. The Tribunal awards €5,000-00 under the Unfair Dismissals Acts, 1977 to 2007. In making this award the Tribunal is cognisant that the claimant has received a statutory lump sum payment under the Redundancy Payments Acts.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)