EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	**CASE NO.**
EMPLOYEE	UD219/2009
	M N1999/2009

against

EMPLOYER

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: Mr. M. Gilvarry

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this claim at Letterkenny on 24th June 2009
and 15th October 2009

Representation:

Claimant(s): Ms. Patricia McCallum BL instructed by Ms. Jolene McElhinney and Mr. Frank Dorrian, P. A. Dorrian & Co., Solicitors, Main Street, Buncrana, Co. Donegal

Respondent(s): In person (*on 24th June 2009*)
Dessie Shiels, Solicitors, 16 Academy Court, St. Oliver Plunkett Street, Letterkenny, Co. Donegal (*on 15th October 2009*)

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. In 1999 his brother set up the company with a circulation of 5,000. In May 2005 he was asked to join the company. His role entailed administration, credit control, online banking and increasing revenue for the newspaper company. Generally he ran everything. The respondent company took over in March 2007. This company owned a number of papers throughout the country and its head office was located in Letterkenny. During the takeover an agreement was made that the payment for the company would be paid in instalments over a twelve-month period.

In September 2007 he was appointed office manager. His duties remained the same but he did not receive a pay rise. At first he was the only person involved in credit control in the Buncrana office. During the same month a full-time administrative assistant was recruited. Her duties entailed covering reception part-time, typing - editorials, memorials, and invoicing customers. In early 2008 her role changed and she took over the claimant's role of collecting money from debtors. At a weekly management meeting a new appointment for general manager was announced. The staff were informed it would have an impact of their roles. As time passed the claimant felt he lost more responsibility and was no longer required to attend weekly meetings. At the time of the general manager's appointment a great emphasis was placed on retrieving monies owed from debtors. Daily and weekly targets were set which the claimant thought were unrealistic. Head office set these targets.

In September 2008 the administrative assistant requested to attend head office for training two to three days a week. When asked he stated that he was aware of the company's financial situation as he had access to the company's online banking accounts. He said that he felt unless the situation of retrieving monies owed improved staff might have to go on short-time hours and he suggested to the Managing Director he would go job-sharing. Redundancy was not mentioned to him.

In October 2008 the claimant's brother met with the managing director to finalise the payment for the company, as there seemed to be problems completing the transaction.

On 24 November 2008, he was informed that a team from the Belfast office were to visit the respondent office. The general manager indicated to the staff that things might improve.

The following day the managing director informed him that a person from H.R. was on her way to the office. Other staff were also present and were told to go home. When the H.R. person arrived, he was asked to come into the general manager's office for a meeting. The general manager was also present. He was informed, "there was no easy way to tell him" but his position was no longer available and he was being made redundant, as there had to be cutbacks. He was given two weeks notice and told he could go home but he was willing to work out his notice. He stated that his contract stated he was entitled to four weeks notice. Training or relocation was mentioned too and he went home shocked.

The following day he did not arrive to work until 12.30p.m. His email was disabled and there was no work allocated to him from credit control. On 5 December 2008 he received a fax concerning his letter of termination from the managing director. The claimant wrote to the managing director to appeal the decision but was informed the company had abided by the proper redundancy procedures.

The claimant gave evidence of loss.

Preliminary issue at the commencement of the second day of hearing:

Counsel for the claimant referred to the Unfair Dismissals Act, 1977 and to sections 6 (1), 6 (2) and 6 (6) therein. Section 6 (1) of the Act provides that "*Subject to the provisions of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.*" Section 6 (6) provides that "*In determining for the purposes of this Act whether the*

dismissal of an employee was an unfair dismissal or not, it shall be for the employer to show that the dismissal resulted wholly or mainly from one or more of the matters specified in subsection (4) of this section or that there were other substantial grounds justifying the dismissal."

Despite the informal approach adopted by the Tribunal in its procedures at hearing, clear structures are nonetheless set out for the presentation of evidence at the hearing of a case. While accepting that the respondent was unrepresented during the first day of the hearing of this case, compliance with such structures was imperative and no room was allowable for mistakes. On the first day of the hearing, the respondent was invited to present its evidence. It declined to do so. Under the provisions of the Unfair Dismissals Act, 1977, it was for an employer/respondent to prove that a dismissal was fair and for an employee/claimant to rebut this evidence. Having declined to present evidence, the claimant in this case presented his direct evidence, though time constraints did not allow him to conclude or be cross-examined on same. To allow the respondent present evidence at this stage when the direct evidence of the claimant has been given and was in the open would effectively amount to a re-run of the case, and would be a reversal of the structure of the presentation of evidence. Under the Act, the onus was on the respondent to prove that the dismissal was fair. To allow the respondent to present evidence at this stage of the hearing would appear to allow then amend their hand and this was not the intent of statute. That the respondent was not legally represented on the first occasion of the hearing of this case was their choice, and their non-representation was highlighted to them at that time. They are a big organisation and could easily have afforded such legal representation. The claimant was legally represented on the first occasion and he should not now be penalised for having secured that representation.

In reply, the legal representative for the respondent stated that as he understood the submission, the objection to the evidence of the respondent appeared to be based of who should have first given evidence rather that the respondent simply not being allowed to give their evidence. Section 6 (6) of the Act provides that the onus is on an employer to show that a selection for redundancy was not an unfair dismissal. This provision does not support Counsels objection to the employer/respondent's evidence being heard. Without hearing the evidence of the respondent, this Tribunal would be unable to determine the issues. If an employer/respondent had no evidence to present to defend his position, then only basic evidence in relation to loss would be required from an employee/claimant. Also, of the first day of the hearing of this case, the respondent did not indicate that they would not be calling evidence.

In this case, the claimant retained legal advice and same has no bearing on the fact that the respondent is a large organisation. Tribunals have no jurisdiction in relation to the costs incurred by a party. As all parties were now present for this resumed hearing, there is no issue in relation to the penalisation of the claimant for having secured legal representation.

The objection to evidence being allowed from the respondent was only raised by letter dated 23 September 2009 to the Tribunal from the claimant's legal representative. The objection was not raised on the day of the adjourned hearing. This Tribunal should follow fair procedures and allow the presentation of the evidence of the respondent.

In reply, Counsel for the claimant stated that on the first day of the hearing, the respondent was given the opportunity to present their evidence and they declined to do so. Instead they gave a submission at the end of hearing the claimant's evidence. The respondent's H.R. manager is experienced in employment matters. If it had been considered a possibility that the respondent could give their evidence after the evidence of the claimant had been heard, this evidence would

not have been presented. In giving all of his evidence, and not simply limiting it to evidence of loss, the claimant was being thorough in the presentation of his case.

Determination on preliminary issue:

The Tribunal have carefully considered the submissions in this preliminary application. The claimant claims that he was disadvantaged by virtue of the fact that the respondent was invited to give its evidence on the first day of hearing and having being so invited, declined to do so. At this resumed hearing, they now wish to present their evidence. The claimant makes a pertinent point. The respondent should have given their evidence first and may well have gained an advantage by having already heard the evidence of the claimant before going into evidence themselves.

The respondent claims that they should, in fairness, be entitled to call evidence and should not be penalised because they did not have legal representation on the first day of the hearing. The Tribunal notes that on the first day, the respondent told the Tribunal that they were calling no witnesses. However, the respondent now claims that they did not categorically state that they would produce no evidence.

The Tribunal is conscious of its duty to apply fair procedures to both a claimant and respondent. It is also conscious of the case of Halal Meat Packers (Ballyhaunis) Limited –v– Employment Appeals Tribunal [1990] 1 ERL 49, where, though its circumstances differ to this case, both are related to the extent of the exclusion of evidence. In the Halal case, the Supreme Court held that the Tribunal could not be permitted to effectively prevent persons from being heard in their own defence, or from cross-examining their opponents. No Tribunal has the jurisdiction to be unfair.

In this case, the Tribunal feels that natural justice requires that all of the evidence be heard, including the evidence of the respondent. However, in doing so, the Tribunal must also be fair to the claimant and ensure that he is not put at a disadvantage. Accordingly, the Tribunal rules that the respondent's evidence is called now and after same is heard, the claimant be re-called to continue his evidence in chief and only then, to be cross-examined. He will also be given time to consult with his legal representative at the conclusion of the evidence of the respondent.

Respondent's case:

In his sworn evidence, the Group financial controller explained his background. He had been the group accountant for an insurance company for five years. He commenced employment with the Group in February 2008 and had the role of overseeing its whole financial function. He operates from the Group's head office, where all tasks have been centralised.

The Group owned twelve regional newspapers throughout different parts of Ireland, including the respondent. Two newspapers had recently closed due to financial constraints. The economic downturn had a severe effect on the Group with losses to a competitor. There were also losses in advertising income which had an impact on all newspapers in the Group. Accordingly, all had tried to cut their costs. To date, fifty employees have been made redundant from different newspapers across the Group, with an average of four employees per newspaper being made redundant. A lot of these redundancies have come about because of the efficiencies gained through centralisation.

In relation to the respondent, in 2008, when revenue was falling, efficiencies and cost cutting measures were looked at, and as the respondent was a regional office, centralisation of functions was considered, as was the benefits of out-sourcing and the modernisation of internal systems. Three employees, including the claimant had been made redundant from the respondent company. Two of these employees were a reporter and secretary.

One of the functions of the claimant when employed by the respondent was that of credit controller, contacting customers in relation to outstanding money which was owed and taking payments of money. This function is now done centrally at the Group's head office through a call centre with I.T. software and the use of a credit card. I.T. modernisation was an efficiency, which the Group considered. The old system called Trojan was updated to a highly interactive system called River Web, this system being able to take payments directly from customers. This system was the biggest advance made by the Group and to which the whole organisation had access, ensuring greater efficiency.

The claimant also had the function of managing and dealing directly with non-staff members – freelancers – who made contributions such as articles and photographs to the newspaper, and arranging payment for them for their contributions. The payment of such freelance people was organised by email from the claimant to the financial controller. Such payment has been taken from all regional offices and is now done through a software package called Sage 50, which is centralised in head office in the accounts payable department. Regional editors retain control over the freelance contributors and so continue to receive a budget allocation for the use of same. However, the current procedure is that these freelance contributors invoice the accounts payable department in head office directly and they are paid accordingly from this centralised system.

The claimant was involved in the purchase of tools such as stationary and office supplies, in the payment of utility bills such as electricity and heat and in office repairs when employed by the respondent. The centralised computer system Sage 50 is now used for the purchase of such tools, same being purchased in bulk, which is cheaper. One supplier is now used to provide the utility services and the centralised Sage 50 software system pays for same. Also, the respondent has moved from the old office where the claimant had operated to a new modernised office, which is not in need of repair.

The Sage 50 system was installed by the financial controller in all offices when he commenced employment with the Group. It has been a gradual exercise and the one system had been used for the whole Group. The River Web system also commenced in 2008 and the last regional office received it in early 2009.

While in the respondent office, the claimant was involved in administrative duties including billing advertisement into the sales ledger system and billing customers for these advertisements, taking and answering telephone queries, posting subscriptions to customers who were in receipt of the newspaper annually, the lodgement to the bank of moneys which had been received locally in the respondent's office and payroll.

The booking of advertisements is now done directly by local sales representatives throughout the organisation on the centralised River Web system. This function no longer exists in the office where the claimant worked. Previously, the claimant reported weekly and monthly by way of email to the financial controller with the invoice figure for the advertisements, these figures having

been taken from the old Trojan system. This function had also been simplified and centralised through the River Web system, the invoice figures now being generated and automated by the I.T software directly to the financial controller.

The claimant was also involved in the invoicing of newspapers locally and then submitting report on same to the financial controller. This report is now done automatically by the River Web system every evening and sent to the financial controller without the need any longer for a manual recording system.

The claimant was not solely responsible for the answering of telephones to his office. Telephones are answered by all of the staff in all of the Group's offices. Specifically in the office where the claimant worked, the telephone was answered by whoever was in the office. Subscriptions for newspapers are now done centrally through the use of Sage 50. All of the Group's newspapers are posted centrally to those who had subscribed for them, including the respondent's newspaper.

In relation to bank lodgements, previously the claimant had taken moneys and lodged them locally to the bank. When the financial controller commenced employment with the Group, the claimant had been the main operator dealing with a local bank account. This system was changed by the financial controller to a centralised bank with a dedicated liaison person. Now the system entails the taking of money to the bank but the transaction being entered centrally on the system at head office. The financial controller has total responsibility for all banking transactions, ensuring that same are done correctly. This was previously done by the claimant at the local level. A High Business Banking system (H.B.B.) is now used for this function.

Previously, the financial controller had instructed the claimant in relation to the payment of suppliers. All payments are now done centrally through Sage 50. This is another task which the claimant had done and which had now been impacted on by software. The claimant had also processed the payroll for some of the employees in the respondent's office. The Group now operate one payroll system, which is done centrally.

The practice of the Group had been to self-distribute its newspapers. However, in the interests of modernisation, the best practice for this task was to outsource it. Previously, the claimant had organised the delivery and return of the respondent's newspaper but now, an outsourced distributor does this task and this has been found to be very effective and cost saving. The financial controller brokered the distribution deal in August 2008.

The reason for the centralisation of tasks has been the cost benefits involved and the greater efficiencies, which have been achieved. The modernisation of the software has helped the Group move with the times making the business sustainable going forward and has allowed for cost efficiencies. Unfortunately, redundancies have been the effects of these efficiencies. However, if the cost cutting steps had not been taken, the Group would not have survived.

The financial controller confirmed that he had no function in deciding the redundancy procedures. However, it was not the case that the claimant had been replaced in the office where he had worked by another member of staff who was dealing with accounts. All accounts were now centralised to head office and no one in the regional office where the claimant had worked dealtwith the type of accounts, which he had previously dealt with. Anyone who was brought back tothe respondent office was there to close things off. The financial controller's recollection was thatone member of staff (***hereinafter referred to as Gem)*** returned to the respondent office for

a periodof two weeks to finalise all of the paperwork that was being brought to head office. The financial controller was not aware of an "accounts department" in the respondent office, asspecified on the claimant's T1-A form (*Notice of Appeal*). His point of contact in the respondentoffice was the claimant, and on emails to the financial controller, the claimant described himself as"office manager". His first introduction to the claimant was in the claimant's position as officemanager. The descriptive term "accounts administrator" as per the claimant's T1-A form was aterm, which does not exist in the Group's organisation.

In cross-examination, the financial controller confirmed that the function of credit control and debt recovery had been part of the claimant's job and he had been in contact with the claimant on a daily basis in relation to this job. The credit control function of the job had now been centralised to the Group's head office. At head office, a call centre environment operates where staff members are on the telephone everyday. The debt collection part of the job was not centralised but it was being done by way of a pre-payment system. However, the financial controller agreed that if a person made a payment at a regional office, this money would be lodged locally to a bank, a lodgement slip completed locally and sent to head office so that the transaction could be typed onto the computer system, thus two parts to the job, a local part and a central part. There are about twenty-five employees in the head office, six specifically in the credit control unit.

The claimant had the job of making payments to freelance contributors to the respondent newspaper, a job which had also been centralised. When put to the financial controller that someone in head office was now doing this job, which the claimant had done, the financial controller replied that one person in head office was now making payments to all freelance contributors.

It was the case that anyone in the respondent office could answer the telephone. A telephone was still in that office and was answered by the staff who still worked there. Also, cheques that are received locally are lodged locally at the bank.

The financial controller confirmed that prior to and at the time of being made redundant, the claimant had worked with an employee – Gem. When asked if Gem had a similar role to that of the claimant, the financial controller replied that she had "partially" worked in credit control and she had also typed letters. The claimant had initially interviewed Gem and over time, she had done more credit control work. She had not returned from head office to the respondent office to finalise centralisation. She had only returned to that office for two weeks to finalise paperwork. She had been employed as a junior credit controller in head office in the credit control unit and was constantly on the telephone. At the time of her move in September 2008 to the head office, the only job being done in the respondent office was that of credit control.

The financial controller agreed that as it was the claimant who had interviewed Gem, she was junior to him. However, he was unsure if it was fair to say that the claimant had more experience that her in credit control. While the claimant had more experience, Gem had spent more time in the job. The claimant had three years service with the respondent and it was confirmed that Gem had been less that a year in credit control. When asked if he had considered allowing the claimant to relocate to head office like Gem, the financial controller replied that his role in the Group was not to allocate jobs to people but to mind costs. He was aware that the claimant had been offered an alternative job. However, the financial controller was not involved in H.R. and was not at the meeting, which decided the procedures to be used in relation to the claimant's redundancy.

Replying to the Tribunal query if he was consulted about the decision to make the claimant redundant, the financial controller replied that as a senior manager, his focus was on costs and noton making people redundant. However, he was aware of the decision to make the claimant redundant. The Group's two directors (*hereinafter referred to as Director 1 and Director 2*), theH.R. manager, the operational director and the financial controller met to review the financial performance of the Group. He was unable to confirm the date of this meeting. His presentation tothe meeting was on how the new software was working and the moves the Group needed to maketo save more money and become more efficient. These moves included redundancies within theGroup including the claimant's redundancy. The meeting had discussed the functions that wereupdated throughout the twelve locations and which no longer required staff at local level to dothem. Accordingly, these staff members were no longer required. When asked how the redundancy decision had been arrived at, the financial controller replied that if a job no longerexisted or if it was being done centrally, it was a straightforward redundancy. Looking for alternative employment for the claimant was the role of H.R. His job was to outline and providefinancial recommendations for the Group. When asked if he had suggested redundancies or procedures on making people redundant, the financial controller replied that he had recommendedjob losses but his role had ended at that. When asked if he had recommended that the claimant'sjob was lost, he replied that he had by reason of redundancy because the claimant's job no longerexisted. Minutes of the meeting had been taken together with the financial report that he hadpresented.

The Group's head office was in existence when the employment of the financial controller commenced. The financial controller explained that probably thirty people worked in head office and six were employed in the credit control unit. No one had been recruited to any office while he had worked for the Group, and no new staff had joined during that period. They had been cutting costs and not involved in recruitment. When asked again, the financial controller explained that, two months earlier, he had recruited an overall manager of ten years experience to assist him in credit control. Also, because of the nature of a call centre environment, there is a turnover of staff and when these employees leave, they are replaced, and replacements had indeed been made. The financial controller was not aware if the claimant had any other skills that could have been used in the Group.

In his sworn evidence, Director 1 of the Group confirmed that he had been at the team meeting in late October 2008 with the financial controller. Such meetings occurred every two weeks. The issue of redundancies was discussed in detail and was treated seriously. The decision to make the claimant redundant was made at that meeting. A number of other employees, similar to the claimant were also made redundant. It had been a very difficult time and Director 1 had met two of these other employees personally.

Director 1 confirmed that the decision to make the claimant redundant had been made prior to the claimant actually been met. It was decided that the H.R. manager would meet the claimant, inform him that he was being made redundant and offer him an alternative job in telesales. The Group had needed to cut costs and raise money in sales.

The Group was launched in 2004. It moved head office to a purpose-built office in 2007 when it outgrew the old office. At that time, the Group had twelve newspaper titles.

In cross-examination, Director 1 confirmed that the claimant was not consulted about redundancy prior to being made redundant. His redundancy was discussed in detail at the management

meeting and, it was decided that the H.R. manager would inform him of same. Minutes of the in-dept discussions on redundancies were taken but were not available to this Tribunal hearing, though same could be subsequently supplied. It was also decided at the meeting to offer the claimant alternative employment. Director 1, Director 2, the financial controller and the operational director attended this meeting, which was not a board meeting. The H.R. manager was on maternity leave at that time and had not been at the meeting. The redundancy decision was discussed subsequently with her. Director 1 and Director 2 made the redundancy decision. The financial controller made recommendations at the meeting but did not decide on the redundancy. It was Director 2 who told the H.R. manager to meet the claimant and inform him about the redundancy decision. She was also instructed to make an offer of alternative employment to him.

Director 1 did not agree that it was unusual that the H.R. manager met the claimant in the respondent's office after the other staff of that office had been sent home to be informed that he was being made redundant. He did not meet the claimant prior to him – *the claimant* – being informed that he was made redundant, nor was the claimant given an opportunity to voice his views prior to being informed. To the best of Director 1's knowledge, re-training or relocation to head office was not discussed. The alternative job that was offered to the claimant was at a regional location.

At his meeting with the H.R. manager, the claimant was told that he could appeal against the redundancy decision. This right to appeal was also confirmed to the claimant by letter dated 27 November 2008. Two copies of this letter were opened to the Tribunal, one which contained the sentence in relation to the appeal and the other which did not. Director 1 could not explain the discrepancy between the two letters except to say that there was nothing sinister about same and the claimant had gone through the early stages of the appeal process.

The letter of 12 January 2009 to the claimant outlined the respondent's appeal process under the heading "grievance procedure". Director 1 stated that it was possibly inappropriate that the letter referred to grievance procedure instead of redundancy appeal procedure. However, the letter was clearly about the procedure to appeal against the redundancy decision. Both procedures were the same. This letter stated in part "On the occasion where jobs are affected by the threat of redundancy, the management engage in full consultation as early as possible." Director 1 explained that the threat of the claimant's redundancy became apparent in the weeks leading to the redundancy decision. However, the statement in this letter was in the context of all of the redundancies and not just the redundancy of the claimant. The respondent was not obliged, under law, to consult with a single person in relation to redundancy. Usually, they would consult with employees but they had not done so in this instance.

It was clear to the management team that the claimant's position had become redundant due to the efficiencies that had been implemented. The H.R. manager would have discussed the selection criteria for redundancy with the claimant at the time he was told that he was being made redundant. While accepting that the respondent's letter of 12 January 2009 was not of "the highest standard", the redundancy decision had been discussed and taken seriously by the management team. They had been operating at a difficult time but had made the correct decision within the meaning of the Redundancy Act. The claimant's position no longer existed and Director 1 did not accept that the decision to make the claimant redundant had been unfair or extreme.

In re-direct evidence, Director 1 confirmed that the claimant had been allowed the opportunity to appeal against the redundancy decision to a manager and this appeal process was the same as the

respondent's grievance procedure.

Replying to the Tribunal, Director 1 said that it had been Director 2 who had spoken to the H.R manager after the team meeting and unfortunately, Director 2 was not available to give evidence to this Tribunal hearing.

The claimant had been offered an alternative job in telesales but Director 1 did not know the terms and conditions of employment associated with that job. Such a job had a range of pay scales and bonuses. Director 1 did not know the pay rate of the claimant from when he was employed by the respondent but the pay level for a job in telesales would probably have been lower at entry. However, some employees in telesales would have earned more that the claimant, based on their experience in the job. A telesales manager would have been the claimant's supervisor in such a job.

No other alternative job for the claimant was discussed at the team meeting, as there were no vacancies in any other areas, nor was the making of someone else redundant in favour of the claimant considered. The administrative functions in the respondent office had been centralised and the teams of employees at head office were specific to their jobs. From their knowledge of the claimant's skills sets, the management team had known that he would not have fitted into head office.

In her sworn evidence, the H.R. manager confirmed that her employment with the Group commenced in October 2007.

The H.R manager went on maternity leave on 2 September 2008. Prior to going on maternity leave, she understood that the management meetings that were taking place were in relation to strategic changes. From August 2008, there had been a series of meetings in relation to cost savings.

On the Thursday or Friday evening prior to the claimant's redundancy date, the H.R. manager received a telephone call from Director 2 when he asked her to go to the respondent office where the claimant worked and inform him that he was being made redundant. On the evening of 25 November 2008, she travelled to that office, met the claimant and informed him of his redundancy. She also asked the general manager/production manager (*hereinafter referred to as Steve*) of that office to sit in on her meeting with the claimant. The H.R. manager gave the claimant two week's notice of his redundancy, and two weeks ex-gratia payment. She also offered the claimant the job of telesales executive to be based in the office where he was currently working but he declined this post. Because the claimant "seemed disappointed", the H.R manager also offered him garden leave rather than have him work out his two weeks notice. The H.R. manager confirmed that the claimant had indicated his intention to appeal against the decision to make him redundant.

Subsequent to her meeting with the claimant, the H.R. manager discovered that the letter of 27 November 2008, which had been sent to the claimant, had not stated that he could appeal against the redundancy decision. Accordingly, she had sent another letter to the claimant's home address stating this "in black and white". Shortly thereafter, the claimant appealed the redundancy decision in writing and Director 2 responded to same. The claimant sent a second letter dated 2 January 2009 in which he requested further information about the redundancy decision, criteria used, the redundancy procedures, the consultancy process and Director 2 replied again by his letter

of 12 January 2009. Thereafter, the claimant appeared to have dropped the appeal process. The H.R. manager had no knowledge of an appeal hearing having been conducted, nor was she aware of the claimant replying to Director 2's letter of 12 January 2009 asking for such an appeal hearing.

In cross-examination, the H.R. manager confirmed that prior to going on maternity leave, she had attended management meeting, which occurred twice a month, where redundancies were discussed. Notes were taken at these meetings but same were not available for this Tribunal hearing. The H.R. manager had not been at the meeting when it was decided to make the claimant redundant, and accordingly, she had no knowledge of that meeting. The first time she became aware of the redundancy decision was when contacted by Director 2 about same. She had known that the claimant was a potential for redundancy but her first awareness that the decision had been made was with the contact from Director 2. She was still on maternity leave at that time and though she was keeping "her hand in", she was not working day-to-day with the Group.

As a H.R. person, the H.R. manager confirmed that she would know the circumstances when a redundancy situation might arise. As the Group was centralising as many functions as possible, the functions that had been done by the claimant were falling away. In the letter of 12 January 2009 to the claimant, Director 2 had written "the role you were employed in, Office Manager with responsibility for banking etc, ceased to exist and as you do not wish to work in sales, the company, after much consideration and deliberation, felt that the only alternative was redundancy." The letter also set out the redundancy selection criteria used in all cases. The H.R. manager described this as a standard criteria list and said that selection for redundancy could be based on all or one of the criteria. The claimant was not consulted or afforded a hearing by the H.R. manager prior to his redundancy. She was not aware if anyone else had consulted him about same.

The H.R. manager confirmed that she was aware of the claimant's denial that he was offered alternative employment. She also confirmed that she was not in a position at this hearing to show the Tribunal notes or minutes of this offer of alternative employment.

The H.R. manager did not give the claimant a RP50 form. She was aware that he had received a monetary amount as his redundancy payment but that PAYE and PRSI had been deducted from it. She agreed that this was not the proper procedure, that this had been human error and that it would be rectified. It was put to the H.R. manager that if so much discussion had taken place in relation to the redundancy of the claimant, such discussion would also have included the correct calculation of the redundancy figure due to the claimant so as to know how much same would cost the Group. In reply, the H.R. manager said that human error accounted for the error in the final redundancy figure.

The H.R. manager and the claimant had discussed the notice period to which he claimed to be entitled. He had claimed that he had a contract of employment, which had differed to that of the other employees in that he was contractually entitled to four weeks notice. The H.R manager said that she only became aware of this when she met the claimant on the evening of 25 November 2008. She had agreed with the claimant to honour this contractual term but first needed to see a copy of the contract.

Director 1, Director 2, the financial controller and the operational director at their management team meeting had considered the claimant for a position in the credit control unit in head office.

However, the credit control team employed in head office were junior staff. The claimant was considered to be a senior manager. The role in the head office was call centre based. They had not discriminated against the claimant but, when considering redundancies at that time, they had been aware that he did not drive. When asked, the H.R. manager confirmed again that she had not been present at this meeting, but this was what she had been told. She had not offered the claimant a move to the head office or re-training. The offer she had made him was that of telesales in the office where he was already working.

Replying to Tribunal questions, the H.R manager described her exact function as that of overseeing the personnel of the Group. At the time when she commenced employment, this had consisted of employees in thirteen newspapers. There had been no H.R. function in the Group prior to her joining so a lot of policies and procedures had to be put in place. She also worked on health and safety, the training of staff around the country and the hiring and firing of staff. She would be notified as to who had to be hired or fired. She would place advertisements to fill vacancies, and was also involved in interviews but senior management made the final hiring decision. The H.R. manager confirmed that as her function involved training, she had the authority to offer re-training to the claimant.

Steve had attended the meeting on 25 November 2008 with the H.R. manager when she informed the claimant that he was being made redundant. He was there to bear witness and to take the minutes of the meeting but did not talk at same or play any part in it. He had been made aware of the meeting on her arrival for same and had not known about it beforehand. The H.R. manager had instructed him to take the minutes. Unfortunately, the minutes were not available at this Tribunal hearing, nor was Steve available as a witness.

The H.R. manager confirmed that she had offered the claimant an alternative job. However, he had stopped her in her tracks when she went to detail its terms and conditions. She would have tried to offer the claimant a similar wage level to that which he had been receiving. The main reasons why the claimant was not offered a position in head office was because it would have been a junior post and he did not drive. The job that had been offered to him was effectively a telesales position. This was the only position available and was not a junior position.

Statements of the legal representatives:

The claimant's legal representative stated that the claimant was now in a strange position at this hearing because his direct evidence had been given out of turn. The dismissal of the claimant had not been in dispute. On the first day of the hearing of this case, the respondent had been invited to present their evidence and had declined to do so. Consequently, the claimant had presented his direct evidence. That the respondent had been allowed to present evidence subsequent to the claimant's evidence was unfair to the claimant. Accordingly, the direct evidence of the claimant has concluded. It was contended that it was procedurally unfair that the respondent had been allowed to re-open their case at today's hearing when same had been closed on the first day of the hearing.

The respondent's legal representative stated that this was not a criminal case and the evidence was based on the balance of probability. The Unfair Dismissals Act 1977 gave foundation to the Employment Appeals Tribunal where employees and employers could receive an informal hearing of their case. The claimant's direct evidence had been heard on the first day of this case. If it was

the contention that the respondent's evidence had concluded on the first day, the only evidence that the claimant had to present was that in relation to his loss. Instead, the claimant had gone into full evidence on that occasion. The Tribunal's ruling at the start of today's hearing that the respondent should go into evidence and then the claimant complete his direct evidence and then be cross-examined was a fair ruling.

Tribunal's reply:

The Tribunal highlighted that this submission had already been made at the commencement of today's hearing and a ruling on same had been made. Furthermore, on the first day of hearing, the respondent had indicated that they did not have witnesses and not that they would not be presenting evidence. Also, on that occasion, the parties had advised that the dismissal of the claimant was in dispute.

Claimant's case:

In cross-examination, when asked his understanding of redundancy, the claimant replied that the company no longer wished to employ him. When asked for his understanding of a redundant position, the claimant replied that the position no longer exists.

The claimant confirmed that he had been met by the H.R. manager and advised that he was being made redundant. His position had involved credit control payments, dealing with contributors, ordering office supplies, payment of utility bills, taking advertisement bookings, invoicing for advertisements, providing weekly and monthly reposts to the financial controller, answering telephones, making payments, lodging money to the bank and processing payroll.

The claimant had completed his T1-A form (*Notice of Appeal*) with his legal representative and on same, he had described himself as an accounts administrator. He had made his legal representative aware that he was the office manager as stated on his emails and finance and business manager as stated in his contract of employment. He had described himself as the accounts administrator on the T1-A form because he had sole responsibility for accounts in the office. He had been appointed office manager by the respondent without consultation. The claimant confirmed that hiscontract of employment was not incorrect in its description, nor was his T1-A form. The title "accounts administrator" was a general description for one position in the office. Three people hadworked in the office but he had been the person mainly responsible for accounts in the accountsdepartment, as well as doing the role of office manager. He had described himself as the accountsadministrator because a lot had been going on in the office at that time in relation to accounts andwith the gathering in of money.

It was the Group who changed the claimant's job description but his job varied within the office. He had also attended weekly editorial meetings with the aim of enhancing the respondent. Gemhad also attended these meetings as a junior administrator from the administration department. She had been appointed as an administrator but had changed to accounts administrator. All threeemployees were in the accounts department in the respondent office. Accounts involved anyonewho handled money. Even the person on reception (*hereafter called Sal*) was in the accountsdepartment as she was the first point of contact in taking payments from people. At times, Gemhad covered on reception and had been involved in credit

control. She was the person who hadmoved to the head office and had then returned to the respondent office to deal with accounts. While she had been moved to head office, he had not been given the option of a move.

The claimant agreed that he was aware that some of his functions were centralised "to some extent" such as responsibility for stationary and utilities. He also agreed that the office was now in a new building thus there was no requirement for its repair. However, the Web system for taking payments came after his redundancy. The lodgement of money was being done locally, the Sage 50 system had not been in use and the distribution of newspapers was done locally through the office up to the time of his redundancy.

The claimant contended that his functions combined the roles of office manager and accounts manager, and he had a senior position in the office. He multi-tasked in his roles and delegated some of the functions in the office to Sal and Gem. Of the three employees in the office, he had been made redundant, Gem had been moved to head office and Sal had taken on all three roles, except for the jobs which were centralised. Sal had taken on some of the claimant's responsibilities but because of the difficulty and pressure of the job, and of not being able to cope with same, it was the claimant's belief that Gem was brought back from head office to the respondent office for two weeks to help. Sal was made redundant in June 2009.

The claimant was "totally shocked" and "totally dumbfounded" at being told that he was beingmade redundant. Thirty minutes prior to the arrival of the H.R. manager that evening, Steve hadtold him that she – *the H.R. manager* – was coming and the "news was not good". When she toldhim that he was getting two weeks notice, he told her that he was entitled to four weeks notice. The claimant confirmed that he was told at the meeting that he could appeal against the redundancy decision within five days. However, he received nothing in writing at the meeting. Steve had taken some notes at the meeting. On the following day, he received a fax of the letterdated 27 November 2008 and, on the day after, he received an updated version of the letter statinghis right to appeal the redundancy decision.

The claimant confirmed that, by way of email dated 1 December 2008 to Director 2, he requested information on the appeals process and he received certain information in reply. He did not reply to Director 2's letter of 12 January 2009 wherein the appeals process was advised. When asked why he had not appealed on receipt of this letter, the claimant replied that he felt that as seven weeks had expired, he had waited long enough to be told about the appeals process, and the letter of 12 January 2009 had detailed the "grievance procedure". He therefore did not take up the invitation to appeal but decided to proceed with an unfair dismissal case after getting the letter. It was put to the claimant that he had gone to his legal representative before getting the letter of 12 January 2009, that he had received this letter on 16 January 2009 but had signed his T1-A form on 13 January 2009. In reply, the claimant agreed that he had not received the letter of 12 January 2009 by the time he had gone to his legal representative. However, he had written seeking a hard copy of the appeal procedures and had not received a reply to same by that time, a period of seven weeks.

The claimant denied that the H.R. manager had offered him an alternative job, or that he had cut her off during their meeting. However, he agreed that he had not written to contradict the suggestion in the letter of 12 January 2009 that he had been offered alternative employment. He also agreed that he had not forwarded a copy of his contract of employment to the H.R. manager when requested to do so because it was not his responsibility. Despite telling the H.R. manager

that he had an entitlement to four weeks notice, he was basically told that he was getting two weeks notice and that he did not have to work out the notice period.

The claimant accepted that the Group had to cut it costs and that fifty employees had been made redundant to date, one from the editorial staff of the respondent newspaper. However, he did not believe that it was a collective redundancy situation. His selection for redundancy was unfair. He believed that he was being made redundant and not his position.

Determination:

The Tribunal very carefully considered all of the evidence that was adduced during the course of this hearing, and the written submissions that were received – with the permission of the Tribunal – subsequent to the hearing.
The Tribunal were unimpressed with elements of the evidence presented on behalf of the respondent and preferred the evidence of the claimant as to the circumstances of his redundancy and what transpired on the day he was informed as to the decision to make him redundant, and in particular accept his evidence that he was not offered alternative employment with the respondent.

In recent past there have been a large number of job losses by way of redundancy due to the economic downturn. In cases of redundancy best practise is to carry out a genuine consultation process prior to reaching a decision as to redundancy. While in some cases there may be no viable alternative to the making of one or more jobs redundant, and no alternative employment available for the employee being made redundant, whatever consultation process is carried out, the employer who fails to carry out a consultation process risks being found in breach of the Unfair Dismissals Acts. Such a lack of consultation may be seen as unreasonable and in some cases may well lead to the conclusion that an unfair selection for redundancy has taken place. In this case there was no consultation whatsoever and the Tribunal do not accept the respondent's evidence that any proper consideration was made prior to selecting the claimant for redundancy.

The claimant deserved better treatment, and his redundancy was dealt with in an insensitive manner. While there was justification for the respondent to carry out redundancies, no proper evidence was furnished as to how the respondent had decided to make the claimant redundant, the criteria applied and the consideration of his skills and consideration of alternative employment.

The procedures followed were flawed and unreasonable. It was only at a much later date the respondent finally produced a letter stating the criteria for redundancy selection, and the respondent did not even follow its own stated policy for consultation prior to redundancy stated in that letter. The Tribunal noted that none of the witnesses for the company were able to give evidence of the application of those criteria to the claimant and the appeal procedure referred to was not notified to the claimant, only a grievance procedure.

Accordingly, the claim under the Unfair Dismissal Acts, 1977 to 2007 succeeds. The Tribunal determines compensation to be the appropriate remedy. Loss having been proven the Tribunal awards the claimant €25,000.00.

The claim in relation to the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails

as the claimant was paid the appropriate statutory notice under the Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)