

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE –**Claimant**

UD1567/2008

against

EMPLOYER - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S.C.

Members: Mr. A. O'Mara  
Mr. J. LeCumbre

heard this appeal at Mullingar on 8 October 2009

**Representation:**

Claimant:

Mr. Dermot Hewson B.L. instructed by  
Mr. Patrick Crowley, J.J. Macken Solicitors,  
Bishopsgate Street, Mullingar, Co. Westmeath

Respondent:

Accountant for the respondent

The determination of the Tribunal was as follows:

The claimant was employed from 11 December 1997 and the employment was uneventful until 20 October 2008 by which time the claimant was in the position of parts manager in the after sales section of the respondent. There was a parts assistant reporting to the claimant. Some 70 per cent of the parts business was internal to supply the respondent's service and repair section. On 20 October 2008 first the service manager and later the claimant were summoned to meetings with three directors of the respondent at which they were told that both of their positions were being declared redundant due to a downturn in the business. The claimant's duties were to be shared between the parts assistant and the after sales director. The claimant left the employment that day and received his statutory entitlements under both the Redundancy Payments and the Minimum Notice Acts. Some time later in December 2008 the claimant noticed that his former parts assistant was now described as parts manager on the respondent's website. There was no agreed procedure, nor any existing custom and practice, in the respondent covering the selection of candidates for redundancy.

The claimant's position at the Tribunal was that either there was a sham redundancy or that he had

been unfairly selected for redundancy in circumstances where the monthly bonus scheme implemented in October 2007 had resulted in him receiving full bonus on nine occasions and a partial bonus on three occasions.

The respondent's position was that due to the serious downturn in the motor trade there had to be changes made. Due to the number of vehicles which were in stock and had to be sold it was not appropriate to reduce sales staff at the time, reductions having since been made in that area. The naming of the parts assistant as parts manager was an error on the part of their web designer that was corrected as soon as it was brought to their attention.

**Determination:**

Whilst the Tribunal is satisfied that there was a genuine redundancy situation existing in the respondent on 20 October 2008 and is further satisfied that the claimant was not unfairly selected for redundancy regard also has to be had for section 6 (7) (a) of the Unfair Dismissals Acts which provides...

*“Without prejudice to the generality of subsection (1) of this section, 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, and”*

The Tribunal finds that the conduct of the respondent in this case was such as to make the dismissal unfair in regard to the manner in which the claimant was told of the redundancy and further by the error made on the website. In these circumstances the Tribunal awards €3,000-00 under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)