EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:		**CASE NO.**
EMPLOYEE	- *claimant*	UD938/2010

Against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr P. Pierce
Mr. P. Woods

heard this claim at Dublin on 25th March 2011 and 13th June 2011

Representation:
Claimant: 25th March 2011 David O'Riordan, Sherwin O'Riordan, Solicitors, 74 Pembroke Road, Dublin 4
13th June 2011 the claimant in person

Respondent: Marcus Dowling BL instructed by Maples And Calder, Solicitors, 75 St. Stephen's Green, Dublin 2

The determination of the Tribunal was as follows:

Background
The claimant commenced working for a fund company in Dublin during September 2006. He was hired as a vice-president of the company on a salary of €70,000 increasing to €82,000. At the time of his selection for redundancy, clients of the claimant were moved to new offices in Dubai. A colleague was paid a salary of €115,000 and is still in employment at the company. The claimant was made redundant on 30th July 2009.

Respondents Case
A vice president (hereinafter referred to as EL) gave evidence on behalf of the respondent. She has been a vice president of the respondent company for two and a half years and has over ten years experience in hedge funds. The company is involved in hedge funds, equity funds and valuation of funds. They have offices in Dublin, Caymen Islands, Dubai and Montreal. She currently earns a salary of €115,000. This was something the claimant would not have been aware of, as salary is confidential.

She looked after hedge funds while the claimant looked after private equity. The claimant was not have been in a position to take on her role as there was a lot more transactions in hedge funds and she was qualified to work in them.

Under cross-examination explained that she did not know the claimant had left until called to a meeting. She knew private equity was moving to Dubai but did not have any sense of restructuring or job losses. She was not aware if the business was in any kind of financial trouble.

A business director (hereinafter referred to SS) gave evidence. At the time of the claimant's redundancy he was one of four business directors of the company. Indications in the business showed up a need for a physical presence in Middle Eastern countries. In 2007 a decision was taken by the board to set up a fully serviced office in Dubai. After applying for licences, recruitment took place and clients were moved in 2009. Dublin no longer had enough clients and decisions regarding staffing had to be made. The company had one vice president too many and after careful consideration it was decided to make the claimant redundant. The claimant was chosen because of knowledge, skill sets and qualifications. There was no private equity business in Ireland and no growth in that area. The claimant's position has never been replaced.

Under cross-examination witness was asked about the allegation of salary exploitation. He explained that expectations at the time the claimant was hired would have been around 50/60k for the profession He was brought in at a salary of 70k, which increased to 82.5K over the course of his employment. The claimant was well treated. Regarding a move to Dubai or Montreal SS stated that there are cultural nuances to consider and work visas would be very difficult. The office in Dubai has one vice president who is of Indian nationality and it was easy for him to adapt. He was unaware that the claimant had qualified 3 weeks previous to his dismissal. He was not present at the dismissal but was aware it was taking place. No forewarning of the dismissal was given because there is the potential that damage could be caused to the business. Normally employees put in the position of redundancy get three months salary and do not work with the clients again. He confirmed that the claimants contract did not reflect this.

On the second day of the hearing the global head of funds gave evidence. At the time of the claimant's redundancy he was a director and company head of fund administration based in the Cayman Islands. He was one of the four involved in the discussions that led to the claimant's redundancy. He referred to their client list of 44 and to those clients transferring to Dubai, 12 of which that the claimant serviced. There is a significant difference in the management of hedge funds and private equity funds. The claimant worked almost exclusively on private equity funding, and these were the clients being transferred to Dubai. As they were moving a significant part of their client book from Dublin one person had to be made redundant.

He explained that while they had projected growth in business for Dublin in 2009 there was none. They had offered the claimant a junior role to bring him on in hedge funds, but the claimant had refused this role. Within their industry they are dealing with high profile clients and large financial amounts are at stake that pass through their hands for which they are paid a nominal fee. It is the practise within the industry that when staff are made redundant that they are paid their notice period, as they cannot have a disgruntled employee having access to these clients or funds. It is a highly sensitive business.

Under cross-examination he disagreed that the claimant could do the same role as the other vice president EL. At the time of the claimants redundancy EL was ten years qualified while the claimant when he joined the company had three more exams to do which he completed during his

time with them. EL had past experience and there was a significant gap between EL and the claimant. There was a pay scale in place for vice presidents, not all of them were on the same salary. He was not aware of any practise in the company of marking down appraisals for emplo yees or requesting that they mark themselves down during the process. He explained that the senior vice president who was the claimants line manger was not at liberty to disclose any employees' salaries to the claimant. He was of the view that the alternative position offered to the claimant with a salary of €35,00.00 was reasonable and after the claimants departure had hired another employee on a smaller salary for this position.

In reply to questions from the Tribunal he explained that the alternative offer to the claimant at the time of his redundancy was the best they could do as their operation in Ireland is small in respect of revenue amount earned and growth was stagnant. After the transfer of clients to Dubai only three private equity clients were staying in Ireland, the claimant may have taken them on as part of his alternative role but no additional private equity clients would have been added.

The senior vice president (hereinafter referred to CC) gave evidence she was the claimants manager. When the claimant approached her about salary differences she had explained to him that she was not in the position to discuss other employees salaries.

She recalled in 2007/2008 she had given the claimant the opportunity to expand his knowledge and skill sets. Hedge funds were a different area to the claimant in trade types and the way they are loaded. She had given him one client account run by three managers, equities, bonds, securities and had got them to load them on their system. The claimant was reconciling trades and pulling the nett asset value for the client, while working on this he was closely shadowed by another vice president in their group.

At the time of the claimant's redundancy they had three vice presidents, now they have two. EL was qualified ten years while AB was qualified for 10 to 12 years and had worked on the risk side of funds. Both had broader experience and were on a higher salary than the claimant. She had looked at the alternatives positions available to the claimant on his redundancy; the only position available at the time was the role of senior administrator.

At the time of the claimant's redundancy she explained to him that his accounts were moving to Dubai, there was no new business coming in to Dublin hence there would be no position in Dublin. She offered him the chance to re-skill on hedge funds through the role of senior administrator but the claimant did not want to consider this. The claimant was paid in lieu of notice, as it was a business risk to let somebody in his position to work his or her notice.

Under cross-examination she confirmed that she was a director of the respondents. She reiterated that she had told the claimant she could not discuss other employees' salaries with him. She was referred to the claimant's review dated 15th November 2008 and it was suggested to her that the claimant had not seen "feedback from reviewer" of which he disagreed with the contents. She confirmed that this was given to the claimant by herself and MM from HR, at a review meeting. The claimant had never raised the "feedback from reviewer" with her afterwards. She recalled when the claimant had graded himself 5 or 4 all the way through his review, she had asked him relook at his self-appraisal, as he needed to substantiate this. The claimant did not know about his position being made redundant until July 2009.

In reply to questions from the Tribunal she confirmed that there is a defined salary scale in place for

vice presidents employees would be aware of the different scales however she was not aware if the claimant was. She had advised that the claimant that there were three different grades for vice president. When a vice president left in September 2010 she was replaced by placing an advertisement on a job agency site, the claimant did not apply for this position.

Claimant's Case

The claimant gave evidence he commenced employment as a vice president with the respondent on the 4th September 2006 and was their first employee in Dublin. Two more people were employed including EL as the company grew over three years and the senior vice president was also transferred to Dublin. He felt that during his last few months in employment there was an intention to move him out of the company.

He was shocked when he was told that he was being made redundant. CC and MM a representative from HR informed that his job was moving to Dubai, he was offered the alternative role which he refused and they had presented him with the RP50 form to sign. AB another vice president was recruited in January 2009 and they told him that AB had more experience than him and SS skills were more relevant. He disagreed with this, as he was a dynamic individual that was being undermined. There had been an atmosphere in the office on the lead up to his redundancy. He had worked hard for the respondent and there were no procedures. He recalled an appraisal in 2007/2008 where he was asked to mark down his self-appraisal. When he asked to see the "360" review he was refused. The work he and EL was doing was interchangeable, he would check EL's funds and review them, and to do this he would have to know how to prepare them. He could have done EL or SS role or alternatively been transfer to another of the respondent's offices, but they had told him of difficulties in obtaining work permits. When he had asked CC about the salary differences, CC had denied there was any difference between his salary and EL. This salary issue did not interfere with his job. He had worked long hours and weekends during his employment.

He had applied through an employment agency for his position with the respondent, he could not recall whether he had named his starting salary or not. He accepted that the decision to open the office in Dubai was taken prior to him discovering the difference in his and EL's salary. He was aware of the law firm in Dubai, and the finance firm in Dubai, which was dormant. The vice president role at this stage in Dubai was meeting and greeting clients as no fund administration took place here until July 2009. The transition to Dubai was discussed early in 2009, however he could see no need to move their accounts there. He has experience in hedge funding.

A number of letters received by the respondent during the first and second day of the hearing were produced; these appear to be from the claimant. They inform the addressee that the claimant is no longer being represented by his solicitor, one mentions a settlement amount, and they all suggest that the case will be ensured of media attention. The claimant denied he was the author of these letters. He had written to the respondent solicitors informing them that his solicitor was no longer representing him and he believed that there were additions to his letter.

He had approached CC over the indicative salary he had seen on EL's curriculum vitae, and CC had denied there was a difference in salary that he was being paid the same amount and if there was any difference it was minor. He did not believe there was a redundancy situation, as there was an inflow of new business, new funds launching and the accounts move to Dubai would be gradual. On the day of his redundancy he had not got the opportunity to raise other alternatives for himself and the manner in which he was dealt with was brusque and he was asked to leave there and then. He was not told the nature of this redundancy meeting before hand nor was he provided with a

representative.

The claimant gave evidence of loss.

The respondents representative outlined in his closing submissions that generally speaking the claimant was on the lowest salary of the three vice presidents. There had been three vice presidents positions and after the selection process there was now only two. It is common practice in this business when making people redundant there is no requirement to work their notice because of the sensitivity of the business. He referred the Tribunal to the following cases:

British Aerospace v Green (1995) ICR 1006.
Foley v Post Office (2000) ICR1283
Anglian Home Improvements v Kelly (2005) ICR 242
Nolan v Emo Oil Services Limited (2009) ELR 122

Determination

The Tribunal finds that a genuine redundancy existed. The claimant worked almost exclusively on private equity funding and these were the clients that were being transferred to Dubai. Dublin no longer had enough clients and there was no growth in the private equity business here. Thus, the decision was taken to make the claimant redundant.

It is common practise in the business that when making people redundant, there is no requirement that employees work their notice because of the sensitive nature of the business and the potential damage that could be done by a disgruntled employee. While this may result in a rather abrupt ending to the employment relationship, as it did in this case, it does not impact on whether a redundancy situation existed in the first place or whether the selection was fair. There was a genuine redundancy situation and the selection of the claimant was fair (albeit not to his liking) in all circumstances of the case.

The Tribunal dismiss the claim under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This ________________________

(Sgd.) ________________________
(CHAIRMAN)