EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:	CASE NO.
Employee	UD787/2007 RP387/2008

MN629/2007WT266/2007

and

Employee UD788/2007 RP345/2008
MN630/2007 WT267/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. O'Connell BL

Members: Mr. J. Reid
Mr. J. Maher

heard these claims in Dublin on 26 March 2008 and 13 June 2008

Representation:

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Claimant:
Mr. Stephen O'Sullivan BL instructed by
JJ Fitzgerald & Co, Solicitors, Friar Street, Thurles, Co.Tipperary

Respondent:
Mr. Mark Connaughton SC instructed by
Mason Hayes & Curran, Solicitors, South Bank House, Barrow Street, Dublin 4

The determination of the Tribunal was as follows:-

The claimants worked as regional representatives with the respondent for in or around twelve years.

The first-named claimant is hereinafter referred to as C1 and the second-named claimant as C2

Respondent's Case:

Giving sworn testimony, a respondent witness who had been the respondent's chief executive officer (hereafter referred to as CEO1) told the Tribunal that the primary objective of the respondent was to give advice to members, to negotiate with the government regarding legislation in the licence trade and to represent and answer queries where appropriate. There was an office in Dublin with eight to ten administrative staff and there were five representatives operating in twenty-five counties. There were six thousand members with each being responsible for 1,100 to 1,300 members. The structure of the organisation was outlined and while CEO1 was not a member of the board he was entitled by invitation to attend meetings. There were a number of sub-committees which were nominated by the respondent's president (hereafter referred to as the president) and appointed by the board of directors.

The first suggestion of redundancy was a meeting in June 2006 in the office of the president at which CEO1 was present. The president, who had previously been the national treasurer, called the meeting. He expressed concern about practices which had built up over the years in relation to the representatives. The president's intention was to streamline, standardise and rationalise. There were exchanges of correspondence and during the course of discussions C1 raised the question of redundancy. The respondent then began to consider redundancy. Their membership had fallen from 6,200 in 2004 to 4,800 at the time of the redundancies. The function of the regional representatives was membership recruitment, to help organise local meetings and assisting in seminars. Their main function was membership. They looked at the organisation locally and regionally and it was noticed that expenses were out of kilter in relation to travel and phones. That was the job of the accountant and he reported to CEO1.

After the June meeting the president instructed CEO1 to look at the possibility of redundancy. All sort of considerations were taken into account and there was some contact with the union. There were discussions with C1 on a one-to-one basis on the phone or face-to-face in relation to redundancy and he made a remark regarding the level of the redundancy payment. While CEO1 was on holidays he was in contact by text message with C1 as to the calculation of the redundancy and at one point there was a misunderstanding in that it seemed he was agreeing to accept less than the statutory redundancy. CEO1 worked with the president at the combined cost of wages and travel. The representatives were paid a salary and while they used their own cars, they received a mileage allowance approved by Revenue plus an overnight allowance on production of receipts. They looked at the possibility of re-employing the representatives in a different capacity. One option considered was to concentrate solely on member recruitment on their own time and they would then get paid a set fee per member plus they could work elsewhere if they wished. These discussions took place with the representatives directly. The Agreement between the respondent and C2, dated 1 December 1996 was opened to the Tribunal.

Following the redundancy of the two claimants and the other regional representatives some of their duties were being done on an agency basis. Up to 31 December 2007 the agents' only function was the enlistment and recruitment of new members and the local branch officers did the other duties. The agents got a fee for every new member that came on board. There were three or four agents with one in the south-east, the west and the midlands. Section 79 of the Memorandum and Articles of Association was referred to and it stated that "…All other paid Officials and staff of the Federation shall be decided upon and appointed by and may be removed by the Management Committee, and the Management Committee shall fix their powers, duties and

remunerations …" CEO1 stated that the finance committee discussed the redundancy and made a recommendation to the management committee. Twenty of the twenty-six members were present and they decided that the matter should be put before the board of directors. It was then proposed to have a full National Executive Council (NEC) debate on the regional representative's role and whether this role should be dispensed with. CEO1 created a document for presentation to the management committee of the NEC and this was also referred to during the course of the hearing. It recommended that the NEC "decide that the post of Regional Representative has effectively ceased to exist" and that a programme be put in place for the "recruitment of an Organisation Development Officer and a significant number of agents throughout the country". This was agreed by the National Executive Council on 18 April 2007.

The two claimants were made aware within 24 hours of the National Executive meeting and they were formally notified by letters dated 1 May 2007. While C1 had been unavailable for work due to illness since August 2006 he was not considered for agency work. However, C2 stated initially that he would consider working as an agent but subsequently rejected the possibility. In relation to C2 there were a number of issues relating to expenses such as mobile phone and travel costs. His weekly expenses were very high and with the level of his mileage he would be endangering himself and it was not sustainable from a health-and-safety point of view. CEO1 stated that he had an obligation to the respondent and he believed that C2 was not being fair to himself driving late and long hours.

C2 did not complain to CEO1 about bullying and harassment. CEO1 was very surprised to hear that such an allegation had been made as he had had a very happy relationship with all the employees. The mention of these allegations did not impact on the decision to make him redundant. Correspondence between the parties was opened to the Tribunal where the legal representative for the claimants stated that the "purported dismissal" was contrary to the Articles of Association and had "no legal effect" and that at the very least the dismissal was "procedurally incorrect". In response, the legal representative for the respondent stated that under Article 79 it was not "an absolute requirement" that only the management committee could terminate an employee. In addition it was stated that the respondent wished to meet with C2 to discuss the alleged bullying and harassment. In view of the gravity of the decision to make the claimants redundant it was decided that the National Executive Council should make this decision. Despite being invited to do so, C2 did not approach CEO1 regarding the bullying allegation.

The matter of expenses in relation to C2 was again raised and CEO1 stated that C2 had been given a great deal of latitude but it was difficult to justify the number of repeat visits in a month to the one location. When he questioned the expenses he received no response. CEO1 was asked if he had reason to doubt if the trips had been made and his response was that he did not know but he would question the matter. The decision to make the two claimants redundant arose out of a redundancy request from C1 that in turn triggered a conversation within the organisation. The decision was arrived at after various discussions. In relation to the figure for redundancy there was no "norm" within the organisation. The other two representatives were offered the same amount of redundancy as the two claimants. CEO1 reported to the finance committee and the management committee in relation to the redundancy figure which was agreed at €22K. C1 was quite ill during 2006 and was incapable of returning to work. He did not question the need to make his position redundant.

A review group which had been recommended by KPMG carried out a review of the respondent's

structures and made a number of recommendations. This was considered by the respondent and it resulted in the Memo and Articles of Association draft which was presented to the AGM in May 2006. A steering group considered the recommendations and a decision was taken that the grade of regional representative would no longer exist. In relation to the expenses for C2, CEO1 had a discussion with him regarding his mobile-telephone bills and his motor-mileage expenses. A document subsequently arose because of the concerns in relation to haphazard and unproductive nature of work and that his health would suffer. The decision to make him redundant was unrelated to the expenses queries.

A consultation document was referred to which was put forward by C2 wherein it proposed new regions for three regional representatives. While CEO1 could not recall when he saw this document he stated that it was interesting but he felt it would be impossible to budget as the document suggested in view of the rapidly falling membership. The two claimants were not replaced by agents. While some agents were recruited there was a single payment in respect of each person recruited. The only function performed by the agents is the recruitment. All other work was done through the organisation development officer in head office whose role had been expanded. This person was appointed in July/August 2007. The claimants were not considered for this role as the job was based in Dublin and he would not expect them to move locations from Wexford and Tipperary. They were looking for a candidate with management experience who could be described as mini chief executive officer. This person guides the people doing the recruitment. The person in this position has managed enterprises, had managed people and has held personnel posts. He has a wide range of experience and is still in the job.

In cross-examination CEO1 stated that the standard of reporting had become lax and a great deal of trust had been placed in the claimants over the years. Regarding the meetings in relation to the redundancy he did not state that C1's employment was safe but would have said that he would be treated fairly. Expense cheques were withheld in order for C2 to give an explanation as to his claims. The job being done by the agents is solely confined to recruitment and no agent is engaged in either of the claimants' areas. The decision was made to make all the regional representatives redundant and not just the two claimants. The illness of C1 was irrelevant in the decision to make him redundant.

At the beginning of the 13 June 2008 hearing the Tribunal received an application to have an appeal under the Redundancy Payments Acts, 1967 to 2003, added to the claims originally lodged. The representative of C1 and C2 stated that his clients wanted to "cover themselves". The respondent's representative said that this should have been done before and that the claimants were "hedging their bets" but that he had no problem with this application. He added that his client had always said that it could pay redundancy.

Claimants' Case

Giving sworn testimony, C1 said that he was nearly sixty-four years old and that his employment

with the respondent had started on 5 March 1995. His role had been to communicate with the respondent's members (including making visits to them) and to attend meetings. He had covered the counties of Limerick, Clare, Tipperary and Offaly.

C1 confirmed that he and C2 had attended a meeting on 21 June 2006 with the president. C1 told the Tribunal that, prior to this, he had not had a lot of contact with the president.

Asked what had occurred at this meeting, C1 said: that it had been a meeting without agenda; that the president had issued some "dictats" about what would happen in the future; that the meeting had been "boisterous to say the least"; and that it had "got quite nasty".

Regarding the meeting, C1 told the Tribunal that there was a discussion about journey planning and that he had believed that it would need discussion but that the president said that it had to be done his way.

C1 said to the Tribunal that the president wanted more checking of motor mileage and that he felt people were "on the fiddle". The president wanted a car to be submitted even if it was a private car. The issue concerned private mileage and work mileage. C1, speaking of the president, told the Tribunal that "it was his way or out the door" and that "it was very boisterous".

Confirming to the Tribunal that he had raised the subject of redundancy, C1 said that the meeting had been "so boisterous" and that he decided that he "would not put up with bullying" whereupon he said to CEO1 that he "would like to see what a redundancy package would look like" and said that he "would consider it if the package was right".

The Tribunal was now referred to a document in C2's booklet for this case. The document was drafted for CEO1 and related to C2's "proposed new regions for three regional representatives" based on serving respondent's 5337 members according to which location within the country's geographical area they occupied. The said document contained a list of duties which could be carried out from Monday to Thursday by these three people (who could be given the title of district liaison officer or some other designation) and it suggested that Fridays might be given over to the production of reports (on a specified range of matters that would have been dealt with on the preceding Monday to Thursday) and to preparation of the following week's journeys.

The proposed salary would be €45k par annum with an annual expense budget of €30k. This would amount to a cost of €225k for three employees which would entail a €59k saving on the €284k cost to the respondent of the service up to then.

The next document considered at the Tribunal hearing was a letter dated 27 June 2006 from CEO1 to C1 which contained the following:

"I refer to the meeting attended by yourself and your colleagues with the President and myself on Wednesday 21st June last.

You will recall that the President drew attention again to the matter that I had discussed with you on a number of occasions regarding your expenses for the months of January, February, March, April

and now May of 2006. You will recall from a number of previous discussions, and formal letters from me to you, that you have been advised on a number of occasions that your failure to provide adequate weekly reports and adequate expense claims has reached the point where they are simply unacceptable. You promised on the 21st of June that you would attend immediately to the outstanding matters but nothing has as yet arrived.

During the course of the meeting on June 21st you mentioned on three separate occasions that, were an offer of redundancy to be made to you, you would grasp it with enthusiasm. I have since had conversations with the President who has asked me to look at the position of redundancy by reference to reorganisation within the Federation and what redundancy package might be available for you.

You commenced employment with the Federation in March 1995 which gives you just over 11 years service. The statutory redundancy therefore to which you would be entitled would be just under €16,000.

This information is being sent to you so that you might have some understanding of the present position. It may be possible, but I cannot guarantee it, that if redundancy were to be accepted on an agreed basis, I may be able to seek some enhancement of the figure as mentioned above.

I need, by return, the outstanding documents which have been promised on a number of occasions. You might also be good enough to let me know your views on the figures you requested."

Asked if he had had any discussion with CEO1 or the president prior to this letter, C1 replied that he had had no discussion with the president at any time.

C1 confirmed to the Tribunal that he had been on sick leave from September 2006. He said that he was a diabetic but that another problem had emerged and that nobody had known what it was. CEO1 sent him to a clinic in Dublin but the problem was not identified. C1 ultimately had a double bypass.

The Tribunal was now referred to an e-mail dated 19 Oct 2006 from CEO1 to C1 which contained the following:

"The last doctor's certificate I received from you expired on October 11th.

We have not had a result from your visit to the clinic in Charleville Mall as yet.

I have had no contact from you in the meantime and therefore I am not aware of your present status.

Have you returned to work?

Are you still on "sick leave" and, if so, do you have a certificate from your doctor for me?

We are now in another phase of a long saga of lack of contact-lack of basic courtesy towards your employer.

You must recognise that there is a limit to the patience that can be displayed towards you.

I require an immediate response with clarification as to: your present whereabouts, your state of health as described by your doctor, whether you have returned to work or when you intend to return to work.

I must expect a reply by return as both time and clarity are now of the essence."

Asked at the Tribunal hearing about medical certificates, C1 said that he "sent certificates till I was sent for the medical" and that then he had "assumed" that respondent "would deal with the results". He added that "it seems now that this was not the case" and said that the inverted commas in CEO1's e-mail (i.e. the reference to "sick leave") accused him of not being sick.

With regard to a letter dated 1 May 2007 from the president to him, C1 did not take issue with a paragraph saying that CEO1 had had a series of meetings and consultations with him over the past year and that, in fact, the possibility of C1's position becoming redundant (and the details of a voluntary severance package) had been discussed with him on numerous occasions during 2006 including exchanges of e-mails and letters.

The letter stated that C1's statutory redundancy entitlement was €15,348.00. However, this statement was followed by this paragraph:

"As a gesture of goodwill, I confirm that …(the respondent)… is prepared to top up your statutory redundancy entitlement to a maximum gross total of €25,000.00 subject to you confirming, in writing, and having had the benefit of independent legal advice, that you accept such an amount in full and final settlement of any and all actions you may have against…(the respondent)…its directors, members and/or agents."

C1 told the Tribunal that he had said to the respondent that he would have to talk to his family and to his trade union official. He also told the Tribunal that there had been no discussion about how his job could be saved or about any other job for him in the respondent company.

Asked at the Tribunal hearing if he would be capable of doing the job of organisational development officer, C1 replied:

"70 or 80% of it. There are things I've not done. I don't have a relevant third level qualification. I just have experience. I'm o.k. for 95% of it. We were watching the paper for this job but we did not see it."

Referred to a 17 October 2006 steering group report to the respondent's national executive council as to the respondent's goals for future years, C1 told the Tribunal that retraining had been recommended but that, in thirteen years with the respondent, he "was never been asked to attend a course of training of any kind". C1 acknowledged that "there was a need for change" but said: "That would require training."

C1 told the Tribunal that, since the termination of his employment with the respondent, he had spent a number of months recovering from his heart bypass and that this had taken longer because of his diabetes. He told the Tribunal of a course he had done and of one that he was about to do. He mentioned that he was "down on the hotel website" but said:

"Once people see you're coming to sixty-four the conversation dies fairly quickly."

Under cross-examination, C1 was asked if he accepted that, by redundancy or retirement, all regional representatives had ceased to work for the respondent. He did accept that none of the said employees still worked for the respondent.

C1's legal representative acknowledged that he did not think that this was a case of unfair selection for redundancy.

C1 told the Tribunal that there was at least one other job with the respondent that he could do and that the management committee was the key group.

It was put to C1 that respondent's national executive was the board of the respondent. C1 agreed with this but said that the management committee had certain responsibilities and powers.

Giving sworn testimony, C2 said that he was 59 and that he had commenced work with the respondent in August 1995. In his work as a regional representative he had recruited members and visited them.

C2 told the Tribunal that, on 21 June 2006, he had been present at "a barracking and a tirade" from the president who had wanted to inspect his car. C2 regarded this as "an unnecessary barracking". When CEO1 subsequently rang C2, C2 said that it had been unnecessary and CEO1 said that C2 would be all right.

C2 said to the Tribunal that he had striven to visit each member at least twice a year in accordance with the specifications of his contract. When he was told that this was impossible he replied that he had been achieving the impossible.

When C2 was told that the respondent needed to reduce the cost of its representatives he put time into the preparation for CEO1 of a detailed proposal that, rather than employing five regional representatives at a total cost of €284k, the respondent could employ three people at a total cost of€225k and thus make a saving of €59k.

C2 stated to the Tribunal that he had been told that he could the have the same offer as C1 and another man. Having been asked for his thoughts, he had contacted the other two and had given them time to think. C1 had said that they could divide the work by mileage or by members to visit. They drafted up a proposal which included an expense budget which would leave them out of pocket if they exceeded it. C2 posted it to CEO1 but no-one ever got back to him about it.

Referring to the 2006 Xmas party, C2 told the Tribunal that he had been asked by the president if he had ever worked in a pub whereupon C2 replied that he had had two. C2 also understood that C1, who was out sick, would never work for the respondent again. C2 told the respondent that he was not taking a voluntary redundancy package whereupon he was offered a post as an agent.

Asked at the Tribunal hearing if the matter had been unresolved going forward, C2 replied: "There was no way I was going to agree. It would be like a turkey voting for Christmas."

C2 told the Tribunal that he was offered €1k so that he would not be stuck and that respondent was starting to get annoyed because he was not taking redundancy. He was told that he would be given another €5k to go to sweeten it. That was to be €5k on top of €25k to go.

The Tribunal was now referred to a letter dated 23 February 2007 from C2's trade union representative to CEO1 claiming that the respondent was refusing to pay C2 his legitimate expenses and saying that, if this matter could not be resolved locally, it would be referred to the Labour Relations Commission.

The next document brought to the attention of the Tribunal was a letter dated 6 March 2007 from CEO1 to C2 regarding CEO1's growing concerns about C2's expense claims. In the letter CEO1 said that he was "looking at the number of repeat visits" to certain counties "which shows a complete lack of journey planning, a complete waste of productive time and an escalating and injudicious increase in motor mileage charges at a time of falling income."

The following paragraphs of the letter were as follows:

"In light of the immediate past history I must now insist that a detailed journey plan be presented here in respect of the coming week no later than the Friday of each week. For greater clarity can I advise that a situation where you make 7 visits out of eight days to the County of Carlow, with in excess of 1000 kilometres claimed by way of travelling expenses must stop now. A cursory examination of the 6 consecutive days visiting in Kilkenny in December and the 15 almost consecutive days spent in Waterford City and County during December/January is a utilisation of time which simply must not be repeated.

I notice that no expenses claim for February 2007 has yet arrived. I note the message that you left for your colleagues in the staff here on the answering machine that you were running short of funds. You will note a payment on account of €1,000 was made to you in February towards your January expenses. I now propose to enclose a cheque for €1,000 towards your February expenses pending c onfirmation from you that you will immediately engage in practical and realistic journey planning to avoid duplication and repetitious visits to the same area with the inevitable time wasting and energy wasting that that implies.

I want your positive response by return."

C2 told the Tribunal: "We were running up against a stone wall." Asked if he had attended meetings of the respondent's national executive council, C2 replied: "That was stopped in September 2006. I was told I needn't come up. Before that, I got minutes and was told the meeting was coming up."

The Tribunal was now referred to a letter dated 1 May 2007 from the president to C2 confirming that the matter of C2's continued employment with the respondent had now been discussed at a meeting of the respondent's national executive council. The letter pointed out that C2 was the only active regional representative employed by the respondent at that time given that one such representative was then on long-term sick leave and that "the remaining two Representatives recently accepted voluntary redundancy packages" and their employment with the respondent had been terminated.

The letter stated that CEO1 had had "a series of meetings and consultations on this matter" with C2 and added that "the possibility of your position with (the respondent) becoming redundant and the details of a voluntary severance package have already been confirmed to you in writing on 5th

January 2007."

The letter also included the following:

"The matter of the future of Regional Representatives employed by (the respondent) was discussed by (the respondent's) Management Committee at its meeting on 21st February 2007. This discussion took place in accordance with Article 79 of (respondent's) Memorandum and Articles of Association which provide that "… all paid officials and staff of (respondent) shall be decided upon and appointed by and may be removed by the Management Committee and the Management Committee shall fix their powers, duties and remunerations…."

As I think you are probably aware, the Management Committee resolved on 21st February 2007 to refer the matter up to (respondent's) National Executive Council. The National Executive Council met on 18th April 2007 and resolved that the post of Regional Representative has effectively ceased to exist. Again, as has already been explained to you, the proposal is to replace the Regional Representative system with a series of independent agents who will be paid a fee for the recruitment of new members to (the respondent).

The purpose of this letter is to put you on formal notice of the termination of your employment by reason of redundancy……

As a gesture of goodwill, I confirm that (the respondent) is prepared to top up your statutory redundancy entitlement to a maximum gross total of €25,000 subject to you confirming, in writing, and having had the benefit of independent legal advice, that you accept such an amount in full and final settlement of any and all actions you may have against (respondent), its directors, members and/or agents."

Asked at the Tribunal hearing if he had indeed had meetings about redundancy, C2 replied that he had had one such meeting but "that was it."

Asked if there had been any discussion about avoiding redundancy, C2 said there had just been such discussion at that one meeting and that he had "put the idea in after consulting with the other two guys."

Asked at the Tribunal hearing if he could have done the job of organisational development officer, C2 replied that he had asked CEO1 about that but that CEO1 had replied that the job specification had not been drawn up.

Giving testimony about the financial loss he had incurred since his employment with the respondent, C2 said that he had contacted agencies but that there had been a problem about his age. He had gone to FAS and FAS had said that they would fund him to do a course at NUI Maynooth. It was pointed out that he had not done any course in twelve years with the respondent. Having done a course in health-and-safety, he was now in the process of becoming "a FAS trainer of trainers".

Under cross-examination, C2 said that it would not have been hard for him to drive for just one hour from his home to the respondent's headquarters but did not reply when it was put to him that

the respondent had wanted a more qualified person with management experience for the role of organisational development officer.

When it was put to C2 that he had said that he was happy to discuss change, he replied that no health-and-safety issue had been brought to his attention. He added that CEO1 had had no concern for his health and safety, that it was never brought up and that there had been an exaggeration.

Asked about the allegation that he had visited a particular county with excessive frequency, C2 replied that he had rung the office for materials and that he had had to visit each member once a year as a minimum and, if possible, twice. When it was put to him that respondent had been trying to introduce some parameters, he replied that he "was being barked at" by CEO1 who "was not giving us the material to work with".

When he was queried about Article 79 of respondent's Articles of Association, C2 replied:

"Staff matters were dealt with by the management committee."

C2 confirmed that voluntary redundancy had been proposed, that he had rejected it and that the respondent's national executive had decided to make him redundant. However, he said that CEO1 had said there was no reason to have seven representatives whereupon a proposal had been put forward for three representatives but this was never shown to the national executive council. C2 did acknowledge that respondent's membership had decreased.

C2 confirmed that he was making the case that the national executive's decision had been invalid because it should have been made by the management committee.

On the subject of financial loss incurred, C2 was asked if he had applied for jobs as a representative. He replied that he had registered with agencies online but that he had never had any formal training and that he had got no response. He had had three interviews but was dealing with FAS.

On being asked if he had ever asked the respondent for training, C2 said that the issue had been brought up at a meeting with CEO1 in 2004 or 2005 but that nothing had ever come of it.

C2 said that he would take reinstatement or re-engagement as a remedy.

Respondent's Case (Resumed)

Giving sworn testimony, a respondent witness (hereafter referred to as CEO2) said that he had been the respondent's CEO since early 2008 but that he had some knowledge of the out-turn for 2007. CEO2 confirmed that there was less need for representatives given the fall in membership numbers and gave statistics to show the fall-off. He said that the respondent had recruited somebody to the post of organisational development officer.

Asked if the fall-off in membership in rural areas could be attributed to fears about drink-driving, CEO2 said that this could be a possibility.

Asked if he had statistics for membership opt-outs as opposed to pub closures, CEO2 said that these statistics were not readily available and that it was "very hard to keep tabs on that".

Determination:

As part of its determination the Tribunal agrees that a redundancy situation existed in 2007 in the respondent.

In principle, the Tribunal believes it is not inappropriate for the national executive council to take a decision of this kind. A careful reading of Article 79 of the respondent's articles of association supports this view. This is without prejudice to the merits of the decision involved.

The Tribunal is critical of the manner in which the respondent dealt with the redundancy situation in these cases having regard to the ages of the claimants and their length of service. The Tribunal also regrets that the respondent did not give any genuine consideration to the proposals put forward by one of the claimants (after consultation with the other claimant and another employee) to resolve the difficulties that the respondent was encountering.

The Tribunal notes that no training was offered to the claimants in the course of their employment but the Tribunal equally accepts that the claimants did not seek any additional training.

The question is whether the deficiencies made the process unfair. In this regard, the Tribunal considered Section 6 (3) of the Unfair Dismissals Act, 1977 as amended by Section 5 (b) of the 1993 Act which states that … "in determining if a dismissal is an unfair dismissal, regard may be had, if the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers it appropriate to do so- (a) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal…."

The Tribunal believes that the respondent acted unfairly in failing to consider earnestly the claimants' proposals regarding the reorganization of the work which would have realised significant savings. Furthermore, the respondent's failure to properly consider either of the claimants for the new Organisational Development Officer role was also unreasonable. Accordingly, the Tribunal believes that the dismissals were unfair. In allowing the claims under the Unfair Dismissals Acts, 1977 to 2001, and awarding compensation under the said legislation, the Tribunal has regard for the fact that a redundancy situation existed and it makes an award to each claimant of €43000.00 inclusive of any redundancy payments made to them on termination of their employment.

The appeals lodged under the Redundancy Payments Acts, 1967 to 2003, fall because awards under redundancy legislation and under unfair dismissals legislation are mutually exclusive.

The Tribunal does not find the respondent to have been in breach of the Minimum Notice and Terms of Employment Acts, 1973 to 2001, or of the Organisation of Working Time Act, 1997, and consequently dismisses the claims lodged under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)