

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employer

CASE NO.
UD342/2008

against the recommendation of the Rights Commissioner in the case of
Employee

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr B. Garvey B L

Members: Mr A. O'Mara
Mr F. Barry

heard this appeal at Dublin on 14th July 2008

Representation:

Appellant : Mr Breffni O'Neill, CIF, Construction House, Canal Road, Dublin 6

Respondent : Mr. John Murphy, Construction Branch, SIPTU, Liberty Hall, Dublin 1

This case came before the Tribunal by way of an employer appealing against the recommendation of a Rights' Commissioner ref: R-051010-ud-07 JOC

The determination of the Tribunal was as follows:

Appellant's Case

The human resources' manager outlined the appellant's policy on redundancy. The criterion used was based on skills, time keeping, attendance, and seniority. This was all predicated on a site-to-site basis and according to the witness it was silly and not feasible to transfer employees from one site to another. This in effect meant that the employer had absolute control on where their workforce was based. The witness was unable to confirm if that policy had been formally conveyed to the respondent but added it was general knowledge within the company. He also accepted that there was no evidence that a written contract of employment was ever furnished to the respondent.

The appellant was active on a number of sites throughout the greater Dublin area at the time it made the respondent redundant. The respondent who was employed as a teleporter/forklift driver had worked on a number of sites up to February 2007. At that time the respondent was on a site that had to close down and in common with other employees from that site he was let go. The appellant justified the respondent's dismissal by way of redundancy on their site-to-site policy but accepted

that other forklift driving jobs were ongoing on other sites. The witness added that a registered employment agreement supported that policy.

The decision to let go the respondent was upheld by the company's financial director. The witness acknowledged that no appeal meeting took place and there were no notes or other documentation available relating in the upholding of that decision. At the time the respondent accepted a redundancy cheque and subsequently cashed it.

Respondent's Case

The respondent confirmed he received and cashed a cheque from the appellant in relation to his redundancy. That cheque together with his P45, and a form was presented to him by the contracts' manger prior to his clocking-in for work one morning in February 2007. The witness did not receive an explanation for that development which he described as a shock. At the time he objected to his dismissal and following representations to his trade union sought to appeal that decision. The respondent was not offered alternative employment or the possibility of transferring to another site.

The witness accepted that the site he was on completely closed but that not all employees there were made redundant. Apart from teleporter and forklift driving he also undertook general labouring tasks for the appellant. He maintained that his dismissal was based on an unfair selection process as other forklift drivers with less service were kept on while he was made redundant.

Determination

The appellant listed the criterion used in how it selected employees for redundancy. An employer contemplating making an employee redundant is required to act in a way that is compliant with the legislation. In this case there was no attempt by the company to consult with the respondent or his representative in relation to a change of status to his employment. The company's policy on redundancy based on a site only is liable to discriminate against their workforce but was nevertheless applied in this case. The employer did not exhaust alternative means of exploring the option of redeploying the respondent elsewhere. Their procedures in this case were arbitrary, abrupt, and contrary to natural justice. In that context the selection process and decision to make the respondent redundant rendered that dismissal unfair. The Tribunal therefore finds that the respondent's dismissal was not due to redundancy in the circumstances

Accordingly, the appeal against the Rights' Commissioner's recommendation fails and the Tribunal varies that recommendation to award the respondent €7500.00 under the Unfair Dismissals Acts, 1977 to 2001. Since a dismissal by way of redundancy is a fair dismissal it follows that the respondent's statutory redundancy payment of €3876.00 has to be deducted from that amount. The Tribunal therefore awards a net amount of €3624.00 to the respondent under the above Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

