

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD2130/10

- Claimant

Against

EMPLOYER

- Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr J. Horan
Mr. J. Dorney

heard this claim at Naas on 21st June 2012.

Representation:

Claimant Mr Tom O'Dwyer, Membership Information & Support Centre, SIPTU,
Liberty Hall, Dublin 1

Respondent: Mr. Paul Dunne, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent is engaged in metal roofing and cladding and is heavily dependent on the construction industry. The Works Manager SG gave evidence. The claimant reported to the Operations Manager, JT.

The claimant was employed as a General Operative. He had several periods of employment with the respondent.

Voluntary redundancies occurred in 2008 and there was a requirement to implement further redundancies in 2009.

The respondent's practice was that any break in service greater than three months was

automatically considered to be a break in continuity of service (the “three month rule”).

In June 2010 the company required a further forty one redundancies. Six redundancies were required from the operations side and the claimant was the sixth person to be selected for redundancy.

The selection criteria used was a “last in first out” process. The selection centred on the claimant and one other employee MD. Following a break in service in late 1996 MD was first to return to work and “clock in” again in 2007. MD clocked in on 30th March 1997 while the claimant clocked in on 21st April 1997. There was a difference of three weeks in both the claimant and MD returning to work. It was on this basis that the respondent used the selection criteria “last in first out”. This was in agreement with the union.

The claimant accepted a financial settlement which included his entitlements under the Redundancy Payments Acts and various other Acts. This was done without prejudice to a further appeal to a third party, in relation to the disputed start date. The claimant raised an issue regarding his start date and subsequently disputed the date that was used for his redundancy selection settlement.

SG contended that the business was continuing to decline. MD was subsequently made redundant in May 2011 and has not been replaced.

SG contended that the claimant was treated very fairly.

Claimant’s Case:

The claimant was unaware of the “last in first out” selection criteria. He had a good working relationship in the company. He contended his duties were on a par with MD. His understanding was that a six month rule should be applied and he was therefore relying on an earlier date of 13th August 1996.

Determination:

The Tribunal is satisfied on the basis of the evidence adduced that the appellant was not unfairly selected for redundancy. Accordingly, his claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)