

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE-**Claimant**

UD1951/2009

against

EMPLOYER- **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. G. Andrews  
Mr. D. McEvoy

heard this appeal at Killarney on 1 November 2010

**Representation:**

Claimant:

Ms. Nuala Liston, Liston & Company, Solicitors,  
8 Day Place, Tralee, Co. Kerry

Respondent:

Managing Director  
of the respondent

The determination of the Tribunal was as follows:

The claimant was employed from July 1999 as an operative in the respondent's automotive electronic component operation. By January 2001 the claimant had been promoted to a position as a production supervisor. The employment was uneventful until sometime in 2005 when the claimant received a verbal warning, with a six-month duration, issued by the then operations manager, later to become the quality manager (QM) following his missing of a flight when on a work-related trip to the respondent's parent company in Japan.

By 2008 the respondent had around 600 employees with the claimant being one of seven production supervisors. Following the economic downturn which hit the respondent's motor industry clients from in the summer of 2008 the number of employees fell to around 300 by the time in February 2009 when the decision was taken to reduce the number of supervisors from seven to three. The respondent furnished its employees with monthly business updates outlining the

overall business situation, their plans to manage the downturn and a summary of the effects for the employees. Copies of these documents were produced to the Tribunal on the day of the Hearing. The criteria used to select the four supervisors for redundancy were based on ranking the seven supervisors in respect of salary, service, attendance and a skills matrix with the four rankings added together to give an overall ranking. The claimant was the second highest paid of the seven. He had the least service of the seven supervisors. His attendance record based on the years 2006-2008 ranked him third of the seven supervisors. The skills matrix, in respect of which the respondent produced no witness who had taken part in its preparation, showed the claimant to be ranked third. The claimant's position was that he should have been ranked first on the skills matrix. It was accepted by the respondent that the claimant had ranked the highest for skills, which would normally result in the highest salary but the operations manager's (OM's) decision on skills was not endorsed by the wider management of the respondent. The claimant reluctantly accepted a lower salary and received a compensatory lump sum payment.

The claimant told the Tribunal that QM called him in on Friday 6 February 2009 where QM told him "I have selected you for redundancy". The claimant, who had not been made aware of the selection criteria, approached the human resource manager (HR) on Tuesday 10 February 2009 and was offered the opportunity to speak to a senior manager, in this case OM, in accordance with the respondent's grievance procedure but declined to take up this offer. It is further the claimant's position that his disciplinary record had been used as a tie-breaker in the overall ranking despite the verbal warning being expired for more than three years. He received a copy of the selection matrix later that week. The claimant then missed a scheduled quality meeting and when enquiries were made as to his reasons for not attending the meeting he was accused of e-mailing confidential information to his personal e-mail account and escorted from the premises by QM. He received payment in lieu of his notice period.

### **Determination:**

The Unfair Dismissals Acts impose a burden on the respondent to show that dismissal was not unfair.

This was a case where the respondent chose not to proffer as witnesses any of those persons to whom the claimant referred in his evidence, namely HR, OM and QM.

The only witness proffered by the respondent was their managing director who, whilst obviously involved in strategic decision-making and in a position to fully satisfy the Tribunal that a redundancy situation existed amongst the supervisors, had no direct involvement in the selection of the claimant for redundancy.

In these circumstances, whilst there is no dispute about the salary and service categories, the Tribunal cannot accept the information put forward by the respondent in regard to both the

attendance and skills matrix categories. In these circumstances the Tribunal accepts the uncontroverted evidence of the claimant in regard to these matters and the inclusion of the verbal warning in the ranking process. For all these reasons the Tribunal is not satisfied that objective criteria or transparency obtained in the selection of the claimant for redundancy. Accordingly the Tribunal finds that the claimant was unfairly dismissed. The Tribunal is cognisant that the claimant was in receipt of a statutory redundancy lump sum payment as well as a significant ex-gratia payment and in the circumstances awards €2,500-00 under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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