EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:		**CASE NO.**
EMPLOYEE	- claimant	MN1785/2009 UD1896/2009

Against

EMPLOYER - respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr R. Murphy
Ms M. Maher

heard this claim at Dublin on 24th January 2011.

Representation:

Claimant: Mr. Shane Coyle, Branigan & Matthews, Solicitors, 33 Laurence Street, Drogheda, Co. Louth

Respondent: Mr. Padraig Lyons BL, instructed by Mr. Shane Crossan, O'Flynn Exhams, Solicitors, 58 South Mall, Cork

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent was engaged in servicing several airlines at Dublin airport. The claimant was employed as a ramp service agent.

In 2008 the respondent experienced serious financial losses. In November 2008 the company announced it was closing its operations at Dublin airport. The unions enquired if there could be a restructuring if employees accepted a 20% remuneration reduction and this was implemented in early 2009. The respondent continued to lose contracts and subsequently lost a huge contract with a major airline resulting in a loss of 40% of their business. However, a certain reduction in staff numbers had to be implemented using the criteria last in first out. Seventeen staff accepted voluntary redundancy and five staff were compulsory made redundant in the first phase. Approximately 38 redundancies occurred in phase 2 at the end of March 2009.

Post March 2009 a reduction of nine ramp service agents was necessary as there was a reduction in the workload of aircrafts.

Staff were updated on the status of the company's restructuring on 13th March 2009. Voluntary redundancies were sought. The respondent wrote to the claimant on 25th March 2009 informing him that his role was at risk of redundancy. He was invited to volunteer for compulsory redundancy effective from 31st March 2009. As there was no alternative full time position available within Dublin the respondent was able to offer him a part-time role as ramp service agent with a reduction to 20 hours per week from 37.5 hours as an alternative to redundancy. The option of overtime could increase an employee's hours but was never guaranteed. The claimant did not apply for a part time role. He had acted in a supervisory capacity from time to time but was not paid as a supervisor.

To the best of the respondent's recollection, the claimant opted to take voluntary redundancy and signed the RP50 form. Following a request from a trade union official that the RP50 cited the reason for redundancy as "compulsory" the company agreed to insert this on the RP50 forms. This was cited on the claimant's RP50 form, the reason being to avoid delay in the claimant receiving social welfare benefits. The claimant's date of termination was 31st March 2009.

A decision was taken in June 2009 to close the respondent's operations in Dublin. Approximately 42 staff were transferred to other airlines.

The respondent contended that the claimant was not unfairly selected for redundancy.

Claimant's Case:

The claimant commenced employment on 30th October 2000 and was employed as a ramp service agent. For two years he worked as a 'stand in supervisor'.

The claimant was invited to apply for voluntary redundancy or a reduced working week. He refused the reduced working week and was adamant that he did not accept voluntary redundancy but that he was compulsory made redundant. He had no understanding of what the arrangement was between the company and his trade union.

The claimant contended that work was available until June 2009 and that some employees were rehired and worked from March 2009 until June 2009.

Determination:

The evidence presented to the Tribunal has been carefully considered.

The claimant is claiming unfair dismissal by reason of unfair selection for redundancy. The claimant was made redundant at the end of March 2009 as part of a programme of voluntary and involuntary redundancy being implemented in circumstances where the respondent company was losing work and contracts as a consequence of an unchallenged downturn in business.

The respondent was implementing a system of last in first out in selecting people for voluntary

redundancy. The claimant fell into a category of employees who were invited to make a choice between redundancy and a significantly reduced working week, which would involve a reduction in hours from 37.5 hours to 20 hours.

As part of his claim, the claimant made the case that he was a ramp service agent who was also a supervisor. This was not accepted by the respondent and the evidence did not demonstrate that the claimant was recognised as having the rank of "supervisor" albeit that he (together with many of his co-ramp service agent colleagues) did act as supervisor from time to time for which he was paid a supplemental shift allowance. On balance, the Tribunal is not inclined to accept the evidence that the claimant was a supervisor and his pay and the paperwork from T1A to RP50 to correspondence accepts his status as ramp service agent.

The claimant accepts that he was invited to choose between redundancy and a reduced working week. He refused the reduced working week on the grounds that he believed in March 2009 that there was plenty of work to keep him on full time. The claimant is adamant that he did not accept voluntary redundancy and that the redundancy was implemented in a compulsory manner.

The evidence is that there continued to be work available up to late summer of 2009 and that persons who had accepted the 20 hour week worked on until June of 2009 at which time they were made redundant.

Interestingly, there was a certain class of employee with shorter service than the claimant who were being made redundant in March of 2009 but in fact were kept on until August of 2009 at which point their redundancy was confirmed.

The respondent moved its enterprise out of Ireland in the summer of 2009 and it transferred its contracts on to various service companies in Dublin Airport and crucially transferred the remaining employees preserving the service accrued to each such employee.

Crucially, it is noted that all persons transferred had longer service than the claimant. It seems therefore to the Tribunal in applying the last in first out principle that the claimant could never have been transferred from the summer of 2009.

The Tribunal therefore finds that the company did move to make the claimant redundant in March of 2009 and that the claimant did not volunteer for this action.

The reality is that there continued to be work available including overtime work up to at least June 2009 at which time the claimant's comparators (working part-time) were made compulsorily redundant.

The claimant succeeds in his claim insofar as the selection for redundancy was premature and the Tribunal awards him €3000.00 under the Unfair Dismissals Acts, 1977 to 2007 for loss of earnings for the period involved.

As no evidence was adduced under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 the said claim fails for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)