EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	CASE NO.
EMPLOYEE- *Claimant*	UD1771/2010

against

EMPLOYER-*Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy SC

Members: Mr. L. Tobin
Mr. P. Trehy

heard this claim in Dublin on 29 December 2011

Representation:

_____

Claimant(s):
Mr. Eugene Smartt, Eugene Smartt, Solicitor,
Newlands Retail Centre, Newlands Cross,
Clondalkin, Dublin 22

Respondent(s):
Ms. Judy McNamara,Peninsula Business Services (Ireland) Limited,
Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

Reinstatement was sought on behalf of the claimant who had worked as a warehouse operative for the respondent from May 2008 to June 2010. It was alleged that the claimant had been dismissed for purported redundancy and that the claimant did not believe that his selection for redundancy had been fair. It was submitted on behalf of the claimant (when the claimant's representative was asked at the Tribunal hearing what was meant by purported redundancy) that there had not been a redundancy but a dismissal disguised as a redundancy. However, it was submitted that, if the Tribunal found that there had been a redundancy, the claimant had been unfairly selected.

Disputing the unfair dismissal claim, the respondent denied acting in breach of unfair dismissals

legislation. It was stated at the Tribunal hearing that the respondent had taken on some more staff who were more skilled than the claimant but who were on trial and that the claimant had not been sufficiently skilled.

Giving sworn testimony, LOS (the respondent's warehouse manager at the material time) said that he no longer worked for the respondent (since end of September 2011) but that at the time at issue there were some thirteen warehouse employees (in a workforce of some forty then). The respondent was a supplier of automotive parts such as brake pads and discs.

A global downturn led to a difficulty recovering debts. The respondent lost a very large sum on one account. Sales were down and the respondent lost a number of accounts. The respondent had to look at lowering costs. LOS tried to cut and control overtime and to reorganise the shift times of the working day. Five to six months before restructuring, employees knew of the problems and the fall-off in orders. Business fell away.

The claimant was a warehouse operative who did order picking and other work in goods inwards but the warehouse was not the only area affected by the downturn. The sales area was also hit. From the warehouse's thirteen employees three were made redundant.

A first redundancy consultation meeting was held in the respondent's boardroom on Monday 24 May 2010. Also, a notification of potential redundancy was issued. (The Tribunal was furnished with a copy of the claimant's notification.)

The Tribunal was furnished with a copy of a typed note of a second redundancy consultation meeting attended by LOS and the claimant on Wednesday 26 May 2010. The note stated that the purpose of the meeting was to look at alternatives to redundancy and to invite the claimant to put forward any ides he might have so that consideration could be given to any available options to redundancy.

The claimant was asked if he had come up with anything and replied that all he could think was a pay cut. However, LOS replied that this would not address the core issue. LOS felt that a pay cut would most likely have an adverse impact on staff morale and productivity which the proposed restructure set out to maintain and improve.

The note went on to state that, if at the end of LOS's consultations with all staff, there were no viable alternatives for consideration and no-one wished to be considered for voluntary redundancy, LOS then had to proceed with compulsory redundancies. It was stated that (as LOS had explained on Monday 24 May 2010) the fairest method of selection was to complete a matrix which scored how well an employee fulfilled his duties as a warehouse operative.

Selection criteria considered would be length of service, disciplinary record, sick days, skill set and quality of work.

LOS then showed the claimant how LOS had scored him in each of the disciplines in the selection matrix allowing the claimant to object if he deemed any of the scores to be unfair. It

was stated on the note that LOS and the claimant had been reading the matrix as LOS had explained to him how each element had been scored and that the claimant had agreed that the scores awarded had been fair.

The note concluded by stating that the next meeting (the context of which would be whether or not LOS would have to make compulsory redundancies) would be scheduled for Friday 28 May 2010 when LOS would be informing the claimant of his total score on the selection matrix. The note contained the claimant's signature.

The Tribunal was furnished with a copy of a note of a third redundancy consultation meeting attended by LOS and the claimant on Friday 28 May 2010. LOS met the claimant to inform him of the decisions relating to the redundancy process. He recapped on their previous meeting explaining that, unfortunately, (given the circumstances as outlined at the first meeting, the absence of alternative positions and no-one opting for voluntary redundancy) there was no alternative to compulsory redundancies.

LOS explained to the claimant that, unfortunately, based on his scorecard (which they had gone through and which the claimant had agreed with at the last meeting) he was in the bottom three and, as a result, he was selected for redundancy.

LOS asked the claimant if he had any questions but the claimant had none whereupon LOS thanked him for his two years' work, wished him well and escorted him to Mr. FC of the respondent who gave the claimant his redundancy cheque. The claimant was told in writing that he had the right to appeal against his redundancy within fourteen days but he did not do so. The claimant lost his redundancy cheque but the respondent gave him another one.

Giving sworn testimony, Mr. FC of the respondent said that the respondent's financial controller (ER) had wanted to keep the respondent in business despite the downturn. FC accepted that the respondent had re-engaged DM who was one of three made redundant from the respondent's warehouse, the other two being the claimant and DOL (the claimant's brother). FC said that DM had approached the respondent and that MM (DM's father) did electrical work for the respondent. Asked if consideration had been given to approaching the claimant or the claimant's brother, FC replied that there had been a breach of trust since the claimant had taken a case against the respondent. FC did accept that three new men had been taken in on a trial basis.

Giving sworn testimony, the claimant confirmed that he had worked for the respondent from May 2008 to June 2010. He said that he had not thought the respondent was in any difficulty and that there had been overtime nearly every day. He denied that he had seen the respondent's redundancy matrix before the Tribunal hearing. He recalled a group meeting on Monday 24 May 2010 and being told on Friday 28 May 2010 of his redundancy. He could not recall meeting LOS on Wednesday 26 May 2010.

Determination:

It is quite clear that the claimant was dismissed by reason of redundancy which is a substantial ground justifying dismissal under Section 6 (4) of the Unfair Dismissals Act, 1977.

The second issue to address is the claimant's case that he was unfairly selected for redundancy.

Section 6 (3) of the Act of 1977 provides:

> "Without prejudice to the generality of subsection (1) of this section, if an employee was dismissed due to redundancy but the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed, and either-
>
> (a) the selection of that employee for dismissal resulted wholly or mainly from one or more of the matters specified in subsection (2) of this section or another matter that would not be a ground justifying dismissal, or
> (b) he was selected for dismissal in contravention of a procedure (being a procedure that has been agreed upon by or on behalf of the employer and by the employee or a trade union, or an excepted body under the Trade Union Acts, 1941 and 1971, representing him or has been established by the custom and practice of the employment concerned) relating to redundancy and there were no special reasons justifying a departure from that procedure,
>
> then the dismissal shall be deemed, for the purposes of this Act, to be an unfair dismissal."

The claimant did not satisfy the Tribunal that the conditions set out in section 6 (3) applied, and has failed to establish that he was unfairly selected.

The claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)