

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE – *claimant*

CASE NO.  
UD2011/2009  
RP2259/2009  
MN1889/2009

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P O'Leary BL

Members: Mr A O'Mara  
Mr O Nulty

heard this claim at Monaghan on 9th March 2011

Representation:

---

Claimant(s): Mr Richard Grogan  
Richard Grogan & Associates, Solicitors, 16 & 17 College Green, Dublin 2

Respondent(s): In person

The determination of the Tribunal was as follows:-

#### **Respondent's Case:**

A witness for the respondent company, a construction business, gave evidence that he was recruited in early 2009 to address the company's financial situation and to see if it could be saved. Forty-three employees were made redundant from the end of 2008. The claimant, who was employed as a labourer, was made redundant on March 12<sup>th</sup> 2009 with two other labourers. He was one of 22 labourers made redundant up to that point. He was issued with written notice on February 12<sup>th</sup> 2009. There were no new contracts in place.

Two labourers working on a different site were employed until October 2<sup>nd</sup> 2009. It was not expected that this site would continue for as long as it did. The company attempted to keep the longest serving employees for as long as possible.

During cross-examination the witness agreed that there was no document issued to the claimant stating what the selection criteria were. The company normally moved workers to other sites if there was work available, but if there were employees already on a site it wasn't financially prudent to move people. Of the two labourers left on the last site one had 36 years' service and one had five years' service. He was not a decision maker in relation to making the claimant's role redundant.

A company director gave evidence that he discussed the company situation with the other director. On December 9<sup>th</sup> 2008 the other director spoke to staff onsite and told them that if the company did not secure new work they would be made redundant. The witness was not present. They selected employees for redundancy based on the site they were working on.

During cross-examination he stated that he did write up a list of employees to be made redundant at each site. The site the claimant was working on was at the snagging stage and required different tradesmen to finish the job, including subcontractors. He did not produce a list of employees and their rates of pay to the claimant's representative as requested by letter of September 8<sup>th</sup> 2009. The witness's uncle was the remaining labourer who had five years' service.

An office employee gave evidence that she processed the redundancy application forms. She put on the forms that the reason for redundancy was reorganisation and rationalisation on the advice of the redundancy section of the Department. She was not part of the decision making process in regard to the redundancies.

She conceded to the Tribunal that she was aware that the claimant was entitled to more written notice than he had been given.

### **Claimant's Case:**

The claimant gave evidence that he was not told by a director on December 9<sup>th</sup> 2008 that his employment would end on March 12<sup>th</sup> 2009. He contended that there was at least one other labourer remaining on his site after he was made redundant and one of these had less service than him. He believed there was at least two months' work left making footpaths and subcontractors were taken in to do the work.

During cross-examination he agreed that the employee with less service was a teleporter operator, but contended that he did labouring work as well. The claimant could operate a teleporter but was not qualified to do so.

The claimant's representative submitted that the claimant was entitled to a further four weeks' notice. He contended that the claimant was paid at the D rate of the Construction Operatives rate under the Construction Industry registered employment agreement and that he should have been paid at grade C level. If the Tribunal found that the claimant was not unfairly dismissed his redundancy payment should have been calculated at the C rate worth a difference of €787.20.

### **Determination:**

Having heard the evidence from both parties the Tribunal finds that the claimant was not unfairly dismissed but was made redundant. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, is dismissed.

The Tribunal finds that the claimant was entitled to be paid at the grade C level of the Construction Operatives rate of €16.37 per hour. Accordingly, the Tribunal awards the claimant the difference of €19.68 per week over 40 weeks amounting to €787.20 (seven hundred and eighty-seven euro twenty cent) under the Redundancy Payments Acts, 1967 to 2007.

This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal awards the claimant €2,619.20 (two thousand six hundred and nineteen euro twenty cent) in respect of four weeks' pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)