

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**claimant**

UD1996/2009

against

EMPLOYER –**respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. S. Behan B.L.

Members: Mr. P. Casey
Mr. O. Wills

heard these claims at Cork on 28 September 2010

Representation:

Claimant: Mr. Charles J. O'Connor, Charles J. O'Connor & Co. Solicitors,
Scarteen Street, Newmarket, Cork

Respondent: Mr. Frank Nyhan, Frank Nyhan & Associates, Solicitors,
11 Market Square, Mallow, Co. Cork

The determination of the Tribunal was as follows:

Determination

The claimant had been employed by the respondent since 1992 and was production manager in 2003 when he, along with two other senior managers, became involved in a restructuring of the respondent as directors with a financial interest. Following a further restructuring in 2007 this financial interest came to an end. Part of the new arrangements included on site management being provided by an employee of the company involved in the restructuring.

The respondent continued to experience financial difficulties throughout 2008 and into 2009. The claimant was out sick from 18 January until 16 March 2009. By the time of the claimant's return to

work it had become clear that the business had become unsustainable and a decision was taken to wind the business down in an orderly fashion in order to maximise the return on both assets and inventory. On 3 April 2009 the claimant was given notice of his selection for redundancy. Around this time the supervisory staff were also given notice of redundancy.

The claimant's employment terminated on 29 May 2009 and within two weeks all the supervisory staff had also been made redundant. The remaining employees had all been made redundant and the business ceased trading by November 2009.

While the respondent accepted its previous practice had been to select candidates for redundancy based on LIFO the Tribunal accepts the respondent's argument that, in circumstances where the decision had been made to wind the company down in an orderly fashion, it was entitled to ensure the best return on assets and inventory by removing the most expensive overheads which included the claimant and the other supervisory staff. In those circumstances the selection of the claimant as a candidate for redundancy was not unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)