**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:
Employee
MN280/2006

CASE NO.
UD448/2006

against

Employer

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL
Members: Ms. A. Delahunt
Mr S. Nolan

heard this claim at Dublin on 4th October 2006 and 6th December 2006

**Representation:**

Claimant:
Mr. Ed Kenny, SIPTU, Liberty Hall, Dublin 1

Respondent:
Mr. John Barry, Management Support Services (Irl) Limited,
The Courtyard, Hill Street, Dublin 1

**The determination of the Tribunal was as follows:**

**Background:**

The claimant contends that he was unfairly selected for redundancy and therefore unfairly dismissed.

**Respondent's case:**

The Managing Director (hereafter referred to as MD) gave evidence to the Tribunal. The company manufactures "flush" doors for hospitals, colleges and offices. MD interviewed the claimant for his job as a production employee. The claimant told MD that he had knowledge of the "edge-bending machine" which the company uses in their business. This would have been an advantage to the company but when the claimant started work it became apparent the claimant did not have a comprehensive knowledge of this machine. The claimant was moved to another machine but was removed from this also. The claimant was then given a position on the floor, sanding, glazing and inserting glass into doors.

MD told the Tribunal of an incident that occurred in the company. A cutter became unattached from the spindle machine when the claimant was using it. MD was in the office at the time and heard the noise. MD examined the machine and discovered the blade on the cutter had become unattached. MD approached the claimant and asked him what had happened. The claimant told MD he had tightened the cutter and insisted it was not his fault. MD asked the manufacturer of the machine to examine the cutter. The manufacturer reported that the cutter had not been tightened. MD approached the claimant with this information. The claimant was belligerent and said "so what". MD did not take action on this error but he did move the claimant from this machine, which had been one of the claimant's three principle activities. The claimant was not to work the machine without the supervision of Mr. D. MD has experience of a similar incident that had fatal consequences.

The company's main sales person had declining sales and the company was losing business to a competitor. The main sales person informed MD of his intention to resign as he was leaving to work for the competitor. Only one person (Mr. L) was now involved in sales. There were thirty-two staff involved in production. The company needed more work priced and negotiated. The company were trying to keep people busy at all times.

In January 2006 the company held production meetings and realised they did not have enough work to continue. MD asked Mr. L to examine sales orders coming in to the company. MD attempted to improve productivity but there nothing more that could be done regarding productivity or reducing prices already quoted for work. MD asked the production managers to investigate staffing levels in the various sections.

Towards the end of February 2006 MD was considering the variety of the skills of the company's workforce. He asked the production managers to identify if there was a surplus of staff in any section. The production managers identified eight people to MD. MD was surprised at this number and was not comfortable about making people redundant. He asked for an explanation as to why the eight people were selected. MD had to consider redundancies in the company due to the downturn in productivity. The claimant was not a multi-skilled person. Job attendance is critical and MD had to have several conversations with the claimant regarding his attendance and he asked the claimant to address this. MD was trying to get a positive result; he was not building up a case for dismissal.

MD informed the eight people in a meeting with Mr. L that their positions were being considered for redundancy. One person told MD he should look for voluntary redundancies. MD approached everyone in the company but no one opted for voluntary redundancy. No one approached MD to say they should not be selected. One person did come to speak to MD to say they were upset about the prospect of redundancy. MD was heavily divided but he could see no other option except redundancies. He reduced the number of redundancies from eight to four. He tried to see if workloads would improve but when they did not he called in the four people selected for redundancy into a meeting. No one approached MD to say they should not have been selected.

The claimant was one of the four selected. There was no reason why the claimant should not have been on the list as he was unskilled despite having held many positions and having experience on many of the machines. The claimant was selected due to his attendance record and the quality of his work. Details of the claimant's attendance records for the last six months of his employment were provided to the Tribunal.

MD has no problem with staff having union membership. He has held a meeting with the union. MD made deliberate attempts not to be told which staff had union membership, as he feared it would be construed that this was the reason they were selected for redundancy. To this purpose MD did not know who had union membership.

MD gave the claimant his RP50. The four people selected for redundancy were given two weeks notice. During the claimant's notice period, the claimant and a colleague asked an employee in the office on two occasions "if I left now what would I get?" The claimant asked MD one day "if I went now what would I get?" He asked MD if he could leave that day. MD replied he could leave but he would only get paid to 1pm. Before the redundancies the company employed thirty-five staff. Four staff were made redundant and staffing levels have not increased since the time of the redundancies.

The claimant had a problem with the supervisor of production (Mr. D). Mr. D delegates duties to staff and he is very professional. Mr. D and the claimant spoke to MD about issues. MD discussed the issues with them. MD would try and resolve the issue or the parties would part with an understanding about what the next stage would be. The claimant did not raise an issue a second time.

In cross-examination MD detailed differences between the position of operative and wood machinist. He told the Tribunal the position of wood machinist encompasses all aspects of the machine. In the normal course of events the company would have advertised a wood machinist's position. MD considered staff working on the floor to be general operatives. He did not know what an operative's rate of pay was. A wood machinist's rate of pay depended on their skills. There is a difference of 30% between the two rates of pay. It was put to MD that the claimant was employed as a wood machinist. MD stated that the claimant was supposed to have specialist skills and that was why he was on a higher rate of pay. The claimant was working in the finishing section when he was made redundant and had been working there for eighteen months.

MD was asked about the importance of the claimant's duties in relation to the production operations in the company. MD replied that the claimant's duties were no more important than any other position. Four or five people worked in the finishing section. The claimant's duties consisted of glazing, sanding and using the spindle. Many staff had the skill to carry out the glazing duty and a number of staff could carry out the sanding duty. It was now the case that primarily, the claimant's supervisor (Mr. D) carries out the spindle duty. Several other staff covered the claimant's job when his employment ended. The claimant was not the only person in that section who carried out all three duties. Mr. D now carries out the claimant's duties along with other work and he works on the spindle the majority of the time. MD denied the claimant had any specialist skills. He had to speak to the claimant regarding his serious misconduct for leaving the workplace early without permission.

It is MD's understanding that 80%-100% of staff has union membership and he has no problem with that.

MD was asked if he had received complaints from the claimant about Mr. D. Both the claimant and Mr. D had approached MD. MD could not recall all of the incidents. One incident occurred when Mr. D was searching for the claimant and found him talking on his mobile phone in the canteen. The claimant and Mr. D complained to MD about each other. The second incident MD recalled

happened when a number of staff were standing around talking and Mr. D told them to return to work. MD did not recall the claimant telling him he was "sick" of Mr. D.

MD was asked if he recalled an incident in February 2006 when the claimant suffered an injury. The claimant was talking and Mr. D told him to return to work. The claimant took exception to this. The claimant tripped up. Mr. D was not there when the claimant tripped. MD spoke to the person whom the claimant was working with at the time. The claimant said he was carrying a door and tripped over a pallet and incurred a fracture. MD denied the claimant told him Mr. D was involved in the incident or that he had told the claimant he would make a note of this. The company does not have a bullying and harassment policy or a dignity at work charter.

It was put to MD that the claimant had an accident in February 2006 and when he went in to MD's on his return to work he was told his job was in jeopardy. MD said this was absolutely impossible. MD denied that Mr. D had told the claimant he would not have a job when he got back from his injury. When MD was considering redundancies he met with the production managers and discussed staff whose skills were overlapping. The company did not need a qualified wood machinist in the finishing section after the rationalisation, as there were a number of very skilled people.

Answering questions from the Tribunal MD said he reduced the numbers selected for redundancy from eight to four because of the fright of having to make people redundant. MD had notes from the interview with the claimant and these showed the claimant had told him at the time of interview that he had twenty years experience as a wood machinist.

MD did not consider the claimant negligent on the spindle but he did ask Mr. D to supervise the machine. Until MD received the cutter back from the manufacturer, with the report on what had happened, the claimant was not to work the machine without supervision. The claimant had told MD he had tightened the spindle but when MD questioned him about it the claimant replied "so what" therefore, MD was uncertain. The claimant's attendance was bad compared to that of his colleagues.

Union dues are not deducted from employees' wages.

A meeting was held after the claimant's employment ended. MD described this meeting as "easy". The claimant's case was not revised at this meeting. The claimant did not raise the issue about redundancy.

Mr. L gave evidence to the Tribunal that he was present at the meeting with the eight employees who were being considered for redundancy. The eight people present made no comments about who should be selected for redundancy. Mr. L was present at the second meeting with the four employees who had been selected for redundancy. There were no issues raised by staff during this meeting but one person did leave during the meeting.

The Tribunal heard evidence from an employee of the respondent company. She worked in the company for six years. She was responsible for wages and first aid. The claimant hurt his wrist on an occasion. He called to her and she placed ice on the injury. He did not indicate that he wished to go to the hospital.

If employees felt that they needed to go to hospital or if they felt that they needed to they sent them to hospital. No one was refused to go to hospital and they would pay for the taxi and for costs of the

visit.

On 22nd February 2006, which was the day after the claimant hurt his wrist the claimant called to see her again. She examined his injury and advised him to go to hospital. He did and was out of work for four days.

She had responsibility for wages and therefore dealt with the redundancy payments. The claimant called to her on a number of times and asked her, "If they left how much they would receive". On the day the claimant left he came into her office and told her that he had spoken to the MD and had asked the MD if it was ok that he "left now" and the MD agreed that he could leave. The claimant told her "I want to leave and I've asked (the MD) can I leave and he said go ahead (the witness) will sort out money for you". He then asked her if he could have his monies due to him. She organised the monies due to the claimant. She explained that, "He knew if he left on that day he would be paid up to that day".

Under cross examination the witness further elaborated that it was made clear to the claimant that if he left on that day (before his notice period) he would not be paid notice monies.

The Tribunal heard evidence from the supervisor of production (Mr. D). Prior to the redundancies he was responsible for five staff. He was asked by the MD to compile a list for redundancies and the claimant was on this list. He told the Tribunal that he had a "fine" working relationship with the claimant. When asked about the claimant's assertion that he bullied and harassed the claimant he replied, "I don't think I bullied or harassed (the claimant) the only time I argued with (the claimant) was when I asked him to go back to work, which was on a regular occasion and flare up into argument". He was asked if there were similar difficulties with other employees and he explained, "Yes confrontation to get them back to work". He explained, "I push the lads to work as hard as I do, I am generally tight with times". If he felt the situation was getting out of control he told the employees that they would go to the MD and the MD would assess the situation and he would resolve the situation. The claimant felt aggrieved at one time and made a formal complain about him to the MD. He had socialised with the claimant on a number of occasions, "Dublin matches and drinks".

The witness explained about an incident whereby he "flipped" because a number of workers complained to him abut the heating and he told them to resume working.

Under cross-examination it was put to the witness that the relationship changed early in 2006 because the claimant joined a trade union. He denied this, it "Made absolutely no difference, my own brother worked there and he is in a union"; trade union would not have made any difference at all. He did not tell the claimant that he would punch him in the face if he was threatened with the trade union. He "Never threatened (the claimant)". On 16th March 2006 the day the claimant left work he had a conversation with him. He had asked the claimant to "go back to work to stay at his machine". "I arrived back to floor after being on phone and he was missing, he was in the canteen on a mobile phone, I told him to stop using phone and to go back to doing the job". He did not say that he did not want the claimant working there. No one worked in the claimant's section in the notice period but some months later a worker did temporarily as they had a "large job on".

When asked by the Tribunal about the selection for redundancy he explained that it had been quiet after the Christmas period. He had been asked by the MD to ascertain how many workers they needed to retain and the best way to organise work. Regarding the claimant, the claimant's capabilities and his flexibility were limited and the claimant's lateness would have been

a consideration.

**Claimant's case:**

The Tribunal heard evidence from the claimant. He worked in the respondent company for two and a half years as a wood machinist. He obtained the job in the respondent company when he saw an advertisement in a newspaper for a wood machinist and he applied for it. He has twenty years experience as a wood machinist. He worked in the section supervisor of production, "from the day I started". He worked on the spindle handle and glazed doors, he was the "Only spindle handle there" and "If the spindling didn't get done the doors didn't go out".

His working relationship with the supervisor was good. In January "Things started to turn sour, went downhill, he kept asking me questions" about which employees were in work. He explained to the Tribunal difficulties he had about work allocation and incidents with the supervisor. He reported incidents to the MD but no action was taken. He explained his wrist injury to the Tribunal and how he felt it happened. He was out of work for a week because of it. On his return to work he was told that he was not getting paid for the week. He asked the MD why he was not getting paid. The MD told him that he was not getting paid and that he was placing him on protective notice, and this was on 6th March 2006.

His final day working there the MD approached him and told him that if he left that day and did not work his notice he would pay him his notice because the supervisor had told him that he did not want him there. When he was being let-go another worker was put in his work section.

In cross-examination he stated that he was not brought in to work on the edge bender and he never worked in another section. It was put to the claimant that an accident happened with the spindle machine and when the MD asked him about it he flippantly replied that the blade was not fitted properly. The claimant denied this. It was he who fitted the blade on the machines and he also denied that the supervisor spent more time with him on the spindle after the accident. The claimant denied that it was the supervisor and not himself that setted the machine after the accident. The claimant denied an incident with the mobile phone and denied he was in the canteen. When put to him, the claimant stated that he hurt his hand and on the same day he wished to go to the hospital and his supervisor did not allow him.

The Tribunal heard evidence from two other witnesses regarding the incident with the supervisor.

**Determination:**

The Tribunal finds that the claimant was not unfairly selected for redundancy. The Tribunal, along with the parties accepted that a genuine redundancy situation existed.

A dispute arose as to whether the selection for redundancy was fair, with the claimant saying he was selected mainly because of his union membership and his supervisor's dislike of him. He also felt that he was sufficiently skilled in all of the machinery in the company.

The company's selection process for redundancy was based on the capability of workers to interchange and be flexible in a range of areas and in a variety of operations, as well as their attendance record. On an analysis of the situation the company deemed the claimant to be less suitable than others in this regard.

The Tribunal found that there was a significant conflict of evidence in relation to many of the matters raised in the case but on balance the Tribunal find that the claimant was not unfairly selected for redundancy. The claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

His evidence with regard to the minimum notice issue is not accepted by the Tribunal either and consequently the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, fails also.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sad.) _____
(CHAIRMAN)