

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE

UD1813/2009

Against  
EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. F. Crawford B.L.

Members: Mr. F. Moloney  
Mr. P. Woods

heard this claim at Dublin on 2nd November 2010 and 11th March 2011

Representation:

\_\_\_\_\_

Claimant:

The claimant in person

Respondent:

Mr Conor Power BL instructed by:  
Ms Sarah Conroy  
Eugene F Collins, Solicitors  
Temple Chambers, 3 Burlington Road, Dublin 4

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The respondent company is a building supplies provider. The company had four divisions, building products, roofing, flooring and sports surfaces. The sales representatives, of whom the claimant was one, were specialists in their areas. The representatives liaised with construction professionals such as architects and engineers. In early 2008 there was a collapse in the turnover of the company and several redundancies were made. The claimant was informed that he was being made redundant on February 27<sup>th</sup> 2009.

The former managing director gave evidence that he was headhunted into the position in February 2008. The company was profitable then, but needed restructuring. But in September 2008 the global downturn changed everything. He was made redundant in August 2009. There were 50 employees when he started and 30 when he left. He believed there were 21 currently. The directors took pay cuts in October 2008 and February 2009.

When he was managing director he held regular management meetings. They discussed the monthly accounts. There was a general cash flow problem but particularly in the roofing division as customers owed substantial sums and there was a long lead in time for the product. He instructed the staff to focus on repair and maintenance to give quicker results. There was some success, but not enough. It was not possible to move the specialist employees between divisions at short notice, as they were specialists in their areas. The skill set was different between the different divisions. The company kept their staff for as long as they could, as they didn't want to lose their specialist knowledge. The company had sent the claimant on CAD courses. Disciplinary records were not considered.

The company lost its credit risk insurance, which affected its ability to trade into the future. In December 2008 they closed the reception area and reduced the warehouse staff numbers. The management board looked at each division and decided on further redundancies in February 2009. In the claimant's division they made the claimant redundant and decided that his director could take over his role. Another employee in the roofing area had flooring knowledge in addition to roofing and he was to cover both areas. Another employee, who was on probation, had indicated to him in January or February 2009 that he had attended an interview with another company and he was confident that he would get the position, but he wouldn't know until the end of February or March. The company hired a flooring specialist on a commission only basis for the Munster area. The employee was let go in February 2010. He was not involved in his recruitment.

The claimant signed the RP50 form. He didn't recall any adverse reaction from the claimant at the meeting. The claimant was not offered the opportunity to appeal.

The director of the roofing division gave evidence that there were three employees in the division, the claimant, a further employee and one employee in the west of Ireland. The lead in time could vary, as they were involved from the design stage. He attended the management meetings but he didn't inform his staff about the details, as he didn't want to scare them. He discussed the need to look for more repair and maintenance lines. He took over the claimant's role. The claimant was asked to cover Donegal until he got cover from the Belfast office.

### **Claimant's Case:**

The claimant was a sales representative in the roofing division. He was an employee for five years. He contended that he was called to a meeting without warning on February 27<sup>th</sup> 2009 and told he was being made redundant. He was very surprised as there were others with less service, including an employee on six months' probation, kept on. There was no discussion regarding a pay cut or the option of alternative positions. After his dismissal he heard that other people were hired. He contended that there were no fair procedures and that the selection criteria were unreasonable and unfairly applied.

**Determination**

It is noted by the Tribunal that the respondent should have abided by its own procedures as set out in the disciplinary procedures and advised the applicant as to his right of appeal from a decision to make him redundant. However this would not have affected the outcome and in all the circumstances of the facts before the Tribunal a genuine redundancy situation existed and the criteria used in selecting the claimant for redundancy was fair.

Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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