EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	CASE NO.
EMPLOYEE - claimant	UD1040/2009
	MN1049/2009

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. K.T. O'Mahony BL

Members: Mr. W. O'Carroll
Mr. A. Butler

heard these claims in Ennis on 23 February 2010

Representation:

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Claimant(s) :
Mr. Paul Tuohy, Michael Houlihan & Partners, Solicitors,
9/11 Bindon Street, Ennis, Co. Clare

Respondent(s) :
Ms. Anne O'Connell, William Fry, Solicitors,
Fitzwilton House, Wilton Place, Dublin 2

The determination of the Tribunal was as follows:-

The claimant commenced employment as a receptionist on 21 May 2007 but her employment ended on 16 March 2009. It was alleged that she was unfairly selected for redundancy.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, was withdrawn at the beginning of the Tribunal hearing on the basis that a payment had been made in lieu of notice.

A company witness (BB) gave testimony that a group of companies was involved in office

developments in the Shannon Free Zone in the environs of Shannon Airport. There was a vision to develop a large amount of office space for letting to high profile tenants. Owner and director to this was BOC (a well-known and highly-regarded business figure with some twenty-five years' experience).

The development was to comprise seven buildings of circa 110,000 square feet per block. Three of the seven had been built. The respondent was one of three companies in BOC's group. The respondent looked after tenant needs (including landscaping) towards enjoyment of the letting.

However, there had been a downturn. Many companies were hit especially the property development sector. A lot of time had gone into trying to ensure the survival of companies and of the employment of their employees. The respondent's costs had to be scrutinised and its rental rollout had to be put on hold. The respondent had a smaller base of tenants than had been hoped but still had fixed costs relating to traffic management and landscaping.

The respondent examined a range of possible cuts with regard to cleaning, sanitation and negotiated reductions to insurance premiums. The respondent had to go back to suppliers to end arrangements or renegotiate. Every branch of the business was scrutinised. For example, window-cleaning which was a big cost was cut from three or four times per year to once a year. Energy costs were reduced. Internal office costs were reviewed. All unnecessary costs were removed from the business model. From end 2007 to the date of the Tribunal hearing the respondent had shed about two thirds of its staff. This was an unfortunate manifestation of this cost-cutting exercise.

At end 2008 the respondent lost a major tenant (DX) which exercised a break option in its lease. That caused a €560k per annum loss of rents. The respondent also had to sacrifice €120k in lost service charges.

The Tribunal was furnished with a list of dates on which particular positions in BOC's group of companies became redundant. In the respondent there was a reduction from eleven employees to three. The redundancy of the claimant's receptionist position was dated 23 March 2009 to reflect the fact that she was paid a week's notice.

The claimant was selected for redundancy as part of a detailed review of costs in which the respondent looked at each area. BB and BOC himself were sorry to see people leave. They looked at all costs to get savings over a big spread of activities. They examined a number of characteristics for each person. They looked at skillsets for flexibility to do different tasks. Bitter choices had to be made. In May 2008 the claimant has been transferred within the group to the respondent without any break of service. Under employees' contract of employment, employees can be asked to perform duties on behalf of other companies within the group.

In the claimant's case it was made clear that there had been no shortcoming in her performance. They were sorry to see her go. BB had told her that. However, cost-cutting had to be done to meet internal commitments to the board. To get reductions the respondent changed its modus operandi and looked at more innovative ways of doing things more cheaply. There was no way of avoiding the decisions the respondent had to make.

Reception duties were taken over by a clerical person (AM) who was already working on accounts with suppliers and tenants. AM was given a wide range of clerical duties and was now working at the reception desk with her previous duties unaltered. The respondent did not think that the claimant had the skillset to do all that AM did. There was no alternative position available for the

claimant although the respondent did look for another role for her to take. Work had decreased. Many staff had left.

On 16 March 2009 BB arranged a meeting with the claimant for the boardroom where they went at 3.30 p.m.. BB referred to the financial state of the respondent. The claimant asked if she was being fired. BB said no but that it amounted to the same thing. They had a short discussion about notice. The respondent let the claimant go looking for work and now understood that she had succeeded in gaining employment.

BB had asked the claimant to look at figures with her adviser and had told her that he would provide a reference for any future employer. The claimant said that that was all she wanted to talk about. The meeting lasted about half an hour. Neither of them had wanted the meeting.

The claimant received no ex gratia payment. The respondent was driven by the state of its finances. It could not make an ex gratia payment when there were so many casualties. BB was conscious that the meeting could be quite distressing. He had wanted to convey to the claimant that the meeting was open to lasting for an extended period of time. However, the claimant did not want that.

Asked if there had been voluntary redundancies, BB said that there had been three two of whom had wanted to create a new entity. However, the said project had not materialised. Developments did not look well for the respondent in the February/March period of 2009. Also, the chef in the canteen was asked to take unpaid leave. While on that leave he resigned after seeking his P45.

The respondent's business was still struggling. The market was bad for property development. There was pressure from lenders and from tenants who wanted rent reductions. The respondent was in the difficult space in the middle. BOC, as owner of the group of companies which included the respondent, was on a government taskforce set up to attempt to galvanise the strengths of the region and attract foreign direct investment. It was a very difficult situation. Since the departure of a tenant in the first part of 2009 the respondent had an empty space with no income from it. Therefore, there was a big burden on other tenants in that there was a bigger cost for them. The respondent worked in square footage terms to try to break even. Tenants had to contribute equally to cover costs. There was a cost shortfall of over three hundred thousand euro which could not be defrayed. The lower cash take caused a fallback of costs on the developer. The respondent could not get enough money from tenants. If all tenants had been there there could have been economies of scale. However, it was unrealistic for the landlord to expect tenants to carry costs. The shortfall came on the developer.

The claimant had not raised a grievance when BB had told her of her redundancy. The entire group was restructuring. The claimant could have been considered for any post in the group if there had been one there then or subsequently.

In her testimony to the Tribunal the claimant did not agree that she had been told of group restructuring. She was told that she would be responsible for her building and an upcoming restaurant and the companies that would move in. She helped the first client to move in. She looked after work permits and did reports, spreadsheets, typing and the usual duties of administration. She accepted that she had no experience in a number of the tasks being performed by the clerk/typist who absorbed her duties.

On the afternoon of Monday 16 March 2009 BB asked to see her. Once they were out of the elevator he said that he had bad news and that she was being let go. The meeting took only seven

minutes.

The claimant denied that there had been any discussion with her about her employer's financial position. After a couple of short assignments she had now secured employment.

Determination:

The Tribunal notes that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, was withdrawn.

Having carefully considered the evidence adduced, the Tribunal is unanimous in finding that there was a genuine redundancy of the claimant's position due to group reorganisation within the meaning of Section 7(2)(c) of the Acts and the claimant's duties were absorbed by the clerk/typist who continued to do her own duties as well as those that had been performed by the claimant. The claimant accepted that she had no experience in some of the tasks attached to the role of clerk/typist. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)