

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:****CASE NO.**

EMPLOYEE

- claimant

UD1880/09

MN1778/09

WT787/09

**Against**

EMPLOYER

- respondent

**under**

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr. M. Flood  
Mr A. Butler

heard this claim at Naas on 16th November 2010.

**Representation:**

Claimant: Mr. Andrew Whelan BL, instructed by Donal Taaffe &amp; Co., Solicitors, Malthouse Square, Smithfield Village, Dublin 7

Respondent: Mr. Jim Waters, Waters &amp; Associates, Solicitors, Unit 1a, Hyde Court, Shaw Street, Dublin 2

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were withdrawn.

**Determination:**

The Tribunal has carefully considered the evidence adduced. The claimant was made redundant from his employment with the respondent company in April 2009.

The Tribunal accepts that redundancies needed to be made in the company in circumstances where product demand had reduced in the period leading up to early 2009.

The Tribunal further accepts that the claimant being the longest serving member of the three-person quality analyst team was surprised that he had been selected for redundancy. Whilst the workplace had been informed that there might be a need for redundancies in 2009 the claimant appeared to believe that the quality analyst positions were unassailable in circumstances where only four months earlier a quality analyst had been recruited to the team. Understandably, the claimant had taken comfort from this fact as it suggested a need for a three-person analyst team.

It was only after the fact of being made redundant that the claimant sought the criteria or matrix that had been used in determining which of the three should be let go.

The Tribunal has considered the matrix as presented and finds that there has been a fundamental unfairness in the manner of reaching the decision. The respondent cannot punish people retrospectively for having certified sick days and being late if these practices were generally taken by the workforce as not being of great consequence. The claimant was never picked up on arriving late (which happened rarely) and it was his uncontroverted evidence that he regularly worked extra unpaid hours early, late and at weekends. If the job needed to be done it got done. It seems manifestly unfair that the issue of absences and timekeeping should not have been given the weight it had been when it was never made an issue.

Taking the performance sheets as presented the Tribunal cannot understand how the figures got so skewed against the claimant. In essence, the claimant in getting the figure five was being told that he utterly failed to meet workplace standards and expectations. This cannot be a true and accurate rating even based on the performance review conducted in November 2008.

It seems to the Tribunal that the figure five was inappropriate and manifestly unfair and nothing in the evidence suggested that the claimant did not successfully meet the expectation required and he should not have been rated so far below his colleagues.

In the circumstances, the Tribunal finds that the claimant was unfairly selected for redundancy and awards the claimant €31,824.00 compensation under the Unfair Dismissals Acts, 1977 to 2007 for remuneration losses.

The Tribunal notes that the claimant has already received a redundancy lump sum of €8424.00, which said sum should be deducted from the award given.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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