EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	CASE NO.
Employee - claimant	UD1149/2009
	MN1156/2009

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 this claim in Ennis on 22 February 2010

Representation:

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Claimant(s):
Mr. Gerard O'Neill, O'Neill & Co., Solicitors,
25 Glentworth Street, Limerick

Respondent(s):
Ms. Fiona Manning, Holmes O'Malley Sexton, Solicitors,
Bishopsgate, Henry Street, Limerick

The determination of the Tribunal was as follows: -

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, was withdrawn at the beginning of the hearing.

The claimant was a machine operator who commenced employment for the respondent at the end of October 2007. Having been injured at work on 6 August 2008, he declared himself fit to return on 9 March 2009 but he was told that he could not return until the company doctor examined him despite the fact that he had a certificate from his own doctor. He attended the respondent's doctor in late March 2009 but did not hear any more from the respondent about this appointment. After being

called to the factory at the end of April 2009 he was made redundant. He was given a letter stating that he had been let go on the grounds of his skill level. However, believing that he had better skills and more experience than others who had been kept on, he claimed that he had been unfairly selected for redundancy.

The Tribunal heard testimony from the respondent's commercial manager (DW). The respondent makes cutting tools for the auto and aerospace industries. A previous company which had operated since 1963 went into voluntary liquidation in 2007 and closed in October of that year. Until October 2008 the respondent was quite successful and made a profit in its first year of trading. However, income and orders subsequently dropped off from €1.8 million in 2008 to about €1 million in 2009. The respondent looked at the market for a chance to increase its business. However, it did not foresee any upturn before 2011 or 2012.

To allow the respondent to remain in business it was decided to make seven employees redundant remaining employees went to a three-day week. The respondent was left with twelve employees in direct manufacturing as well as a supervisor and a maintenance technician.

The respondent looked at maintaining three product lines. It had to retain key employees and key skills. All salaried staff took a twenty per cent pay cut. For direct manufacturing employees there was just short time.

The claimant worked in solid carbide centreless grinding. DW, asked to state the criteria by which twenty direct manufacturing employees had been reduced to twelve, said that the respondent simply based its decision on which man could operate more machines. All that was done by men of equal service was taken into account. Another employee (MK) had been upskilled, while the claimant was out (as a result of an injury to his knee and back), to do the claimant's duties. MK had an additional skill set (which the claimant did not have) as well as being able to do the claimant's work. They had both commenced employment with the respondent in October 2007. However, the claimant felt that he had been unfairly selected for redundancy due to his accident.

DW did not believe that the respondent could have done anything other than what it did do. It would not have been sufficient solely to operate a reduced working week. The respondent's reduced level of income was such that it called for the drastic measure of compulsory redundancy.

The claimant gave testimony that he had handed in a medical certificate every week after his injury had occurred in August 2008. When he attempted to return on 9 March 2009 he was not allowed on to the factory floor because he was not insured and he was told that he would have to be cleared to work. It took five weeks to see the company doctor. He got no result. He rang the doctor who said that the respondent was dealing with it. He had not realised that he had illness protection cover with his mortgage. However, for insurance reasons, the respondent refused to sign. He had not felt that the respondent wanted him back.

When the claimant was handed a letter saying that he was being made redundant on a skills basis due to a lack of orders he was told that it was between him and MK but that MK now had more skills than he. However, MK had rung the claimant for help. The claimant's machine was "all touch". At the time of the claimant's accident MK was working in a different department.

The claimant believed that he had more skills than another employee (DLJ) who had been trained by the claimant and who had been made redundant two weeks before the claimant only to be subsequently taken back as a cleaner on a short-term basis that was ultimately extended when it was

decided that a cleaner was necessary. Asked if he would have taken the cleaner position, the claimant replied that he would like to have been asked.

Determination:

The Tribunal carefully considered the evidence adduced. Though the claimant might not have been less skilled than a retained employee (MK) before the claimant's accident, the fact that MK upskilled during the claimant's long absence by learning to work on the claimant's machine (albeit with advice from the claimant himself) as well as knowing his own work meant that it was reasonable for the respondent to select the claimant for redundancy. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)