EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: CASE NO.

EMPLOYEE UD2171/2010
– claimant No 2

against
EMPLOYER *- respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Egan B.L.

Members: Mr. W. O'Carroll
Mr T. Gill

heard this claim at Roscommon on 22nd February 2012 and 27th April 2012

Representation:

Claimant:
Respondent:

Respondent's case:

The respondent company supplies ready-mix concrete products and other architectural products to the building industry. It has block making facilities and quarries in a number of locations throughout Ireland. The products, which are heavy materials, do not travel well and are supplied to local markets. The company is a unionised company and deals with a number of trade unions but primarily with SIPTU. In that regard there is a comprehensive agreement in place since January 1985 between the company and trade unions. The purpose of this agreement is to set forth the terms and conditions of employment and to promote orderly and peaceful labour relations in the interests of the company, their employees and the trade unions. The agreement is subject to the relevant statutory legislation regarding terms and conditions of employment. The company, in addition to its employees also engaged the services of hired haulage drivers to carry out its work.

Due to the collapse of the construction industry in general and market decline across the

product group, the company introduced a rationalisation plan. The company experienced a 75% decline in business which resulted in the closure of over 50 locations countrywide. The total workforce reduced from 1900 in 2007 to a current figure of 500. As part of this process the claimant, who was based in Athlone as a truck driver, was made redundant. The viability of the Athlone plant was looked at and a decision was made to close down the Athlone plant with the loss of 7 jobs. The plant closed down in March 2010 and has not re-opened.

As part of the redundancy process the company met with the claimant and his trade union representative on 10 March 2010 and outlined the company's position. The redundancy processwas carried out in line with long established procedures as laid down in the comprehensiveagreement between the company and the trade unions. The company denied that it breached thisagreement during the process. The company initially sought to implement the redundancies on avoluntary basis but as no volunteers were forthcoming implemented compulsory redundancies.In addition to the redundancy package an ex-gratia payment was also offered to the claimant.The total amount offered was €32,000.00 and the claimant declined this offer. The Tribunalheard evidence from the then regional operations manager that the claimant was offered analternative as a dump driver in a location some 25 miles from Athlone but he declined thisoffer. This position was also advertised internally within the company but nobody applied forthe position. The position was not filled and the duties were subsequently taken on by a contractworker already engaged on the site.

The company denied that the hired haulage drivers were treated more favourably than its own truck driver employees. A rota system operated in the Athlone plant which was part of an historical agreement. The claimant was third or fourth on this rota system, behind the hired haulage drivers. The hired haulage drivers had been engaged by the company prior to the claimant's commencement of employment. The Tribunal heard further evidence that thenumber of hired haulage drivers engaged by the company has also declined since 2008.

Claimant's case

The claimant commenced employment with the respondent on 18th September 2003 and was dismissed by way of redundancy on 30th April 2010. He was offered a redundancy package but refused this on the basis that he wished to retain his job. The claimant believed that there was scope within the company to facilitate him on other sites within reasonable range of his home but no alternative to redundancy was discussed with him. He referred to a job vacancy in one of the company's other sites, which the respondent claimed had been offered to him and stated that no such offer had been made and that he was unaware of that vacancy at the time of his dismissal. Had he been offered this vacancy the claimant would have taken the job as he did notwant to be unemployed.

The Union Official, who negotiated with the respondent in respect of the redundancy package, told the Tribunal that at no time was the claimant offered alternative employment and specifically that the vacancy in another site was never offered to him. Furthermore, the Union Official was not made aware of this vacancy.

Determination

The Tribunal has given careful consideration to the evidence and submissions in this case. There was a conflict of evidence between the parties of the availability of suitable alternative

positions and the advertising of a job vacancy on one of the respondent's other sites. The Tribunal accepts on balance the evidence of the claimant and finds that he was not offered alternative positions.

There is a heavy onus on an employer to prove that it acted reasonably and fairly towards an employee selected for redundancy and a consequential duty to use fair procedures in making a redundancy (Fennell V Resource Facilities Support Limited UD57/2009). The Tribunal has considered the provisions of Section 6(7) of the Unfair Dismissals Act, 1977 and the Unfair Dismissals (Amendment) Act, 1993, and finds that under the circumstances, the conduct of the respondents has failed the test of reasonableness. Therefore, the Tribunal finds that the claimant was unfairly selected for redundancy and his claim under the Acts, succeeds.

The Tribunal awards the claimant €28,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)