EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: **CASE NO.**
EMPLOYEE - ***claimant*** UD1100/2008

against

EMPLOYER - ***respondent***

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mahon B.L.

Members: Mr. L. Tobin
Mr. S. O'Donnell

heard this claim at Dublin on 6th March 2009
and 19th June 2009

Representation:

Claimant: Mr. Martin Collins B.L. instructed by Ms. Elaine Callan, Carvill Rickard & Company, Solicitors, Watermill House, 1 Main Street, Raheny, Dublin 5

Respondent: Mr. Eamon McCoy, IR/HR Executive and Mr. David Farrell, IR/HR Executive, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows: -

Preliminary Issues:

The claimant had estimated his overtime at a higher rate of €350.00 on the T1A form (*Notice of Appeal*) as there was no overtime worked by him for the three months prior to the end of his employment. For the purpose of the redundancy package calculation, the respondents calculated the claimants overtime at €245.05 using the statutory method of calculation on the thirteen weeks prior to the cessation date, which is a higher weekly rate than the claimant actually worked. The claimant confirmed that he was happy with the respondents overtime figure.

Opening Statements:

The representative for the respondent stated that the respondent considered that the claimant had taken voluntary redundancy. The supporting documentation includes a form of acceptance signed by the claimant on 25 May 2008, confirming his acceptance of the voluntary redundancy package and a formal notification of termination of employment by way of voluntary redundancy.

Counsel for the claimant stated that following the letter of 17 April 2008 which was issued to all staff outlining the redundancy posts at risk, the claimant believed that his position was going to be made redundant. Considering his date of joining the respondent company, the claimant accepted voluntary redundancy in the assumption that his redundancy would be inevitable, an act which was to his detriment. There was no overtime in the three months prior to the claimant's cessation date due to the redundancy process in place.

Respondent's Case:

In his sworn evidence, the Station Manager (*hereinafter referred to as Alan*) who had responsibility for the area in which the claimant worked, outlined the respondent's redundancy procedures. Prior to the redundancy announcement, there was close consultation and negotiations with the two unions involved SIPTU and UNITE. In a letter sent to all staff members dated the 17 April 2008, the respondent made it known that thirty one posts were at risk for redundancy and that the options would be re-deployment or voluntary redundancy. The claimant queried the figures in relation to his redundancy entitlements, which was common practice. The respondent did not regard the claimant's expression of interest as acceptance of voluntary redundancy. In a letter dated 22 May 2008, the claimant and respondent settled on a figure for redundancy, and the claimant proceeded to sign an acceptance of the voluntary redundancy on the 25 May 2008. On the 28 May 2008, a formal notification of termination of employment was issued from the respondent to the claimant. As far as the respondent was concerned, the redundancy was voluntary and settled. The claimant signed the RP50 Redundancy form on 16 June 2008.

There were two section managers on the ground, one manager for passenger services and one with responsibility for the ramp section. The ramp section includes the sortation area and ramp area. The claimant worked in the ramp area. The letter of 17 April 2008 outlining redundancies to staff included fifteen full-time ramp agents and one full-time ramp supervisor at risk. The posts were broken down as one full-time supervisor from the ramp, fourteen ramp agents from the ramp and one ramp agent from sortation. The claimant's date of joining the company ranked him as twenty-ninth in order of seniority.

Initially the redundancies from the sortation area and ramp area were separate but on consultation with the unions, the redundancies from the two areas were linked together, so instead of fifteen from the ramp area and one from the sortation area, it became sixteen from the ramp section in total. Alan acknowledged that the amalgamation of the areas could lead the claimant to doubt the security of his position, but the claimant did not raise any issues regarding his anxiety with his line manager over being made redundant due to his date of joining. Of the sixteen positions in the ramp area at risk, three staff left and four took voluntary redundancy. The remaining positions in the ramp area were not made redundant as redundancies in other areas of the company made up the shortfall.

Alan stated that the issue over the lack of overtime during the redundancy process was not relevant, as overtime could never be predicted in any given week.

At the commencement of the second day of hearing, the respondent's representative was given liberty to re-examine Alan. He told the Tribunal that in June 2009, it was announced to staff and their union representatives that the company was for sale and transfer to a competitor. Due to the company's situation in 2005, the respondent had been re-structuring its situation with the aim of remaining in Dublin. An announcement of its closure in March 2009 had been made in December 2008 but through negotiations with the unions, the Dublin base remained in operation.

However, since then, revenue losses have continued so the station was in an unsustainable financial situation. Consequently, a decision was made that through negotiations with a competitor, the business will be sold to them. Putting this in context, Alan stated that the respondents efforts to remain in Dublin had not been successful thus the reason for the sale/transfer. There was no recruitment to the ramp area subsequent to the redundancy of the claimant.

Compulsory redundancies would have been implemented on the basis of "last in, first out" by department, through negotiations and agreement with the union. This policy would have affected the part-time staff because employees move from being part-time employees to full-time employees.

(*Lists of the respondent's employees and their recruitment dates were opened to the Tribunal and the content of same was examined*).

Reference was made to the lists titled "Ramp Sortation" and "Ramp Service"; same being described as lists of the full-time and part-time staff within the ramp department from their start date with the respondent. Reference was also made to a list of full-time ramp and baggage agents from their date of joining the respondent – from longest service date to shortest service date. The claimant's name was on both lists and appeared eleventh from the bottom on the list of ramp and baggage agents. The date of this last list was May 2008. At that time, the respondent was seeking to make fifteen positions redundant. Four of these positions came from the part-time employees so the remaining eleven positions were from the full time ramp positions.

Subsequent to the redundancy of the claimant in May 2008, the claimant raised the issue of shift pay with his union and the rights commissioners. This element was not paid at that stage but the issue was subsequently settled with the claimant's union in August.

In the aftermath of the redundancies, the respondent lost one of its customers in June. In July, a customer was taken on a two months contract and another customer was taken on with a contract of one month. There was also a high level of sick leave among staff at that time and all of these factors, including an operational difficulty, had an effect on the amount of overtime worked. Turnaround times of flights effect overtime and with the increase in staff sickness, new customers and operational difficulties, overtime increased until September and then returned to the position it had been in April. Further consultation with the unions would have been required, had the respondent needed to make more positions redundant following the voluntary application for same.

One person had been recruited subsequent to the redundancy of the claimant. However this person held a responsible role of co-ordinator for all roles. It was a more responsible job when compared to the ramp role.

In cross-examination, Alan did not accept that the claimant was exposed to compulsory redundancy when the ramp area and sortation area were amalgamated for the purpose for redundancies. Though the respondent made no effort to explain to the claimant that he was not exposed, the claimant never came to Alan or Stew – *the claimant's line manager* – with any concerns about such exposure. However, no notice was given to the employees so as to inform them as to who might beat risk of redundancy. When put to Alan that the claimant had, at all times, believed that he was at risk of compulsory redundancy following the amalgamation of the ramp area and sortation area, and so had opted for voluntary redundancy, Alan replied that he had never spoken to the claimant about this.

Overtime was always available to employees due to sickness, operational difficulties, people on annual leave, etc. However, Alan did not agree that there had been any amount of overtime available. The three months prior to the claimant's redundancy were wet months and the level of sick leave was probably down thus accounting for the lack of overtime available during that period.

The respondent's letter of 17 April 2008 to its employees had required fifteen service agents for redundancy, one sortation agent and fourteen ramp agents. Compulsory redundancies would have referred to full time positions based on an employee's date of joining the respondent. Four employees had taken voluntary redundancy, including the claimant.

Replying to the Tribunal, Alan confirmed that the same redundancy package would have applied regardless of whether it had been a voluntary redundancy or a compulsory redundancy. However, the issue of compulsory redundancies had not arisen. If the claimant had not accepted voluntary redundancy when he did, his employment would have gone from that of a full-time employee to that of a part-time employee.

In his sworn evidence, Stew explained that he was employed by the respondent for nine years. His responsibilities included overseeing the ramp area, completing rosters, allocating overtime when required, liaising with the unions, etc.

Stew had no official role in the redundancies of May/June 2008 and he would have advised anyone who approached him about it to go to the H.R. manager, Alan the Station Manager, or the union. He did not recall anyone coming formally or informally to him for advice and the claimant had not approached him. He did not give the claimant any advice about the calculation of redundancy, nor did he put pressure on the claimant, or anyone else, to persuade them to accept redundancy. None of the union representatives came to Stew with concerns about the claimant and they never requested a formal meeting with him in relation to same.

In cross-examination, Stew denied that after the claimant received the respondent's letter of 17 April 2008, he told the claimant that he – *the claimant* – was at risk of being made redundant. When asked if such a conversation had occurred, Stew replied that as this would have been fourteenmonths ago, he could not remember now. It was put to him that the claimant's evidence would bethat he – *Stew* – had told the claimant that sixteen posts were required for redundancy and that asthe ramp area and sortation area were being amalgamated for this purpose, the claimant's post wasat risk. In reply, Stew said that he could not remember such a conversation and because it was fourteen months ago, he could not confirm or deny if he did or did not say such things to the claimant. He added that he spoke generally to people.

Claimant's case:

In his sworn evidence, the claimant confirmed that he received the Station Manager's letter of 17 April 2008 wherein was outlined the respondent's requirement for restructuring and consequently the risk of redundancies for thirty-one posts within the company. Having read the letter, he thought that his position was safe as there was another person who had been recruited after him. About three days later, the claimant met Stew as Stew passed through the claimant's work area. The claimant had said that Stew had said that the redundancies would include the claimant. The claimant pointed out that he had not been the last person to be recruited. About five or six days later, the claimant met Stew again. At that time, Stew said that the sortation area and the ramp area were being considered together in relation to selection for redundancies, that sixteen people were required and the claimant would now fall within that number. The claimant considered that his

position would go if both areas were to be treated as one. The respondent was seeking sixteen redundancies and the claimant knew that, based on his commencement date with the respondent, he was number eleven on the list, as recruited.

Following this second conversation with Stew, the claimant attended a union meeting. Before going to this meeting, the claimant submitted a note to the respondent suggesting that he might or might not be interested in voluntary redundancy. He did this because he thought that he was going anyway. Referring to the submission that was made to the respondent (*a copy of which was opened to the Tribunal*) the claimant confirmed that the note contained his signature but the note itself was not his writing. However, he did make enquiries about the redundancy offer and received a reply by way of letter dated 8 May 2008 (*a copy of which was opened to the Tribunal*).

At the union meeting, a union representative announced to all present that the claimant and another employee had were opting for voluntary redundancy and that they would be going by 31 May 2008. At that stage, the claimant told the SIPTU representative that this was totally untrue. However, the union representative told the claimant that during intense negotiations, Alan told him – *the unionrepresentative* – that the claimant was going. The claimant understood from this union meeting thatthe respondent was going to get rid of sixteen people either through voluntary or compulsory redundancies. It was stated that the offer was a voluntary one. Consideration of the claimant's overtime would have enhanced his voluntary redundancy package. The claimant took voluntary redundancy because, from what he understood, he was going to be made redundant and if he did not accept the voluntary package, his redundancy lump sum would have been less.

The claimant established his loss for the Tribunal. He secured alternative employment since June 2008 as a self-employed courier dealing with lost luggage at Dublin airport but at a lower rate of pay. He is still in this employment.

Overtime had always been available except for the three months prior to his redundancy. There was so much overtime available at times that the respondent found it difficult to fill it and so offered deals to ensure that it was done.

Any person who took the option of becoming a part-time employee moved to working twenty hours per week and took a large reduction in pay. The claimant felt that this was not an option for him as he had two children. He brought his claim for unfair dismissal when he discovered that he had been replaced and the amount of overtime being done subsequent to his redundancy. At the union meeting, Alan had been quoted as saying that there would be no more overtime and only part-time work would be available for those employees who remained after the implementation of the voluntary redundancies. The claimant felt that he had been misled about the overtime situation and what would happen subsequent to his redundancy. The future situation as discussed at the union meeting and what was said by Stew did not subsequently happen.

In cross-examination, the claimant confirmed that Stew would have passed through his work area at least once a day. Stew was the person to whom he reported. He spoke to Stew on at least two occasions about the redundancy situation. However, he never asked Stew for a formal meeting.

The claimant confirmed that because of his family circumstances, he would not have made the redundancy decision lightly.

When asked how certain he could be that Alan had said the things he was reported to have said at

the union meeting – *no more overtime and only part-time work* – the claimant replied that, at that meeting, the union representative had said that during intense negotiations, Alan had said what he had said. When put to the claimant that he was alleging that he had made a life changing decision on something that was supposedly said, the claimant replied that the same was said by four of five people at the union meeting.

The claimant was very annoyed when it was announced at the union meeting that he had accepted redundancy, when he had not. He asked a number of questions of the union representative and indicated to him that he was unhappy that his name had been used at the meeting. However, he did not ask the union representative to do something about the idea that he had accepted redundancy. He tried to contact Alan about the notion that he had accepted voluntary redundancy on at least fifty occasions. Alan had only returned one of his telephone calls and told him that Stew was his manager. However, he did not contact Stew about it.

The claimant confirmed that the letter of 17 April 2008 from the Station Manager – *Alan* – wherein was outlined the respondent's requirement for restructuring and consequently the risk of redundancies of thirty-one posts within the company did not indicate therein a compulsion to acceptredundancy. When put to the claimant that his written reply to same had stated, "may be interestedin accepting" the claimant replied that this letter was not his writing and that the letter that he hadsubmitted to the respondent had said "may or may not". The claimant confirmed that his purportedletter – *which had been opened to the Tribunal* – definitely contained his signature. It did notcontain the words "may not". The undated letter in question which the claimant confirmed contained his signature stated "To whom it may concern I would like to get more information onthe voluntary redundancy as I may be interested in accepting it." (*sic*) The claimant confirmed thathe understood what was said in this letter.

The claimant agreed that he received a reply from the respondent by letter dated 8 May 2008, because he had asked for it. There was a subsequent sequence of letters from the respondent, dated 13 May 2008 and 22 May 2008. The claimant explained that he had felt that the initial redundancy amount that was offered to him did not properly take into account his shift pay and overtime. When asked if he had sought advice on the redundancy package or if he had worked it out himself, the claimant said that he had tried to work it out himself because overtime had not been included. He had spoken to the union representative at the conclusion of the union meeting and he had also spoken to a colleague. When put to him, the claimant agreed that he had not received the first letter – the letter of 8 May 2008 – offering redundancy at the time of the union meeting. In relation to the subsequent redundancy offer letters, he had basically telephoned Alan and Alan's secretary had come back with a better redundancy quote. The claimant agreed that he had persisted so as to obtain the right redundancy figure. The respondent had calculated his overtime at the more favourable thirteen weeks rather than thirty-nine weeks prior to redundancy. The claimant accepted that a substantial amount of overtime, in money terms, had been included in the calculation of his redundancy. It was put to the claimant that he had persisted in getting the right redundancy figure and had received the most favourable outcome in relation to same from the respondent, despite now claiming that he had not really wanted redundancy.

The claimant confirmed that it was his signature on the "Voluntary Redundancy…: Confirmation of Acceptance" form and that the signature was witnessed by another. To the claimant's knowledge, it had not been a requirement of the respondent that his signature be witnessed but he got a witness anyway. The form of acceptance stated in part "Further to your letter dated 22 May 2008 I wish to confirm my acceptance of the voluntary redundancy Package as detailed within the letter dated 22 May 2008." (*sic*) The form was dated "25/5/08" and the witnesses' signature also bore the same

date. The claimant explained that he had signed the acceptance form on 25 May 2008, which was after speaking to Stew on the second occasion. Stew had told him then that the sortation area and ramp area were being amalgamated for redundancy selection purposes and that he, as one of thesixteen required for redundancy, was definitely going. The claimant confirmed that he had signedthe form with the concern that he would have been made compulsorily redundant in any event.

Stew had been the claimant's ramp manager and when the claimant had concerns, he would go to him. He flagged his concerns to Stew. Stew told him – *the claimant* – that he was one of thoseincluded for redundancy but the claimant said that he was not. Five days later, Stew had returnedand told the claimant that he was included in the numbers. The claimant had also tried to contactAlan by telephone but those telephone calls were not returned. The claimant maintained that hehad earned €40,000 plus per year and if he had not been told that he was in the drop zone for redundancy, he would not have signed the form accepting voluntary redundancy. However, heconfirmed that he had not raised any issues with his union or shop steward before he signed theform of acceptance. The union representative had also told him that he was in the drop zone forredundancy.

The claimant commenced employment as a full-time self-employed person on 19 June 2008 with a courier company. He had registered for VAT, which took time and was earning €17,000 per year.

The claimant accepted that grievance procedures were contained in his contract of employment. When asked if he availed of the grievance procedures in relation to his claim that he wrongly took voluntary redundancy, the claimant replied that he had only contacted his union. Alan was never willing to talk to him despite the attempt to contact him. The claimant confirmed that he did notbring the respondent's failure to contact him to the attention of his union.

It was put to the claimant that he had received three different lump sum quotations for redundancy by the letters of 8 May 2008, 13 May 2008 and 22 May 2008 respectively and that the quotations broke the statutory ceiling, thus they were all good redundancy offers. The claimant replied that none of the offers, including the one that he had accepted were great offers, though he did accept and sign for the last one.

The claimant agreed that his legal representative had written to the respondent by letter dated 16 July 2008 about an issue of five weeks unpaid shift pay to which he was entitled. He had also gone to the union representative about it. Eventually it was paid. The claimant also agreed that his claim for unfair dismissals was made to the Employment Appeals Tribunal on 17 September 2008. He was being advised by his union and his legal representative in July and September. He agreed that, when his legal representative wrote to the respondent in July about the unpaid shift pay, no mention was made of his dissatisfaction with the redundancy offer. Furthermore, when the claim of unfair dismissal was made to the Employment Appeals Tribunal in September, no offer was made to repay the redundancy to the respondent. However, the claimant did not accept that his redundancy was fair. He was told that sixteen people had to go or the respondent's operation would cease. He would not have chosen redundancy if he had not been told this. Over time, subsequent to his redundancy, the claimant found out that unlimited overtime was being worked and it was when he discovered this that he went to this legal representative about his selection for redundancy.

Replying to the Tribunal, the claimant explained that he first received the letter of 17 April 2008 from the respondent outlining their need for redundancies. The meeting with Stew and the union meeting occurred respectively, subsequent to the letter. Though the claimant had never said that he

was definitely accepting voluntary redundancy, it was announced at the union meeting.
Keat (*claimant's colleague*) in his sworn evidence said that he had commenced employment with the respondent in December 2004 as a part-time employee on the ramp. Roughly a year later, he got a full time position in the baggage hall (also known as the sortation department/area) and he continued to work there.

In March 2008, there had been a risk that Keat could lose his job. At that stage, he was a full-time employee in the sortation area. In April 2008, he received the same generic letter of 17 April 2008 from the respondent which the claimant had received, wherein the respondent announced the need for redundancies. As he was the last person overall to be recruited within that area, Keat felt that he would be one of those to be chosen for redundancy. However, he did not volunteer for redundancy as he felt that it would not be worth it to him. He did not approach management about it because he took it that he was losing his job anyway. He was happy when people who had been recruited before him left because their leaving moved him up the scale and made his position safer.

It was made clear at the union meeting that the respondent was seeking sixteen redundancies from the combined ramp area and sortation area. Keat realised that based on this combination, he was no longer the last person recruited though he was still in the drop zone for possible selection. His understanding was that if the respondent did not get enough people to volunteer for redundancy, he would be made compulsorily redundant.

In December 2008, Keat was informed that he was being made redundant in March 2009 due to the downturn. However, some days after being let go in March but before he received his redundancy cheque, he was called back to work.

Prior to the claimant's redundancy, there was less overtime. However, since June 2008, there was "open season" on overtime and people could work as many hours of overtime as they wanted.

In cross-examination, Keat confirmed that he was familiar with the contents of the respondent's letter of 17 April 2008 to its employees, within which was outlined the need for redundancies. He agreed that nowhere therein was there a mention of compulsory redundancies. The letter had stated that there were "31 posts at risk for redundancy". The letter had also stated "If, after the applications for voluntary redundancy have been approved, the Company still needs to make more redundancies, then the criteria for selection will be advised following further consultation with the Trade Unions". Keat accepted that it was on foot of a union agreement that redundancies were to be effected on the part-time staff employed on the ramp area and sortation area first. However, he believed from the letter that if enough voluntary redundancies were not achieved, he would be made compulsory redundant.

Keat accepted that, on foot of a union agreement, the redundancies affected the part-time employees first. He confirmed that he had commenced employment as a part-time employee and subsequently moved on to become a full-time employee. Keat also accepted that such factors as extra customers, operational difficulties, extra flights and staff sickness affected the availability of overtime. However, from his experience with the respondent, there was always plenty of overtime available.

Pas (*claimant's colleague*) in his sworn evidence confirmed that the respondent had employed him since 1989. For the first ten years, he had worked in the ramp area before moving to the sortation area.

Pas confirmed that he was aware of the respondent's April letter wherein they announced the need for voluntary redundancies but he did not apply for same.

There had always been plenty of overtime available from the respondent to the best of Pas's recollection, except during the Gulf War and in the months of March, April and May 2008. He did not know the reason for this. The redundancies had come about in March and overtime had ceased to be available at that time. Subsequent to the redundancies, the availability of overtime became plentiful again and Pas did a lot of it in June, July an August 2008.

Pas could recall the claimant to a certain extent. The claimant had worked in the baggage sortation area, as did he. Pas commenced as a job sharer/part timer at twenty hours per week in 1999, butwhen this no longer suited the respondent – after his job-sharing partner left employment – he wasasked to work the twenty hours on Saturdays and Sundays. This proposal suited the respondentbetter as it was more structured. Pas worked that twenty hour Saturday/Sunday arrangement throughout all of 2007. This changed again in approximately March 2008 when it was explained tohim by Stew that because of roster changes to suit the respondent, the Saturday/Sunday arrangement no longer suited and his roster would have to be changed to five hours per day overfour days per week. As this did not suit Pas, he referred Stew to a conversation they previously hadwhen Stew had said that he – *Pas* – would revert to job sharing if a difficulty arose with working onSaturdays and Sundays. He was told by Stew that the work sharing proposal was not an option butthat he – *Stew* – would honour an original agreement, he could work full time at forty hours overfour days a week. This arrangement commenced for Pas on 1 June 2008.

The claimant left the respondent's employment in or around the time Pas recommenced working full time. As Pas had twenty years service with the respondent, the redundancies did not affect him directly, so he did not pay much attention to it. The redundancies had been based on a persons "date of joining" the respondent.

In cross-examination, Pas confirmed that he had commenced as a full-time employee with the respondent. The job sharing had been at Pas's request and the unions had agreed to the arrangement. When he lost his job-sharing partner, Pas continued the arrangement as a part timer working Saturdays and Sundays. The approach by Stew to change this arrangement to working twenty hours over four days had been for ease of the roster and had nothing to do with the redundancies. His reverting back to working full-time at forty hours over four days per week had also been with union agreement and same had not affected his length of service.

Pas agreed that the 30% increase in sick leave between May to June 2008 was significant. He also agreed that there were more flights during the summer months and there had also been operational difficulties during that time and all of these were factors which could explain the increase in the overtime.

Rob (*claimant's colleague*) in his sworn evidence confirmed that the respondent had employed him since 2003 on the ramp. He had commenced employment as a part-time employee.

Rob explained that around Easter time, there was usually plenty of overtime to be worked but in 2008, it dried-up.

Rob confirmed that he received the respondent's letter of 17 April 2008 and understood from same that the positions of one supervisor, fourteen ramp employees and one sortation employee would be made redundant. Stew told him on several occasions that if the respondent did not get the required

number of voluntary redundancies, compulsory redundancies would apply and if this could not be achieved, the respondent would close.

Rob confirmed that he was aware that both his position and the claimant's position were at risk of redundancy. The claimant was in eleventh position and he was ninth or tenth. However, he did not volunteer for redundancy but hoped that others would go for it thus ensuring that his position became safe. Four employees from his area volunteered for redundancy and this allowed him move up two places. Subsequently, the respondent informed him that he would be rostered to work twenty hours per week though he averaged twenty-seven hours per week and any amount of overtime that he wanted.

In cross-examination, Rob confirmed that he had been made compulsorily redundant in March 2009.

Rob agreed that an increase in sick leave, operational difficulties and an increase in flights were real factors in relation to availability of overtime. However, it was his opinion that the respondent did not offer overtime during the period in 2008 leading to the redundancies.

In relation to the respondent's letter of 17 April 2008, Rob interpreted it to be a certainty that there would be compulsory redundancies because of the way the letter specified the positions at risk. He did not attend the union meeting to enquire about same. He called to the office of Stew and was told that three people had been enquiring about redundancies. He was also told that if the respondent did not get the required number of voluntary redundancies, there would be compulsory redundancies. Compulsory redundancy was being mentioned all over the place.

Staf (*claimant's colleague*) in his sworn evidence confirmed that he was still employed by the respondent. He commenced employment in March 2004 as a temporary part-time employee and progressed to the position as full-time ramp supervisor.

Since Staf commenced employment in 2004, there had never been a shortage of overtime over the twelve months of a year, and especially during summers and at Christmas. However, during March, April and May 2008, the availability of overtime appeared to dry-up. He was expected to do the same work but with less staff available to help. He expressed his concerns to Stew on many occasions about the lack of staff but received no real reply.

Staf received the respondent's letter of 17 April 2008 about the redundancies and presumed from same that people were going to lose their jobs. Employees were nervous about the letter and the claimant had been very upset and had felt that he would lose his job. Staf contacted his union representative and was told that negotiations had taken place and that cuts had to be made otherwise the company would cease. He had attended the union meeting where it was announced that the claimant had volunteered for redundancy. The claimant had been irate and had said that he had not volunteered for anything. Staf's impression from that union meeting was that from the negotiations between the unions and the respondent, the respondent needed to make cuts otherwise the company would not be viable.

In cross-examination, Staf agreed that the respondent's letters to the union representatives and to the employees were similar in tone and neither had mentioned the word "compulsory". However, anyone within the risk bracket of the numbers mentioned for redundancy felt that they were going to be the ones to lose their jobs. While this was a presumption, it had been said at the union meeting that jobs had to go otherwise the respondent would cease.

At the union meeting, it had been said that the claimant had accepted voluntary redundancy. Staf felt that this should not have been mentioned at the meeting. He knew that the claimant had wondered about the redundancy package he might get if he took redundancy but he had not decided to accept it at that stage.

Chris (*claimant's colleague*) in his sworn evidence confirmed that he commenced employment with the respondent in 1999 as a ramp agent in the baggage area.

There had been plenty of overtime available since Chris commenced employment and he had done a lot of it. However, there had been very little available during March, April and May of 2008. After those months, overtime became available again.

Chris did not receive the respondent's letter of 17 April 2008 in relation to the proposed redundancies. The redundancies did not affect him and therefore, he did not discuss it. He attended the union meeting where it was announced that the claimant was willing to accept redundancy. The claimant had called to the chairman of the union meeting and said that he had never indicated that he was willing to take redundancy. In relation to the respondent's letter of 17 April 2008, Chris's view of same was that everyone understood it to be tantamount to compulsory redundancy even if the word "compulsory" had not been mentioned therein.

In cross-examination, Chris agreed that such factors as extra customers, operational difficulties, extra flights and staff sickness, as mentioned in the evidence of Alan, affected the availability of overtime.

Closing statements:

The respondent's representative made the following points…

1. there was a difficulty with the evidence of the union meeting because the union representative had not been present at the Tribunal hearing to give direct evidence. What was attributed as said by the union representative at the union meeting in the direct evidence of the witnesses was hearsay evidence and consequently should not be considered by the Tribunal in their deliberations.

2. the claimant said in his evidence that there were matters which he was not satisfied with. However, he did not query his dissatisfaction with the respondent's management, thus management could not have been in a position to deal with his concerns.

3. the claimant received the most favourable calculation for his overtime from the respondent for the purpose of his redundancy package. Though not confirmed by the claimant, the calculation used was over the period of thirteen weeks preceding redundancy rather that over the period of thirty-nine weeks preceding redundancy. The claimant had done a considerable amount of overtime before the termination of his employment and this had also been included in the calculation of his redundancy.

4. this was a claim of unfair selection for redundancy under section 6 subsection section 3 of the Unfair Dismissals Act, 1977. (b) of same states [if an employee] "*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." Everything that the respondent did in relation to this redundancy was in compliance with procedures which were agreed with the union and so this claim must fail.

5. the Tribunal heard the claimant's evidence in relation to his use of the respondent's grievance procedures. In a case of unfair dismissal, grievance procedures must be used by the person making the complaint. The case of Conway –v– Ulster Bank (Ud474/1981) sets the principle that where a grievance procedure exists, it must be used. In the case of Travers –v– MBNA Ireland Limited (Ud720/2006), the Tribunal had determined that "the claimant did not exhaust the grievance procedures made available to him by the respondent and this proves fatal to the claimant's case." The respondent's representative contended that the claimant's failure to use the grievance procedures was fatal.

6. the case of McDonagh –v– Dell Computer Corporation (Ud348/2002) stated in part "the claimant, however, accepted the voluntary separation agreement and received the money, thereby receiving full consideration for his decision. The claimant did not, at any stage, seek to repudiate the contract by returning the monies, nor did the circumstances surrounding and the entering into the redundancy contract make it an unconscionable contract". Similarly in this case, the redundancy monies were taken and not returned. Properly, the redundancy contract should have been repudiated before the dismissal claim was made.

The claimant's representative made the following points…

1. the reason for presenting the evidence from the union meeting had been to show that the impression that had been given to the employees was that if enough voluntary redundancies were not achieved, the respondent would cease operations.

2. the Tribunal was not presented with evidence of the procedures used between the union and the respondent. All the Tribunal had been presented with was the letters that had been sent by the respondent to the employees and the union representatives to show that fair procedures were followed. When the sortation area and the ramp area were amalgamated for the purpose of redundancy selection, the claimant got the impression that he was going to be one of those to be made redundant.

3. evidence was given that it had been said by a manager that if enough voluntary redundancies were not achieved, there would be compulsory redundancies. This was also an impression that had been given to the employees by the union.

4. the matter of this case revolves around the use of fair procedures

Determination:

The members of the Tribunal very carefully considered all of the evidence adduced, statements made and documents presented during this two day hearing. The Tribunal heard in evidence that

the claimant and his colleagues received a letter issued on the 18 April 2008 from the respondent outlining a company requirement to restructure and reduce the number of positions at the airport. The respondent confirmed that consultation with the unions had been initiated and that the options available in the first instance would be re-deployment within the organisation, or voluntary redundancy. There was no mention of compulsory redundancy. The letter went into some detail and advised that staff members who wished to be considered for either redeployment or voluntary redundancy should complete and return an enclosed form. The claimant sought information in relation to the voluntary redundancy. He received the information by letter dated 8 May 2008, for his consideration. Having persisted as confirmed by the respondent's letters dated 13 and 22 May in order to achieve the correct and optimum figure, he chose to opt for voluntary redundancy and accepted the offer. He signed the acceptance form as required and also arranged to have a witness sign and date the form, which he was not obliged to do. No evidence was presented indicating that the claimant was under pressure to accept voluntary redundancy. He did not raise any queries or concerns about the redundancies at that time. While the claimant was confronted with a difficult and stressful set of circumstances for his consideration and decision, he was aware of the union involvement in the process and chose not to avail of the opportunity, as a union member, to invoke union expertise to assist his deliberations.

In relation to the overtime issue which was raised during the hearing, it is the opinion of the Tribunal that the volume of overtime available from time to time is generally unpredictable and dependant on the nature of the respondent's business as a service provider and is subject to factors beyond the control of the respondent.

It is clear to the members of the Tribunal that the decision to accept the redundancy package by the claimant was not taken lightly and was well thought out over a reasonable period of time. Since the claimant volunteered for redundancy, he cannot content that he was unfairly selected for redundancy. Having regard to all of the circumstances, it is the finding of the Tribunal that the claimant was not unfairly selected for redundancy and that a voluntary redundancy did occur. Therefore, it is the unanimous determination of the Tribunal that the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)