EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: **CASE NO.**

EMPLOYEE – ***claimant*** UD28/2009

against

EMPLOYER - ***respondent***

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. B. Glynn

Members: Mr. B. O'Carroll
Mr. J. Le Cumbre

heard this claim at Athlone on 31st August 2009

Representation:

Claimant(s): Ms. Mary Murtagh, County Longford Citizens Information Service, First Floor, Longford Shopping Centre, Longford

Respondent(s): Mr. Padraig Quinn, Hugh J. Campbell & Co., Solicitors, Custume Place, Athlone, Co. Westmeath

The determination of the Tribunal was as follows:-

(*At the commencement on the hearing, the representatives' for the claimant and the respondent opened a number of documents to the Tribunal*).

Dismissal was in dispute.

Background:

It was the claimant's case that he had been unfairly selected for redundancy. It was the respondent's case that the claimant had sought to be made redundant.

Opening statement:

The claimant's representative stated that by letter dated 1 July 2008, the respondent informed the claimant that they were making him redundant. The claimant had no prior knowledge of this decision and there had been no consultation with him in relation to same. It was a compulsory situation. The claimant had subsequently signed an RP50 form. Prior to his redundancy, the

claimant had tried to exercise grievance procedures but to no effect. Subsequent to his redundancy, the claimant discovered that no other employee had been made redundant. Consequently, he believed that he was made redundant because he had raised grievance issues with the respondent.

Claimant's case:

In his sworn evidence, the claimant confirmed that he commenced employment with the respondent on 12 February 2001. No real contract of employment had existed and his conditions of employment were agreed over a few pints in a pub. He was told that his employment would commence on a trial period and he would receive a payment for overnights. He received his instructions from the respondent's company secretary (*hereinafter referred to as Der*) or the officemanager (*hereinafter referred to as Fras*). The claimant had a good relationship with Der and Fras.

The claimant received a telephone call one day from the respondent in which he was informed that from November 2007, he would only be paid for the days that he worked and not for the days that he was off. It was a telephone call telling him of the way this was being done in the future. He had replied that this was unfair as it was only being applied to drivers who operated cranes of 50 tonnes or less. There had been no consultation on this and he had to ask for a letter outlining same. This letter was dated 5 December 2007 and in same was stated in part "[*the claimant*] will be paid by our Company only on days when there is work available. This notice is effective from 19th November 2007 and will be reviewed again on 1st February 2008." The claimant did not believe that all of the other employees received this letter because in talking to them, they did not know the letter's contents. The review of the situation for 1 February 2008 did not happen.

On 14 March 2008, the claimant wrote to the respondent by registered post wherein he outlined a number of grievances such as the non-receipt of payslips except for eighteen in total – which he needed when applying for his mortgage – and the non receipt of a P60 form for the year 2007. He also highlighted changes to his implied contract of employment, these conditions having been the respondent's custom and practice. These changes including the loss to his paid travel time, the loss of paid diesel – for his van which he supplied - for his travel to and from work and, of not being paid for days on which there was no work available for the crane he operated. He had also requested therein a written statement of the terms and conditions of his employment. The reason for the letter had been because the claimant wanted something decided in relation to his conditions of employment as the goal posts in relation to same were constantly being moved every day by telephone call. He was only informed of the changes by telephone call. The claimant received no reply from the respondent to this letter.

By email on 24 April 2008, the claimant's wife contacted the respondent to enquire if her husband was still on short time or if this situation had been reviewed in line with the contents of their letter of 5 December 2007, as the local social welfare officer required this information. By letter dated 29 April 2008, the respondent confirmed that the claimant would continue to be paid only on days when there was work available and that this would be reviewed again in September 2008.

On 9 June 2008, the claimant received an official written warning from the respondent, which stated "that because of your refusal to attend work we may not be in a position to keep employmentopen to you". The basis of the warning had been that Fras had telephoned the claimant one eveningas he was finishing work and told him that there would be no payment to him for travel time, lodgetime, or overnights, and the payment for diesel would be cut out or restricted to one fill per week. The claimant had replied to this letter by his letter of 11 June 2008. He stated therein that he was"very unhappy with the contents of this letter (*the letter of 9 June 2008*) as I

have never refused toattend work as stated…" He also stated therein that "the new terms and conditions to my contractof employment was never agreed verbally or in written formation and the company appears to betrying to enforce these new Terms and Conditions without this agreement. In addition these newTerms & Conditions are less favourable and unfair." (*sic*) He received no reply from therespondent in relation to his letter of 11 June 2008.

Subsequent to this, the claimant attended the Citizens Information Service where the Code of Practice on Grievance and Disciplinary Procedures and the Construction Industry Joint Labour Committee Employment Regulation Order were brought to his attention. The Citizens Information Service also wrote to the respondent on behalf of the claimant by letter dated 16 June 2008.

The respondent informed the claimant that he was being made redundant by letter dated 1 July 2008. In same was stated in part "A decision has been made to downsize [*the respondent*]. Thisdecision had been made following the current decline in work and the general economic forecast. Several vehicles are being disposed of including the crane, which you had driven for the past number of years. Consequently we regret to inform you we had no option but to make you redundant."

The claimant's last day of work for the respondent had been on 5 June 2008. The practice had been that on the night before, he would receive a telephone call from the respondent telling him where to report to work on the following day. The respondent had not disposed of the crane that the claimant had operated. The claimant did not receive any alternative offer of employment from the respondent. There were eight or nine other drivers employed at that time and none of them were made redundant, and of those drivers, the claimant had the third longest service. At that time, the respondent had eight or nine cranes and the claimant had the ability to operate all of the cranes except two, and these he could have operated with a day's training.

The claimant was unfamiliar with the RP50 form which he received with the letter of 1 July 2008 and accordingly had sought advice about same from the Citizens Information Service.

The claimant was unaware of what happened to the respondent's other drivers. He thought that one of them had walked off the job because of being treated in a similar way. The claimant also thought that the respondent had selected him for redundancy because he was a troublemaker and they wanted rid of him.

In cross-examination, the claimant accepted that the first letter from the respondent was that of the 5 December 2007. He also accepted that work was slow for the respondent at that time. When put to him that the letter was sent to all employees by Der in light of the slow down, the claimant replied that he had been spoken to about the situation by Fras. He accepted that it had been explained to him that the respondent was in trading difficulties and there was a slow down in work but he had been told this by Fras and not by Der. He did not know what proposals had been put to the other drivers but he accepted that it had been put to him by the respondent that they wanted to retain all of their workers and so proposed cutbacks such as only paying him for the days that he worked. This was the only proposal that had been put to him by the respondent up to 5 June 2008, and same had been repeated in the respondent's letter to him of 29 April 2008.

By June 2008, the claimant was only aware of one other driver who had left the respondent's employment. The only significant contract that the respondent had at that time was work on the N6 motorway and the claimant accepted that it had been explained to him that the reason the respondent had this contract was because they had priced the work at a low rate. However, he had only been told this by way of telephone calls. He did not know what cost cutting proposals had

been put to the other drivers, or that they had accepted these proposals in the interests on keeping their jobs because there had been no consultation.

Fras contacted the claimant on 5 June 2008, which was the last day he had worked for the respondent. She told him that because of cutbacks, the respondent was not going to pay him traveltime, hence paying the claimant for eleven hours rather that fourteen hours. The claimant's response to this had been that if he was not going to be paid for travel, he would not work for lessmoney. He did not report for work on 6 June because he had been told to pull off the job on thenight of 5 June. He had pulled his crane off the job and parked it on the road. The following day,the respondent sent another driver on a sixty-five tonne crane to do the claimant's job.

The claimant did not go to work on 9 June, as he had not been contacted by the respondent about same. He was not telephoned by the respondent after the 5 June about returning to work. The procedure had been that he was contacted by telephone on the night before and told where to go to work on the next day. He had been told to pull off the job and despite being available for work, he was not contacted again by the respondent about work after 5 June.

The claimant denied that he had ever attended a meeting in the respondent's office subsequent to 6 June 2008 and prior to receiving his redundancy cheque. When put to the claimant that at such a meeting, there had been a discussion about employment conditions and that he had said that his doctor had told him that he should not be working such long hours and he had complained about problems with the non national workers who were working on the motorway, the claimant denied that any such meeting had occurred after 6 June. The meeting when these issues were discussed occurred around February 2008 when the contract for work on the motorway had been signed. At this meeting, the claimant denied that he had said that he would not work beyond the hour of 5.00. He agreed that he had said that he would not work every Sunday and that he would only work until 12.00 on Saturdays.

At the meeting, which was prior to 5 June 2008, the claimant denied that there had been any conversation with the respondent about redundancy. They had only discussed the short time situation. At that meeting, he had been told that if the respondent got the motorway contract, the drivers would be put back on full time. On the 5 June, the claimant was told to pull off the job and the next contact he had with the respondent was on the signing of the RP50 form. The claimant confirmed that he had requested that his redundancy be sorted out earlier than scheduled by bank draft as he was going abroad on holidays and so would not be available for a while thereafter.

When put to the claimant that he had called to the respondent's office on 15 July 2008 in order to get a form for the building society in relation to his mortgage, signed by the respondent, the claimant replied that he could have. It was also put to the claimant that emails had passed between the respondent and the Citizens Information Service – as his representative – between 2 July 2008 to 21 July 2008 clarifying the redundancy lump sum he would receive, that the respondent had paid him his redundancy earlier by bank draft as requested, that his ticket had been renewed by the respondent and that they had parted amicably, the claimant replied that he had been entitled to have his ticket renewed. He had been told that his crane was being sold but instead, his crane was replaced on the job, and this was something that would not be done in a recession.

The claimant maintained that he had never asked for redundancy. He had decided that his redundancy had been unfair when he found out that he was the only one who had been made redundant and that his crane had not been sold. He decided that his selection for redundancy was unfair when he was made redundant. He had not made that point at that stage because he had

wanted to find out about his rights first. He had been isolated from the others prior to being made redundant, had not wanted to be made redundant and had liked his job. His dispute with the respondent was over his selection for redundancy when he was one of the longest drivers in service. When highlighted that, on the form for the building society in relation to his mortgage, when asked if his redundancy was "as a result of a dispute" he had replied "no", the claimant explained that his wife had completed the form. It was also highlighted that when asked on the form if his redundancy had been voluntary, the reply had been "no" and the reason given for the redundancy had been "due to downturn in economy". The claimant denied that his redundancy had been voluntary or that he had elected for same. He had decided that his redundancy had been unfair when he was made redundant, or a while after that. When asked why it then took another five months for this unfair dismissals claim to be lodged to the Employment Appeals Tribunal, the claimant replied that he had given time to see if his crane would be sold.

It was again put to the claimant that the form for the building society in relation to his mortgage had stated that the reason for his redundancy had been due to a downturn in the economy and that there had been no dispute with the respondent. It had not said that he had been a troublemaker. He had elected for redundancy. In reply, the claimant said that he had never asked to be made redundant but had just wanted to receive his rights and entitlements.

The claimant confirmed that on leaving the respondent's employment, he received his notice and holiday entitlements and, in relation to his redundancy, he received €9.540.00 which was paid to him by bank draft.

Replying to the Tribunal, the claimant confirmed that he was informed that he was being made redundant on receipt of the letter of 1 July 2008 with the attached RP50 form, for his signature. While accepting that the respondent had difficulties, the claimant stated that as far as he knew, he was the only one who had been made redundant. Everyone knew that the respondent was in a downturn but prior to 1 July 2008, there had been no notification of redundancies.

When the claimant received the cheque for his redundancy, he had signed the RP50 form on 25 July 2008. This was prior to going abroad to a wedding. The RP50 form had stated, "dismissed by reason of redundancy" but even then, the claimant believed he was unfairly dismissed. However, because of all that had happened and because so many of his letters to the respondent had gone unanswered, he had decided to forget about it. The reason he had been given for his redundancy was the sale and disposal of his crane but this had not happened, and this was the reason he was now pursuing the matter with the Employment Appeals Tribunal.

The claimant had not received a contract of employment from the respondent. The respondent had interviewed him for the job in a pub over a few pints. Their working relationship had been good up to June 2008. There had been no negotiations in relation to changes in his terms of employment. All he received was telephone calls informing him that changes had been made. The claimant had never attended a meeting with staff and the respondent. Everyone was spoken to individually so as no one knew what was said.

The respondent discussed no alternative options with the claimant. All he received was his RP50 form informing him that he was being made redundant. In relation to the form for the building society in relation to his mortgage and the comment thereon that his redundancy was "due to downturn in economy", the claimant explained that at that time, he had been told that his crane was being disposed of but this had not happened. His crane was still in service and the respondent had purchased a new crane in 2008.

The claimant established his loss for the Tribunal. Despite his efforts, he had failed to secure alternative employment since his employment with the respondent had been terminated, as there is no work available. He is scheduled to commence a FAS course in October 2009.

Respondent's case:

In sworn evidence, Der confirmed that he was the respondent's director and company secretary.

He had known the claimant, who had been a taxi driver and had hired him. The claimant had been trained over a period of two to three months and was retained after this trial period. He had been a good worker and had minded his machine. In order to maintain continuity of work, the respondent's practice was to assign a driver to one crane, which the driver operated and minded.

In the latter part of 2007 and into 2008, the economic downturn came and the respondent got less work. They then got a contract on the N6 motorway to supply cranes and concrete pumps. However, because they did not have an exclusive contract, they had to compete on price in relation to the supply of this equipment. Sometimes they had three to four cranes on a site. In deciding to work to keep the contract, Der set out to meet each driver. This had not been done in a deliberate way. He had met the drivers where there were working in the different places on site and had told them that it was tougher and tougher for the respondent to keep things going and survive. If repayments for the cranes were not made to the leasing company, the cranes would be repossessed.

Towards the end of 2007, Der had proposed to the drivers that they would only be paid for the days that they worked, and there would be a cutback on the fuel allowance and overnights. The drivers had said that it was a terrible situation to be in and had looked at their options. One driver left to go abroad to full time employment. At that time, the respondent had employed ten crane drivers.

By 2008, the downturn situation was getting worse and worse for the respondent. Pricing on the motorway contract had to be re-negotiated every quarter and this was the only major job the respondent had in which to keep ten cranes in operation. At the time, they had no other substantial contracts, and they still do not. The N6 contract is scheduled to end in 2010 and with it ends the respondent's contract with them. Because the respondent had no other substantial contracts, a decision was made to scale down. They currently have six cranes and by 2010, they expect that the number of cranes will be four. In 2008, only six crane drivers were employed.

All drivers had been told that cutbacks would have to be made, and accordingly, the days they were not working would not be paid so they should claim social welfare for these days. Der had also discussed this with the claimant. Also, because non-nationals who worked on the motorway were willing to work long hours, the respondent felt that they had to take advantage of this, so the claimant had been told that if he was working on the motorway, it would have to be a twelve hour day. It was after this that the respondent began receiving letters from the claimant.

The other change had been that if drivers had to drive to work, their travel time would not be paid. The drivers had not been happy with this proposal but the other alternative had been no work at all. The other drivers had then accepted this change, but not the claimant. When, on 5 June 2008, the claimant had said that he would not work because of this change, the respondent had to send another crane to the claimant's site.

It was on 5 June 2008 that the claimant was told about the changes in paid travel. His reply to this had been that he would not be at work the next day. Fras had therefore told the claimant to move his crane out of the way as another crane would have to be sent to do the claimant's job. A seventy

tonne crane had been sent to replace the one that the claimant had operated because no other fifty tonne crane was available. Subsequent to this, Fras made numerous telephone calls to the claimant to establish his position but he did not answer any of these calls. Der had been in the office when Fras had tried to make contact with the claimant. On 9 June 2008, the claimant was issued with an official written warning because of his "refusal to attend work". It was following this letter that the letters of 11 June 2008 and the letter of 16 June 2008 were received from the claimant and the Citizens Information Service respectively.

Der thought that it was on the 26 June 2008 when he went into the office and found the claimant there speaking to Fras. Though Der did not wait until the end of this meeting, he heard the claimant say that he would not work on Sundays and would only work until 12.00 on Saturdays, that he did not like working on the motorway and that the work there should be dragged out so as not to have to work fourteen hour days. The claimant had also said that his doctor had told him that he should not be working such long hours at his age. When the claimant had asked to be made redundant, the respondent had not responded.

The only constant work that the respondent had at that time was the work on the motorway, and he was unable to dictate the hours of work there. Der's fear was of being unable to pay the finance company for the cranes. However, he did not contemplate making employees redundant. He had wanted to keep everyone in employment as crane drivers were highly skilled.

By 26 June 2008, there had been no consideration of making anyone redundant and there had been no talk of redundancies. The respondent did not know anything about making people redundant so, that day, the claimant had been told that they could not give him a decision. Then, the respondent decided to sell the claimant's crane. However, when they went to sell the machine, a mechanical problem was found with it, the repair of same to cost €14,000.00. A forty-five tonne crane was sold instead. Such cranes are being sold abroad at one third of their price. It had been the respondent's policy to replace a crane each year. Two or three new cranes had been purchased in 2008 but thelead-in time for such a purchase is five and a half years.

It had been the claimant who first mentioned redundancy, and subsequent to its mention, the respondent had agreed to pay same. There had been no consideration of redundancy prior to the claimant saying it. The claimant had not been dismissed and if he had agreed to the changes, he would still be in employment. The respondent paid him his redundancy and there had been no acrimony at his leaving.

In cross-examination, Der agreed that prior to working for the respondent, the claimant had driven excavators and this had been a good basis for the driving of cranes.

In relation to the changes in working conditions, Der confirmed that he had met all of the employees and told them that work was drying up. Only one driver had been given a guaranteed eight hours pay because he had been driving a bigger crane but this had been reduced to the same level as the other drivers after two months.

The respondent never got around to replying to the claimant's grievance letter of 14 March 2008. All of the employees had different terms of employment and the respondent had not gotten around to putting these on paper for the claimant. He agreed that perhaps the grievances that the claimant had outlined in his letter should have been addressed.

When put to Der that the claimant had thought that other employees were also being made redundant, Der replied that other employees had left and secured employment elsewhere. It was

also put to Der that the statement "consequently we regret to inform you we had no option but to make you redundant" which was in the dismissal letter of 1 July 2008 was not consistent with a voluntary redundancy situation. Der replied that it had been the claimant who had wanted redundancy. Up to then, redundancies had not been considered but when the claimant had asked about same, consideration was then given to the possibility of downsizing and of disposing of some of the vehicles. He had not been selected for redundancy. He had asked for it. If he had rowed in with the changes, he would still be in the respondent's employment.

Replying to Tribunal questions, Der confirmed that it had been Fras who had made contact with the claimant on 5 June 2008. On 26 June, the claimant had been in the office when Der entered.

It had been the claimant who had asked for redundancy and Der had sent the redundancy letter dated 1 July 2008 to the claimant. They had decided that that was the time to start disposing of cranes and had gone from eight to six cranes. When put to Der that the content of the redundancy letter did not reflect a voluntary redundancy situation, Der replied that the phrasing of the letter was final, that the claimant's crane was being disposed of and that therefore he could not change his mind. Der considered that the claimant was aware that he would receive such a letter. At that time, work had been available to the employees over a full week, including Saturdays and Sundays. If the claimant had agreed to the changes in his terms of employment, he would still be working, as he was a good operator who looked after his crane. Der had no problems with him.

In her sworn evidence, Fras confirmed that she was the respondent's office manager. She had worked for the respondent for twenty years, since the company was founded. Her responsibilities included hiring out cranes, informing the employees of the location of their work, dealing with telephone queries, etc.

Fras confirmed that Der had conversations with all of the employees in relation to the cutbacks. Due to cash flow problems, the respondent noted that they could be in difficulty and so cutbacks had been required. Accordingly, it was decided to cut corners on outgoings and keep the employees in their employment. The first proposed cutback had been that employees would only be paid for the days that they worked. Subsequently, the decision was made to cease the payment of travel time.

On 5 June 2008, Fras spoke to the claimant about this cutback. The claimant told her in no uncertain terms that unless he was paid for his travel to and from work, he would not be at work the next day. In reply, she had told the claimant that a crane was required on site and if he was not going to be at work the next day, to move his crane so as another crane could move in. She confirmed that she was aware of the warning letter of 9 June 2008 which had been sent to the claimant.

Fras had made occasional efforts from the 5 June to the 26 June to contact the claimant by telephone but had been unsuccessful. Her next contact with the claimant had been on the day he came to the office on 26 June 2008. He had started the conversation and had said that he wanted to be paid travel time for working on the motorway and he was not returning until he was paid. Fras had explained to the claimant the difficult position the respondent was in and that other employees had accepted the cost cutting proposals. The claimant's reply had been that if he was not getting paid his expenses, he would not go to work. It was at that stage that Der had entered the office. The claimant had also said that his doctor had told him to shorten his working hours and not to work twelve hours per day. He had also said that he would only work until 12.00 on a Saturday, that he would not work on a Sunday as he had a young family, and he would prefer redundancy that to work on the motorway. The respondent had valued its crane drivers and had wanted to keep

them in employment. Up to this point, consideration had been given to cost cutting in relation to the employees pay, but not to making anyone redundant. No consideration whatsoever had been given to getting rid of the claimant as a troublemaker. When the claimant asked about redundancy, no answer was given to him and Fras told him that she would discuss the matter with Der. The respondent thought about the idea over the weekend and decided that if the claimant's health would not allow him to continue working and if he wanted redundancy, then they would let him go.

Subsequent to the notice of redundancy letter of 1 July 2008, the respondent had received an email from the Citizens Information Service enquiring on behalf of the claimant as to the breakdown of details of the redundancy lump sum, details of any further contribution to the redundancy settlement after statutory redundancy and holiday entitlement. There was no issue that this was not a redundancy situation. The respondent's intention had been to make no mistakes in relation to the redundancy, which the claimant had requested. The meeting in the office had ended amicably and Fras had no difficulties with the claimant's wishes. When the claimant had subsequently contacted the office to say that he was going abroad to a wedding and requested that his redundancy be paid early to him, the respondent had agreed. Both the claimant and his wife had called to the office for the signing of the RP50 form and his redundancy had been paid to him by bank draft.

The form for the building society in relation to the claimant's mortgage had stated that the redundancy had not been voluntary because the claimant would not have gotten his mortgage if it had been indicated thereon that it had been a voluntary situation. In completing the form in this way, the respondent was obliging the claimant. However, it had been the claimant who had wanted redundancy.

In cross-examination, it was put to Fras that if lots of work had existed, why had there been the need for short time. In reply, Fras replied that the meeting with the claimant had not occurred at the commencement of the motorway contract, which was at the time of the short time situation.

It was the respondent's normal practice to contact its employees to inform them of their location of work if a site had changed. However, if an employee remained working on the same site for a period of time, there would be no need to contact a person every night to inform them where they would be working the next day.

In Fran's conversations with the Citizens Information Service, there had been no necessity to mention that they were dealing with a voluntary situation. The conversation had been to ensure that the correct amount of redundancy was paid to the claimant. When put to Fras that the contents of the notice of redundancy letter of 1 July 2008 was not consistent with the contention that the claimant had opted for voluntary redundancy, Fras replied that the respondent had never had a redundancy situation before and perhaps this explained the confusion in the letter. However, she was unsure if it was necessary to have the letter spelled out any better as the respondent was doing what the claimant had wanted. His words had been that he wanted redundancy. Though there was work available for the claimant's crane at that time, in deciding to dispose of this crane, the respondent was looking to the future and the forecasted economic downturn that was coming.

Replying to the Tribunal, Fras confirmed that when the claimant said to her that he was not coming to work the next day, she had asked him to move his crane and he had done so voluntarily. She had felt that if the claimant did not come to work on the following day, the issue could still be resolved. When put to Fras that the respondent's contention was that the claimant had elected for redundancy yet the way they – the respondent – had completed the claimant's building society form in relation to his mortgage suggested that the redundancy had not been a voluntary one, Fras replied that if it had been indicated on the form that the redundancy was a voluntary one, the claimant might not had

received his mortgage.

The current number of drivers employed by the respondent had reduced to six employees. However, none of these employees were made redundant, as all had elected to leave their employment with the respondent.

Determination:

There was a substantial conflict of evidence between the parties during the hearing of this case. However, on the balance of probability and based on their consistence, the Tribunal preferred the evidence of the respondent.

The respondent proposed certain cost cutting changes because of the economic downturn. These changes impinged on the terms and conditions of employment of the respondent's employees. The Tribunal accepts that these changes to the conditions of employment were proposed orally to the employees, and not in writing as they should have been. Some of the employees accepted these changes but the claimant did not. When the change in his conditions of employment were put to the claimant on 5 June 2008, he refused to accept same and told the respondent that he would not be returning to work. When he was then asked to move his crane off the site, he did not refuse but did so voluntarily.

The Tribunal noted that it had been indicated on the claimant's mortgage form that the redundancy had not been voluntary. However, the Tribunal believes that the respondent acquiesced to the claimant in this regard to assisting him with his application, foolish though this might have been.

The Tribunal does not believe that the claimant was selected for redundancy, either unfairly or otherwise but rather, he suggested redundancy to the respondent at some date after 5 June 2008. Through a series of telephone calls and emails in early July, the claimant's representatives clarified the redundancy lump sum – and other entitlements – which the claimant would receive. The claimant elected for redundancy and thereafter received a bank draft for same from the respondent on 25 July 2008. Having elected for redundancy, the claimant cannot now allege that he was unfairly selected for redundancy. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)