EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF: CASE NO.

EMPLOYEE ***-claimant*** UD2243/2009

against

EMPLOYER ***-respondent***
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr J. Goulding
Mr P. Trehy

heard this claim at Dublin on 17th January 2011, 13th June 2011 and 14th June 2011

Representation:

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Claimant: Ms. Rosemary Mallon B.L. instructed by Eversheds O'Donnell Sweeney, Solicitors, One Earlsfort Centre, Earlsfort Terrace, Dublin 2

Respondent: Mr. Padraic Lyons B.L. instructed by Lavelle Coleman, Solicitors, 20 On Hatch, Lower Hatch Street, Dublin 2

Respondent's Case

The Pharmaceutical Services Director (JD) of the Group gave evidence. The respondent is an international pharmaceutical import company. A large company purchased the respondent in 2006 and now it operates as one of many subsidiary companies. At a meeting held on the 9th June 2009 and following other discussions around that time, it was decided that since JD was going to Dublin to view a new leasehold premises that he would also carry out a cost analysis of the respondent company. JD looked at the three cost areas; fixed costs, operational costs and discretionary costs. JD discovered that salaries accounted for in excess of 50% of the costs.

A meeting took place on the 16th of June 2009 with the claimant where the plans for the audit were discussed and his role and activities within the respondent. This meeting was comprehensive and lasted for two hours. JD had similar meetings with other staff members to ascertain if there was any overlapping of activities or the possibility of centralising activities. JD returned to the UK to write his report. The claimant's salary was the highest in the respondent and as such JD concluded that, ' consideration should be given to the position of Managing Director being made redundant.'

At a Board meeting on the 24th of June 2009 the claimant was provided with the report and given the opportunity to consider the report as it contained his proposed redundancy. General issues were also discussed at this meeting. The Directors voted on the proposal 'to consider' the claimant's redundancy not to make his position redundant. The claimant's salary was the only immediate costsaving measure available to the respondent.

In cross-examination he stated that he was the Chief Executive of the respondent. AW was MD of D the parent company. JE was the Finance and IT Director of the M Group. He was never a board member of the respondent. He had responsibility for overall marketing strategy in the group. The claimant's employment ended on the 2nd July 2009. Prior to the termination of the claimant's employment in July 2009 the respondent made a loss for three months. From May 2010 to November 2010 the respondent made a profit. In May 2010 the respondent made a modest profit. Sales increased in 2006. In 2009 the respondent moved to a larger premises. A clear decision wasmade that he would spend two days in Dublin in June 2009. The meeting on the 9th June 2009related to a cost assessment and he did not recall it being a productivity record. It was clear beforehe came to Dublin to meet the claimant that they discussed the cost base of the business and thiswas the reason for the meeting. No discussion took place prior to the meeting. The purpose of themeeting was to look at marketing costs as the trading figures were unsatisfactory. Discussions tookplace around poor performance of trading figures. No discussions regarding potential redundancytook place at the meeting. It was likely that IB (director of the respondent) asked him to the boardmeeting. He was not sure if he had a meeting with IB before he arrived in Dublin. He did notknow why there was no minute of the meeting of the 9th June 2009 and he did not have discussionswith IB before he arrived.

He met with the claimant and his wife, CF on the 16th/17th June 2009 along with DG and MG. The claimant was the MD, DG, sales manager, CF, Administration Manager and MG, operations manager. He obtained the job descriptions from the pay roll. He had no reason to believe that the job descriptions given by the claimant and his wife were in any way inaccurate. The job descriptions that he received were sent to him by the individuals involved. The role of the operations manager and the warehouse manager were not different. He spoke to the claimant on the second day of his visit to Dublin. He spoke to DG in the warehouse. Recruiting for the warehouse would have to be done in consultation with the MD. When asked that he did not consider amalgamating the operations manager and the role of MD he replied it was inappropriate to do so and it was not something that could be recommended. In November 2009 MG was the sales manager and prior to this the respondent had no sales manager. The business operation was done in M and it was absolutely vital that the sales operation should be maintained and sales had to be driven. The claimant visited pharmacies in Leinster and Dublin. There was no possibility of two roles in sales, the sales team had to remain close to the customer. He was asked to make a cost appraisal and to look at the fixed costs and that is what he did. When asked if the claimant did not say that the marketing analysis dept only was to be transferred he replied that the position was that sales were declining and without sales you cannot do business. He could not recall saying that the sales team should improve. Part of his recommendation was to see how he could improve business. It was not for him to identify weaknesses in sales staff. He recommended that the sales team structure should be reviewed.

It was incorrect that the only role he looked at was the MD's role. He agreed he recommended the claimant for redundancy. He did not recommend that the sales team be reduced at this time. It was clear the role of MD was a substantial cost saving to the respondent. He did not consider a pay cut and there was an immediate cost saving to be made. He had spent some time with the claimant and the IMB. He did not discuss the issue of transferring the Regulatory Affairs

Department. When asked if he told the claimant he had formed an opinion that the Regulatory Affairs should be transferred to M or D he replied that the claimant spent 25% of his time on Regulatory affairs and at meetings they discussed regulatory affairs. When asked if he had given the claimant the opportunity go give input or a view that the Regulatory Affairs be transferred to the UK he replied that he had great support from the Regulatory Team. He had given support to the claimant in the IMB.

The key recommendation was that marketing be transferred to the M Head Office. He did not recall what the claimant said but he said it was not workable. He discussed the contents with IB and his report was written at the time in final form. IB received a copy of the report before theclaimant knew. He was requested to undertake the report and was asked to give it to group members. He reported to the groups' chief executive. IB was the chief executive of the M group. When asked if the report of the 24th June 2009 should have been presented to the claimant hereplied that he did not think it should be presented in an abysmal way. It was not an ambush, theclaimant was aware that he was undertaking a cost appraisal of the business. When asked if he wasnot a board member of the respondent he replied he attended a meeting on the 24th June from theoutset. He recalled that the claimant sought time to go away and read the report and he was notrefused this.

The meeting regarding the report lasted for one to one and a half hours. The meeting prior to the report was forty minutes and it took two and a half hours in total. The claimant was given an opportunity if he wanted to take a break. The decision made on the 24th June 2009 was only to consider the recommendation to make him redundant and not actually to make him redundant.. IB stated that a decision had to be made that day. IB had spoken to AW who was in favour of hisreport being considered. IB conducted the meeting on the 24th June 2009 with great care. He didnot recall the claimant said that his clear understanding that a vote was taken to make the claimant'sposition redundant. The element of cost was looked at. When he was asked if he recommended theredundancy because of the price the claimant cost he replied yes that was part of it.

In re-examination he stated that he did not regard his actions as an ambush. His proposals regarding sales were that it should be reviewed. Telesales was a quicker way of contacting a group of customers.

In answer to questions from the Tribunal when asked what did he bring to the group he replied his two main areas were regulatory affairs and he had a speciality in pharmaceutical marketing and looked at business performance. He was the main director of the M group and he looked at performance and marketing in general and the performance of the business. He would advise the other company if necessary and do cost analysis. In certain circumstances it was experience. When he returned on Monday he met with IB and they went through his report. He allowed IB to ask questions and possibly to look at other options and the potential restructuring of the business. His report recommended specific other areas and what may happen in the future. The MD role could be split across the group and that was his strong recommendation. He had considered other options and that the cost of MD's salary be dispersed across the group. He had not looked at other detail, as it required further consideration. He needed everyone to look at sales efficiencies. He did not have sufficient knowledge to decide on the outcome.

IB told the Tribunal that he was director of the respondent and group director in M. D owned the respondent, which was a subsidiary of the M group. There was a temporary dip in figures in six to nine months in the group's performance sales in the respondent. There was much more competition

in the UK and the respondent was at a much lower level of profit. Where there are high margins more competitors will arrive. This was not unexpected, it was long term. The respondent made a profit in January, February, and March 2009. The respondent faced more competition and long-term change. The financial effect of competition become apparent, there was clearly a long-term dip and this was recognised at the time. At the meeting on 9th June 2009 the claimanthad obtained quotations on behalf of the respondent and he told him not to go ahead before themeeting in Salford so they could look at ways of prioritising cost margins.

The MD (claimant) had full knowledge of the business and his discussions in June 2009 reflected the problem. The clamant was informed that the respondent was going to specifically address the sums of money. He understood that they had very wide discussions on cost base of the business and he may have used the word productivity. They were looking for ideas to continue in business.
On the 22nd June 2009 he spoke to JD at length and they discussed JD's conclusions and recommendations; it was a serious issue and a delicate one to consider. They recognised how difficult it was for the claimant. JD explained that roles would need to be reallocated with somechanges in the structures but without disturbing the local element. The warehouse had to be in Ireland and other issues were the Regulatory Affairs and day-to-day management of managers. They clearly saw an increase in the telesales function. They took on board JD's points and therewas some issue regarding quality and they were endeavouring to increase market share. He did notsee the sense in reducing sales, redundancy in sales did not replace what that needed to be done inthe warehouse.

He discussed the matter with AW, board member. It only seemed fair to explain the situation to the claimant. AW was not available for the meeting. He did not understand what difference it made if he disagreed and they would have to consider a different view. The purpose of the discussion with the claimant was to establish if the claimant had some alternatives. He was certain at the meeting that everything was explained to the claimant and the claimant's central function was to give information. At the meeting on 24 th June 2009 there were four items for discussion. The respondent sustained varying losses and he discussed with the claimant day-to-day business. He was happy that the claimant should read the report. He was aware that the claimant may not wantto go back to work and take time off. The claimant's preference was not to go into work. This wasa potential redundancy. The purpose of the vote was to accept the claimant's position. They covered everything they could. The respondent tried to be fair and reasonable. He told the claimant to read the report now but that was taking words out of context. The meeting was not anambush. The vote was not a vote to make the claimant redundant, it was potentially a stepping-stone. It was a matter, which could lead to redundancy.

Turnover was fluctuating and some products were sold at a reduced rate. There was no distribution within the M group. Some matters needed to be rectified. The regulatory element was one of the roles undertaken by the claimant. The sales manager was a key role and this was a business under pressure and it was essential to find alternative restructuring in the group. The claimant recognised a drop in profit was a temporary measure. He could reduce the price in the market place but he could not find any alternative for the claimant. On the 30th June 2009 the meeting in Dublin took two and a half hours. He did not make suggestions to the claimant regarding his salary/position on the 30th June 2009. He felt that the claimant was adequately involved at the meetings on the 24th and 30th June. At the meeting on 30th June there were very few suggestions about a reduced salary and no other alternative. Reducing a sales person by one would be the wrong response and it would lead to further decline. The respondent needed all its sales personnel and telesales in the UK was important. The claimant was not happy with the way matters were progressing.

In a letter to the claimant dated 16th July 2009 he indicated that the respondent was in no position on the 9th June 2009 to suggest that his position would become redundant, as they still had to formulate JD's conclusion and JD has to discuss the matter with him. At the board meeting on the 24th June 2009 he was open to other alternatives and it was entirely up to the claimant. The meeting arranged for the 8th July 2009 did not take place as the claimant decided he did not want to attend the meeting. The meeting was rescheduled for the 15th July 2009. The claimant decided that he did not want do discuss salary. He sent a letter to the claimant dated 2nd July 2009 regarding the meeting held on the previous Tuesday. At the end of the meeting on 30th June 2009 the decision was made to make the claimant redundant and this was confirmed on the 2nd July 2009. The respondent made a loss in 2010. and the claimant was not entitled to a bonus that year. If the claimant's contract terminated he retained all his entitlements except the respondent vehicle.

In cross-examination he stated that the respondent now employs twenty-five. No one else was made redundant after the claimant was made redundant. The respondent has increased its employees by ten. Between July 2009 and December 2009 three employees were taken on, a van driver, a tele sales and a warehouse employee. Ten were taken on as the business was growing in terms of the number of customers and product sold. The price of product had decreased, the respondent had less profit and it had to reduce its own costs. The meeting that took place on the 9th June 2009 was not a board meeting, it was an ordinary meeting. JD was to look at costs and this could lead to a change in staffing. At the meeting on the 9th June 2009 no one mentioned the possibility of JD looking at redundancy or staff reduction. The meeting on 9th June was about cost analysis. The reason JD was there was to look at costs.. The term productivity could have been mentioned. The meeting they had was based on poor performance. There were no minutes taken as only board meetings were documented. When JD returned form Dublin he discussed it with him on the 22nd June. There was no need to change what JD had done. It was his final report to him. He was absolutely positive that he did not have a discussion with JD prior to the meeting of 22nd June. JD reported to him. If he disagreed with JD's recommendations the report prior to the board meeting on 24 June may or not have been different. He agreed with JD's conclusion. When asked if the entire board should be present he replied that he did not think so and it was not the way they worked.

When asked in relation to the report that JD gave him on the 22nd June 2009 and the proposal to transfer the claimant's function to the UK he replied that is where there was a capacity. When asked why it was not documented he replied the report was for internal purposes. There was no alternative but to make the claimant's position redundant and they had a board meeting to establishif there was any alternative. The claimant was well rewarded and the respondent did not think thatto get rid of sales staff was the way to go. AW knew that the board meeting had been arranged. AW was invited to the board meeting after the 9th June 2009 but was on adoptive leave. He spoketo AW most days. Regarding the claimant's redundancy it did possibly go through the board. The decision to make the claimant redundant was done by JE, AW and the witness after they had ameeting on the 30th June 2009. They had exhausted the process. AW, JE and the witness had afurther meeting after the 8th July 2009. The claimant was reluctant to agree to a meeting on the 8thJuly 2009 and they had a lengthy discussion without the claimant being present.

There was a virus on the claimant's computer on the 25th June. The claimant's wife could access her PC but she was not on the same system as the claimant. The claimant was the only person on the system and he believed the claimant accessed his computer later that day. The claimant had as long as he wanted to read the first page of the report, which were the conclusions. He agreed that

the claimant asked about making one field service person redundant and increasing one telesales but he did not agree with the proposal. The respondent could not tell him face to face what was inthe report of the 24th June as it was a caring employer, and it was done for his benefit. In any eventhe would only need to read the last half page of the report or just its conclusions. At that stage JDdid not consider pay cuts. He had a wide-ranging discussion with the claimant on the 24th June2009. The minutes were written after the meeting. He was under an obligation to offer him aposition and he was offered the position in the marketing group in the UK. He could not recall ifhe said this to the claimant. He did not say to the claimant to open a coffee shop. There wereprocesses in place for potential redundancies. When asked that there was not a proper discussionwith the claimant about a reduction in salary he replied that they did discuss it but did not achieveobjectives. He did not want to make a sales person redundant. Nothing the claimant said madeany sense to him.

Claimant's Case

The claimant told the Tribunal that he established the respondent in 2004 and in February 2006 he sold his company to the M group. He was retained in an MD role. His rates of pay altered over time. In addition to his salary he was paid 10% of the audited pre tax profits of the respondent. The respondent would pay him a pension of 7% of gross salary provided that he paid 3%. Clause 7 of his contract put a restriction on employment in that if his employment were to terminate with the respondent that he would not engage in similar work for the period of one year. When he was made redundant he decided to establish a business on his own. He outlined his extensive experience in the pharmaceutical industry prior to selling his company to the M Group. From February 2006 to November 2008 the respondent had three to four employees. When his employment terminated sixteen to seventeen were employed.

He attended a meeting on the 9th June 2009. Present at the meeting were JE, IB and the claimant. AW was not at the meeting. JD came in at the end of the meeting. GN was commissioned to do marketing work, design, business cards, letters and he was on a retainer. IB told him that he did not want GN and the claimant felt that he was needed to do this work. Nothing was mentioned to him about costs. As far as he was concerned it was a type of productivity assessment of the respondent company, and it was agreed that he would accompany JD during this assessment but that did not happen. He was not included in the interviews conducted by JD except for one interview with the sales manager where he was allowed to stay for a short while. He was effectively sidelined. JD came to the room and told him that IB needed to do an audit on productivity in the respondent. There was no mention of lay off of staff at the meeting and there was no indication that the trading figures were unsatisfactory. He met JD in Dublin and had a meeting with IMB that morning. He was not a party to the interview by the respondent with his wife, CF and MG. He was present for discussion with DG. JD did not consider the possibility of making his role redundant. Before JD went to get his flight he came to his office. The claimant was looking at a financial report and he said maybe we should consider making redundancies. He told JD that it was something he was considering and it was in the back of his mind. His wife CF was finance manager of the respondent. She was not staff administrator. There was no sense to have marketing in Ireland transferred to another jurisdiction. He never said that market and marketing analysis was an immediate area for transfer. MG was warehouse manager and not operations manager. All staff recruitment had to come through him, he was responsible for that. It was very important that the product coming to the warehouse was the correct licensed stock. He had no knowledge of regulatory affairs.

On the 24th June 2009 he had absolutely no idea of the content of the report. His recollection of

the meeting in the UK on the 24th June 2009 was that he was in a room he knew something was wrong, as the seating arrangements were different than previously. IB and JE came to the room and five items were on the agenda. The first item was accounts. Points two and three went back and forwards and a long discussion took place about the pharmaceutical market in Ireland at the time. Points one, two and three were finalised and JD came to the room and he was not there for the discussion of the first two points. He came to the room before item four was discussed which was JD's report described on the Agenda as "John's Report". IB passed the report to him and he recommended that he be made redundant. The claimant was horrified and flabbergasted and he felt embarrassed and humiliated. He could not believe it. He told IB that he needed to look at the report. IB told him to read it now. He was not going to be given any opportunity to take the report away with him. He was the MD of the respondent and had brought the respondent to its current position. He was disgusted and he protested to IB and JE. He asked if they had looked at any alternative or a pay reduction. Each time he mentioned this he was shot down. IB and JE put up their hands and he was redundant and he had no illusion about that. He suggested over twenty minutes had they look at a pay cut. After the vote was taken he again said the same thing but he could see it was futile. After the vote IB told him that he was redundant.

He had previously been made redundant. IB asked him if he was ever made redundant before and he responded yes. JE told him she was previously made redundant and JD was never made redundant. IB knew he was involved in setting up a business. He had looked at the hospitality sector and he remembered saying that to IB glibly. IB told him he might like to get involved in a coffee shop. IB told him that there was a sales position in UK but he told him he was not in a position to comment on that IB told him at the meeting that they had to follow procedure, this was after the meeting. IB told him they would meet the next day and he told him that he was flying back to Dublin the next day. He was informed that he may want to take time off. The respondent was doing well, the claimant was in a small office in the warehouse. If they were going to talk to the claimant or his staff did IB expect him to be there. The claimant returned to Dublin on the 24th June 2009.

On the 25th June 2009 he could not gain access to anything on his PC and his password would not work. His wife's password worked. On 30th June he met with IB and AW in a Dublin hotel. He did not accept that he was being made redundant. He raised reduction in salary and he felt it was a fait accompli. After he left the meeting IB told him that he was redundant.

He spent five months from June 2009 to November 2009 trying to get his entitlement from the M Group. He had invested in the respondent to establish it. Part of his redundancy was that M would repay him money and he was trying to get it back. As he was terminated abysmally some of his money was still in the accounts. He was deprived of his livelihood and the business he knew and he is on the wrong side of fifty. In the private pharmaceutical industry there were a lot of constraints and jobs were cut. His plan was to see if he could go into the same business. A friend GN approached him in December 2009 and asked him if he would like to get involved in a business but he could not do so due to the non-compete clause in his contract. He knew once the non-compete clause had expired he could get a job and he went into partnership with GN. It will take him two to three years to break even. He earns a salary of €50,000 per annum and he is a shareholder in this company. From April 2008 to March 2009 his overall earnings with the respondent were €245.895.00.

In cross-examination he stated that at the meeting on the 9th June 2009 many items were discussed including the products they coded and the effect it had on business. GN proposed to do some

design work and this was not acceptable to IB. IB recommended a productivity audit and now they would get more out of employees. He agreed that specifics were spelt out to him at the meeting. JD was going to meet each member of staff to discuss their job specifications. At the meeting on 9th June 2009 there was a discussion on how employees could do their job better. He welcomed the fact that there would be savings for design costs. The respondent was trading unsatisfactorily at the time. There was a serious downturn in the business.

At the meeting on the 24th June 2009 he stated that there was stock sitting in the company in D. He accepted that the margin was low on the drug Lipotir. If you had this drug in stock you could sell other drugs, which made it more profitable. He did not have Lipotir in stock and others did and it was not possible for him to sell possible stock. If he did not have stock there was going to be a decline in figures. He did not accept that changes had to made in the business the same as industry. He thought on 9th June 2009 that one of the sales staff being made redundant might be warranted. He stated that redundancy may possibly be on the agenda. He did not discuss with the respondent a potential redundancy. He never said that it should not be his job that was made redundant. He did not disagree in JD's final report that he suggested that one of the field sales staff be made redundant and telesales should be increased. Business was expanding and the respondent needed to put more effort into telesales. The licensing of the product was always done in the UK. His redundancy made no sense for the respondent and it was a bad idea for him. IB and JD lacked information in terms of the job he undertook. At the meeting on the 24th June 2009 he did explain that five hundred pharmacies had closed. One third of the market drugs were being dispensed to hospitals and pharmacies would not dispense the drugs as it had a major difference with the HSE. The drugs were not being bought from a parallel import company but were being bought from a main manufacturer. He did not get time to mention this at the meeting on the 24th June 2009 and he did not mention it at the meeting on the 30th June 2009. Prior to the vote on the 24th June when he tried to offer an alternative he was shot down and there was no doubt in his mind that he was made redundant. Apart from protesting about not being able to read the report had they looked at cutting costs IB was not interested and he told him he had to go through the process. He wanted the claimant to go through proposals and after he saw the proposals he was made redundant.

He tried to read the report on the 24th June 2009 and he tried to see if there was an alternative he was told to read the report now. He asked if they thought about a pay reduction. The pay cut he had in mind was thirty to fifty percent. If he had remained with the respondent he would have made a profit and turned it around. He would have increased the customers, undertaken more targeted sales and taken on telesales employees to target customers. He never had a full discussion with IB about this. IB was not going to give him an option, as he was told that his flight was booked the following day to come to Dublin.

He is in partnership with GN. GN worked in the USA for many years and established companies there. He knew GN for over thirty years. He was shocked at what happened and he had to fight for his money. When asked about his endeavours to gain employment from June 2009 to February 2010 he replied that the economy had catapulted and jobs were not there. He saw his job with company MT the way forward.

Determination

The decision of the meeting of the 9th June 2009 that JD would carry out an audit/inspection of some sort, of the respondent was only taken as an afterthought, and this indicates that there was little thought or preparation put into it.

There was a difference between the parties as to the type of audit/inspection that was to be carried out by JD and we feel in the circumstances that the claimant was misled as to the real reason for the interviews, carried out by JD.

Contrary to what was agreed or understood during those interviews between JD and senior personnel the claimant was sidelined and was not allowed to take part or be included as they were taking place except during one interview with the sales manager, where he was allowed to stay on for a short while. This was very serious given that he was the managing director of the company concerned.

There was no knowledge or information concerning JD's report given beforehand to the claimant as managing director of the respondent and given that the report had serious implications for the claimant, this was a very serious matter. We do not accept the contention by the respondent thatthis knowledge and information was deliberately withheld until the meeting of the 24th June 2009was done for the benefit of the claimant.

We feel that the main recommendation of JDs report was sprung on the claimant at the meeting of the 24th of June 2009 where it was listed as the fourth item on the agenda under the heading "John's Report".

We do not accept the contention of the respondent that the decision made at the meeting of the 24th June 2009 (as denoted by the unsigned minutes and other evidence) and the discussions at the meeting of the 30th of June 2009 was a mere step or steps towards the redundancy of the claimant and that no redundancy or decision to make the claimant redundant had actually been made. We believe under the circumstances that the decision was already made after the report was submitted by JD to IB. The meetings of the 24th and 30th of June, 2009 were really implementing a decision that had already been made, coupled with "small-talk".

The fact that the claimant was told later on that the tickets had already been booked by IB and others to come over to Dublin, if he chose not to come back for further discussion in the interim, was an indication that the decision had already been made.

We accept the contention of the claimant that he was horrified, flabbergasted, embarrassed and humiliated by the whole sequence of events and the manner in which he was treated, especially allowing for the fact that he set up the original company and was its present managing director

In the circumstances we this Tribunal feel that there was no adequate or fair procedures afforded to the claimant in dealing with this matter, and that the respondent's conduct was both unfair and unreasonable, that the procedures adopted by the respondent were not transparent, objective, or fair, and that the respondent acted unreasonably in that, in particular:

(a) There was no reasonable time given to the claimant to read or study such a vital report, which had obviously very serious implications for him, but that notwithstanding that, when he received the report we believed that the decision had already been made to make him redundant.

(b) That while there appeared to be a situation existing within the respondent where some cost-cutting measures were needed, including possibly the redundancy of staff, nevertheless there was no adequate or reasonable consideration given to other cost cutting measures, apart from the redundancy of the claimant who was the managing director of the company concerned.

(c) That there was no opportunity or realistic opportunity for the claimant, or for the claimant in conjunction with other senior personnel of the respondent to become involved in considering other cost-cutting alternatives, or to have any meaningful discussions, dialogue or consultation with the respondent on other cost-cutting alternatives.

(d) That the response of IB that the claimant would only need to read the last half page of the 4/5 page report or he would only need to read its conclusions was totally unreasonable and unfair.

(e) That the claimant was severely shocked, embarrassed and humiliated by the respondent in this matter and suffered loss, damage, inconvenience and expense.

Section 6 (7) of the Unfair Dismissals Act 1977 as substituted by Section 5(b) (a) and (b) of the Unfair Dismissals (Amendment) Act 1993, states that:

"Without prejudice to the generality of subsection (1) of this section, in determining if a dismissal is an unfair dismissal, regard may be had, if the rights commissioner, the Tribunal, or the Circuit Court, as the case may be, considers it appropriate to do so:

(a) to the reasonableness or otherwise of the conduct (whether by act or mission) of the employer in relation to the dismissal, and

(b) to the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in Section 14(1) of this Act or with the provisions of any code of practice referred in paragraph (d) (inserted by the Unfair Dismissals (Amendment) Act, 1993) of Section 7(2) of this Act."

Having regard to all the circumstances and evidence adduced in this case and taking into consideration the comprehensive submissions, case law, and statute law put forward by the legal representatives of each respective party.

We are of the view that the claimant was unfairly selected for redundancy, and as such was unfairly dismissed and that the respondent has not discharged the onus that the claimant was fairly dismissed.

Having considered all of the remedies available under the Act, this Tribunal is of the view that the most appropriate remedy in the circumstances of this case is, compensation.

Accordingly we award the sum of €295,000.00 in compensation to the claimant against the respondent under the Unfair Dismissals Act, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)