EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:	CASE NO.
EMPLOYEE	UD1708/2009
–claimant	MN1655/2009
against	
EMPLOYER	
–respondent	

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney B.L.

Members: Mr. T. L. Gill
Ms. H. Henry

heard these claims at Athlone on 4 May 2010

Representation:

Claimant: Ms. Louise Fogarty B.L. instructed by
Mr. Andrew Turner, Hamilton Turner Solicitors,
66 Dame Street, Dublin 2

Respondent: Mr. Alan J. Ferguson, Personnel & Training Services,
83-85 Bridge Street, Ballymena, Co. Antrim

The determination of the Tribunal was as follows:

Determination

At the commencement of the hearing the respondent's representative sought leave to represent the respondent in accordance with paragraph 12 of S.I. 24 of 1968, Redundancy (Redundancy Appeals Tribunal) Regulations, 1968, which provides

Parties summoned to attend a hearing of the Tribunal may appear and be heard in person or may be represented by counsel or solicitor or by a representative of a trade union or of an employers' association or, with the leave of the Tribunal, by any other person.

Having satisfied the tribunal that he had some twenty years experience in this field and carried professional indemnity insurance the Tribunal granted leave to represent the respondent.

This was a case where the claimant, one of eleven production designers employed by the respondent in the production of advertisements, challenged both the existence of a redundancy situation and the fairness of the claimant's selection as one of two candidates for redundancy amongst the eleven designers.

On 23 January 2009 the claimant, along with the other designers, received a letter from the Production Manager (PM) informing her that, as a result of the economic downturn, it was necessary to reduce the current number of Production Designer positions by 65.5 hours per week. PM sought volunteers for redundancy, giving the designers until 27 January 2009 to decide on this. There were no volunteers and the respondent invoked a process, set out in the letter of 23 January 2009, listing four criteria against which the designers were to be judged.

PM, who rated the designers against the criteria, was not called to give evidence and the respondent sought to rely on the evidence of the General Manager (GM) who conducted the appeal made by the claimant against her selection for redundancy. When the problem with this approach was pointed out to the respondent's representative an application to adjourn the hearing on the basis of the respondent's unfamiliarity with the Tribunal's procedures and the fact that PM was no longer in the respondent's employ as, following a reduction of all staff to a four-day week in April 2009, the production operation of the respondent had closed in its entirety on 31 July 2009. The respondent's application, which was opposed by the claimant's representative, was refused on the grounds that the representative had assured the Tribunal of his experience in dealing with such matters and furthermore the score of the claimant against the criteria had been enumerated with the respondent's notice of appearance form T2. Partway through the hearing was not an appropriate time to realise that PM was an essential witness.

After GM had finished giving evidence about the conduct of the appeal the claimant's representative made an application for a direction from the Tribunal on the basis that the respondent's case was flawed as no fair selection procedure had been shown and that it had not even been shown that a redundancy situation existed in the respondent in January 2009.

The Tribunal was unanimous in granting the application on the basis that, whilst not agreeing that a redundancy situation had not been made out, it was clear that the respondent had failed to show that the claimant had been fairly selected for redundancy as the respondent could not say that they were surprised to discover that PM's evidence would be necessary. In circumstances where the respondent had failed to show that the claimant was fairly selected for redundancy it must follow that the claimant was unfairly dismissed.

The claimant then gave evidence of loss. Her employment began on 26 April 2007 and terminated on 10 February 2009 having received one week's notice of termination. The claimant asserted that following the closure of the production department in July 2009 several members of staff were offered the opportunity to transfer to positions in Northern Ireland in companies associated with the respondent. The claimant pointed out that she had trained as a designer in the North and relocation there was not a problem for her.

Having already found that the claimant was unfairly dismissed the Tribunal finds that compensation is the appropriate remedy in this case. The Tribunal notes that the production process in the respondent closed on 31 July 2009. Whilst the Tribunal is not satisfied that the claimant would have been offered work in the North by associated companies it is clear that in July 2009 she would have been entitled to a lump sum payment under the Redundancy Payments Acts. This forms part of her loss in circumstances where in February 2009 she did not, at that stage, have sufficient service in order to qualify for such lump sum payment.

Accordingly, the Tribunal awards €15,000-00 under the Unfair Dismissals Acts, 1977 to 2007. The evidence having shown that the claimant received her entitlement to one week's notice in February 2009 the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

The Tribunal notes that the claimant was seeking a reference from the respondent. There is no jurisdiction in either the Unfair Dismissals Acts or the Minimum Notice and Terms of Employment Acts in regard to references.

Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)