

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

Employee - **claimant**

UD767/2009

against

Employer - **respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Ms. M. Sweeney  
Mr. J. Flavin

heard this claim in Cork on 30 March  
and 1 June 2010

Representation:

Claimant:

Mr. Eoin Clifford B.L. instructed by Ms. Fiona Foley,  
Fiona Foley & Co. Solicitors, Joyce House,  
Barracks Square, Ballincollig, Co. Cork on the first day.  
In person on the second day

Respondent:

Mr. Killian O'Mullane, Murphy English & Co. Solicitors,  
Sunville, Cork Road, Carrigaline, Co. Cork

The determination of the Tribunal was as follows: -

The respondent, which supplies CCTV systems into both the domestic and British markets, recruited the claimant, who had considerable experience in the industry, as sales manager, with principal responsibility for the domestic market, in July 2006. The employment was uneventful with sales volumes strong for the first eighteen months of the employment. At its height the respondent had 30 employees. Over 2008 sales volumes began to decline, especially in the domestic market, with performance against budget being even worse. This resulted in the proprietors of the respondent being forced to implement a cost reduction programme.

From September 2008 an across the board 20% pay cut was imposed. There then continued a drive to cut costs following a further reduction in sales. The proprietors decided that there would have to be a reduction in the size of the senior management team of managing director (MD), sales manager

domestic (the claimant) and the sales manager for the UK market (SM). The respondent's position was that when the proprietors came to consider the situation, even though the claimant was the most junior of the three in terms of service that was not the reason he was selected for redundancy. The selection of the claimant as the candidate for redundancy was based on the fact that his departure would be least damaging to the respondent as the proprietors had contacts with most of the claimants clients even accepting that the claimant had brought five clients with him when he was recruited. The loss of either MD or SM would have been much more damaging as the proprietors did not have the same contact base as either of them.

**Determination:**

Having carefully considered all of the evidence over the two hearings, the Tribunal was not satisfied that the claimant had been unfairly selected for redundancy in all the circumstances of this case. The claimant accepted that the respondent's business had been in serious decline. The Tribunal did not find that MD (who had other areas of expertise due to his experience in the industry and his access to significant players in the UK market at which the respondent's next major product was being aimed) or any other person should have been made redundant rather than the claimant. The Tribunal accepts that the claimant's dismissal was by reason of a genuine redundancy. The respondent was in financial difficulties. Cost-savings had to be made which included pay reductions, lay-offs and redundancies. The claimant's argument that his role had been cost-neutral was based on historical sales. These had subsequently declined. The claimant had not persuaded the respondent of his cost-effectiveness at the time of his termination. The respondent had had to make a judgment call. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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