

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
- *Claimant*

CASE NO.
UD1474/2010

against

EMPLOYER
- *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr W. Power
Mr T. Brady

heard this claim at Dublin on 12th December 2011 and 22nd May 2012

Representation:

Claimant: Ms. Rosemary Mallon B.L., Mr. Conor Connelly, Hussey Fraser, Solicitors, 17 Northumberland Road, Dublin 4

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

The determination of the Tribunal was as follows:-

Determination

The Tribunal has carefully listened to the evidence adduced over the course of this two day hearing. The claimant states he was unfairly selected for redundancy in November 2009 when his position of head finishing foreman was made redundant. The company had previously flagged that the industry was in decline and the workforce were faced with reduced working weeks and redundancy. However, in implementing these declared changes to the workplace it became apparent to the claimant that not everyone was being put on a three day working week and that at least two of the finishing foreman that had heretofore been answerable to him were now being described as "snaggers" JF and MK, and were working a full five day week with their salaries preserved.

In November 2009 the claimant was told by RC, his line manager, that he was selected for redundancy and was given six weeks notice. The claimant was clearly very upset at the situation and sought the rationale behind his selection for redundancy over the two men now classified as "snaggers" aforesaid.

During the course of a rigorous examination of the evidence it became clear to the Tribunal that the

respondent did not consider the suitability of the claimant for the position of “snagger” in any practical way. The respondent quite clearly was of the view that the position of head finishing foreman was redundant and there was therefore no possibility of redeployment.

Of concern would be the failure to consider the longevity of the claimant’s service to the company in considering his departure. It would also appear that the claimant had worked as a “snagger” in the course of his career and indeed he gave evidence to the effect that right up until the termination of his employment he continued to undertake “snag” work to assist with the smooth completion of the finishing process.

Having been told that he had been selected for termination, the claimant sought to address this issue with the company director, Mr. F. This meeting was described as an “appeal” but could never have been intended as one and if it was it was fundamentally flawed. For example, it was accepted that Mr. R.C.’s decision to terminate was approved by the board yet now one of that very board was hearing a purported “appeal”. Indeed, in his evidence Mr. F. indicated he simply told the claimant that the decision had board backing and he was not reversing it.

In looking at the evidence in total the Tribunal does have to accept that the position of head finishing foreman was redundant and indeed it is noted that a Mr. OF, a fellow finishing foreman was made redundant at the same time as the claimant.

In looking at the process and procedures applied the Tribunal does accept that the procedures were flawed and it was very frustrating to the claimant not to have some understanding of why he was selected until some effort was made to explain the situation to him well after the event in a letter of 16th November 2009.

The Tribunal knows of no practice wherein a Senior Supervisor would be considered for the work of a General Operative position in a programme of restructuring in the workplace and the Tribunal would have to accept that the employer was not under an obligation to do so. However, the claimant it is noted did request that this be done and at the very least it is accepted that there was an ongoing need for a finishing foreman for up to perhaps 3 to 4 months after the claimant was let go at the Ashtown site. It was never explained to the Tribunal why he was not considered for this work.

The Tribunal accepts that there was an unreasonableness and unfairness to the procedures being applied to this man’s termination and taking into account the monies already paid as part of the redundancy process the Tribunal awards a further €18,000.00 under the Unfair Dismissals Acts 1977 to 2007 being compensation for the remunerate losses arising out of the early termination of his employment.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)