EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	**CASE NO.**
EMPLOYEE - *claimant*	UD2192/2009

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. Clancy

Members: Mr G. Andrews
Ms H. Henry

heard this claim at Limerick on 11th May 2011

Representation:

Claimant: In person

Respondent: Ms Muireann McEnery Peninsula Business Services (Ireland) Limited, Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

Respondents case.

A founding director of the company gave direct sworn evidence. The architectural company was established in 1983, they opened a branch in Dublin in 1995 and in Newry in 2009.

In 2008 contracts started to vanish, a large contract they had lined up with a local authority was cancelled. To address this drop in income the directors of the company in January 2008 stopped paying in to their pensions. In April 2008 the directors took a 33% pay cut. Their profit was declining, in 2007 it was €80,000.00 and in 2008 they made a loss of €580,000.00, they injected more money in to the business which resulted in a loss of €250,000.00 in 2009 and in 2010 the company broke even.

As a result of these cost-cutting measures, all employee salaries were reduced by 15% in September 2008. At this stage they were struggling to hold on to their core staff. At the beginning of 2009 they started the process of selecting staff for redundancies and drew up a matrix for this purpose.

On the 19th February 2009, they met with the claimant and explained to him their lack of work and

their high costs of overheads. They also tabled the matrix to be used at this meeting and had decided on how to weight this matrix. This "weighting" document was produced in to evidence, employee were to be scored on a rating of 1 to 5.

Each director of the company were requested to complete the matrix individually and submit them. The total of these individually scored matrix resulted in the final matrix for the claimant. This matrix was given to the claimant on the 25th February 2009. The claimant fell down on two aspects of the skills scored, "Education/Qualifications/Training" and "Versatility/Flexibility". The witness explained that when one submits for a tender to local authorities, marks are awarded for the qualifications their employees have, these are based on the RIAI standards.

The claimant had received his qualifications from the LIT but then LIT had amalgamated quantity surveying, engineering with architect technician, so even though the claimant had up-skilled in other areas, this affected the RIAI's recognition of the claimant's qualification; they would now require an interview and examination. The respondent sought a waiver from the RIAI for the claimant but under new regulations, he needed to take a new examination. The witness spoke to the claimant about this and gave him sample papers from the RIAI but the claimant declined to do an interview or an examination. Therefore, when the respondent were submitting a tender to a local authority they would have to put another employee's name or drop points if they submitted the claimant's name.

The witness had tried to persuade the claimant to take the RIAI exam. Other employees did not have to do exam as they had qualified in Cork. While the claimant had upskilled he was not registered with the RIAI. The witness stated the claimant was very good on big projects and good technically.

The individual matrixes scored by the directors were produced in to evidence. The two other technicians the claimant was compared to are included on these, DM and SC. All three technicians were scored out of a maximum of five for each skill. This witness referred to the matrix he completed and explained his reasoning for the claimant's scores.

For "Education/Qualifications/Training" the claimant received 2.5 while DM and SC scored 2.5 and 3 respectively. The reason for this score was because the claimant was strong in his views and resistant to change. Under "Co-operation" the claimant was scored 2.5 and DM and SC scored 3 and 4.25 respectively, this result was because they had difficulty in bringing the claimant around he always thought his way was the better way. Under "Self-Motivation" the claimant scored lower that his two colleagues, this is because the claimant sometimes relied on others to make decisions. It was the claimant's education and flexibility that led to him being made redundant. Five other employees were made redundant at the same time as the claimant and the same criteria were used in all these cases.

On the 18th June 2009 the claimant's solicitors wrote to the respondent raising the fact that another architectural assistant was now working for them. The witness explained that this was a junior technician on leave from college and he worked for them from June to September that year on a temporary basis. This junior technician's salary was equivalent to €15,000.00 per year while the claimant's salary had been €80,000.00.

The respondent had never used the criteria of "LIFO" before when making redundancies and gave an example of an employee (A) who was recruited in 1996 and her sister (B) joined the company five years later. When the redundancies were being made it was A who was let go. They had

negotiated and consulted with claimant in respect of his redundancy and it was the positions made redundant not the individual people.

He was referred to the claimant's book of documents and answered a number of queries raised in this. The respondent had decided to open the Newry office after they had instigated the pay cuts, as an architect who was a former employee of theirs had moved here. She had telephoned them saying there was an opportunity in Newry for them as there were no other private architect company in the town doing the work they were doing. They decided to seize this opportunity andemployed the former architect to run same. They also re-recruited a Dublin-based architect that they had previously let go. The business in Newry was different; one architect was on a salary of€40,000.00 while the other was on €20,000.00. SC, one of the claimant's comparables, is based inDublin and was on a three-day week, he has only gone back fulltime this year. They are constantlyreviewing their business and each entity has to stand on their own.

This witness disputed that the RIAI exams only happened every two years, as it was his understanding they happen every year. The time of the redundancies was a most painful time; the witness had known the claimant along time and would have liked him to continue working for them. However not having him RIAI qualified was a handicap for them.

Under cross-examination, the witness reiterated that he had given the claimant the RIAI papers and he had told the claimant to take a look at them and the claimaint had brought them back in the following Monday and told the witness he did not want to do them.

The staff had no input in drawing up the matrix they gave them the results and informed them as to how the scores were calculated. DM had joined the company in 2004.

In respect of the claimant's inflexibility, on one occasion they participated in a training management up-skilling course, as part of this each employee had to look their roles to see how they could perform it better. Part of this was a personality analysis but the claimant did not think it was relevant. The different scoring on the matrix in respect of qualifications went back to how the local authorities scored for each tender, the respondent have to insert the specific qualifications of their employees on these tenders. When they had made submissions about this they were informed it would be better if they put a member of the RIAI on these. Not putting an RIAI member on a tender would result in their scoring being down-graded. The claimants qualification from LIT is not recognised. In 2006 they had 30 employees currently they have 11. A senior architect, the claimant and two administrative staff were made redundant.

When making the redundancies they looked at the functions they would require for the future. The claimant had the longest service so they were also looking at costs at this stage going forward. The claimant was on the highest salary in the office.

The claimant had been resistant to the 15% pay cut. Voluntary redundancy was discussed but nobody wanted to take it up. It was not possible to redeploy the claimant to Dublin or Newry all staff in Dublin were on a three-day week at this stage. DM was employed since 2004 and SC since 1995 both are now back working full time.

Claimant's Case

The claimant gave direct sworn evidence. He commenced employment with the respondent in 1990 and was made redundant on the 13th March 2009. At the time of his redundancy there were four architectural technicians employed by the respondent, including himself, all doing the same work. He produced drawings and received a letter informing his of the risk of redundancy. DM was also an architectural technician who also worked on site, received a letter regarding risk of redundancy. SC was a senior technician and received a letter regarding the risk of a three-day week. HK was scored as an architect even though she was a technician, she received a letter regarding the risk of a three-day week. One of the Dublin technicians was assessed as an architect that took him out of the selection process. The claimant felt his redundancy was pre determined and it was not a fair process.

In respect of the 15% pay cut, he had asked if they would be working a shorter day and was told that it was a temporary pay cut. He felt that they should have discussed this issue with employees individually. There had been previous redundancies in Dublin were "LIFO" was used; an architect and two CAD (computer aided design) were let go.

The first time he was aware that he could have appealed the decision to make him redundant was when his solicitor received a letter from the respondent in June 2009. There had been no mention of an appeal procedure at the time of his redundancy.

During his time with the respondent he would have administered projects but he was not a "project manager", this was in reference to a respondent document stating that they had no need for project managers.

He produced in to evidence an organisational chart and a proposed organisational chart with a screen shot showing these two documents were modified on the 17th February 2009. In the organisational chart he is named and in the proposed organisational chart he is not named.

He had received his qualifications in 1983 as a standard technician and has also got AutoCAD. He had ten years more experience that the next technician, but, they had scored them equally for length of service and experience.

He had always delivered his jobs on time; he had a good quality of work where the respondent had him checking junior staff work. The pressure he was under when working didn't allow him the time to adapt to changes. He never received any complaints in relation to his work. When he had time, he kept up with the changes to the building regulations. He had set up the CAD system for both offices.

He abided to all instructions in relation to his job. An example of where there was a clash with the respondent was in relation to health and safety on jobs for which he was responsible, it was his job to check the health and safety assessment in accordance with legal obligations and he felt the respondent did not treat this with the same seriousness as he did.

He had worked previously with the student taken on by the respondent after having made the claimant redundant in 2008, and the claimant maintained that the student would have been qualified when he went back to work for the respondent.

Under cross-examination he confirmed he was not a member of the RIAI but that the most

important thing was that the respondent was RIAI registered. He was referred to a document "Procurement Process for Consultancy Services" which states "there is a qualification assessment before tenders are evaluated"; he had been involved in doing submissions. He was informed that HK was a qualified architect and a technologist, she had studied in Germany and was required to do a technician course to achieve her architect's qualification. The claimant commented that he had never worked with HK.

He assumed that LIFO had been applied in Dublin for redundancies previously as A was the last architect employed there and she had been let go. He accepted that he and his comparables were not referred to as project managers on the matrix. He accepted that LIFO was not used in determining his redundancy. He could not recall seeing the matrix at the first consultation meeting. It was not highlighted to him at any stage that he could propose any changes to the matrix. He had printed down the organisation charts from the respondent public folder on their computer system. The cash flow projection, a copy of which he had acquired was headed "Option A" and the respondent's representative put it to him there were other cash flow projections in existence. He could not comment on that, he had picked up Option A at the photocopier. He could not recall the director making representations on his behalf to the RIAI and he had decided that he was going to acquire the Chartered Institute of Technologists accreditation. He could not accept that the former student was only employed for the summer of 2009, as he had not been present in the office at this time.

At the time of the pay cuts he had raised the issue as to why they were not being placed on a three-day week instead of the pay cut, the respondent's director had informed him that they had their image to think of. He was not aware of how his FAS qualification in CAD ranked. He confirmed he had a third level qualification in architect technician from LIT. He was not aware that his name had been excluded from tender documents because he was not a member of RIAI, as he was not involved in the tendering process. Once in November 2008 the respondent's witness had brought up the matter that they had only received 2 out of 7 in technical scoring was because he did not have RIAI. While working with the respondents 60% of his time was spent on public contracts.

He gave evidence of loss.

In reply to questions from the Tribunal he outlined that the redundancy was carried out unfairly, he thought it came down to cost and as he was the most expensive technician the process was unfairly weighted against him. The respondent did name employees on their tender documents but also said if things had arisen names may be substituted.

Determination

The Tribunal carefully considered the evidence adduced at the hearing and the documentation submitted. The Tribunal accept that a genuine redundancy situation existed. The criteria for the matrixes, which resulted in the claimant's selection for redundancy, were inconsistently scored. There was no appeal mechanism in place for the claimant to utilise.

The Tribunal finds that the claimant was unfairly selected for redundancy therefore his claim under the Unfair Dismissals Act 1977 to 2005 succeeds and accordingly we award the claimant the sum of €45,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)