

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

1) EMPLOYEE - *claimant*

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2) EMPLOYEE – *claimant*

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3) EMPLOYEE – *claimant*

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4) EMPLOYEE – *claimant*

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5) EMPLOYEE - *claimant*

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6) EMPLOYEE – *claimant*

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7) EMPLOYEE - *claimant*

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8) EMPLOYEE - *claimant*

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9) EMPLOYEE – *claimant*

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10) EMPLOYEE - *claimant*

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11) EMPLOYEE - *claimant*

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12) EMPLOYEE – *claimant*

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13) EMPLOYEE - *claimant*

&

14) EMPLOYEE - *claimant*

CASE NO.

UD1805/2009
MN1823/2011

UD1868/2009
MN1830/2011

UD1869/2009
MN1820/2011

UD1865/2009
MN1827/2011

UD2155/2009
MN1833/2011

UD1803/2009
MN1821/2011

UD1870/2009
MN1831/2011

UD1867/2009
MN1829/2011

UD2106/2009
MN1832/2011

UD1804/2009
MN1822/2011

UD1807/2009
MN1825/2011

UD1808/2009
MN1826/2011

UD1866/2009
MN1828/2011

UD1806/2009
MN1824/2011

Against

EMPLOYER – *respondent*

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P O'Leary BL

Members: Mr A O'Mara
Mr O Nulty

heard this claim at Monaghan on 8th March 2011, 18th May 2011, 19th May 2011 and 30th August 2011

Representation:

Claimant(s): Mr Peter Leonard BL, instructed by:
Mr Padraig Murphy
Solicitor
54 South William Street, Dublin 2

Respondent(s): Mr John Barry
Managing Director, Management Support Services
D'Olier Chambers, D'Olier Street, Dublin 2

The determination of the Tribunal was as follows:-

Background:

The claimants' representative outlined that this was a case of constructive dismissal taken by the 14 claimants. The claimants all accepted a voluntary redundancy package, but considered that they had been forced to accept it due to the behaviour of management over a period of time. The respondent company makes beef products.

Claimant's Case:

The first named claimant gave evidence that his employment as a maintenance technician began in April 1989. His role was to oversee the machines and to carry out servicing at weekends. The employment was uneventful until the managing director's son took over as the maintenance supervisor. He started nit picking at the claimant's work. He stood behind the claimant while he worked on a machine.

In July or August 2008 the company made an offer of a voluntary redundancy package, which was statutory redundancy plus two weeks per year of service. He knew that the company had lost a major contract. The claimant put his name forward for redundancy. He later heard from his trade union representative that the company had withdrawn the offer of the two weeks ex-gratia payment. He did not know why. He believed it was because the company saw how many people wanted to take it. He then intended to continue working.

The atmosphere had changed in the last 12-18 months and it was no longer a nice place to work. The MD's son would call him into the office and tell him how to do things. If he had done something wrong he would receive a 'coaching note'. He received many coaching notes in 2008 where he had previously received very few. He had to fill in timesheets for the jobs he did. A coaching note could lead to disciplinary proceedings. He was told that his work had deteriorated and that it wasn't acceptable. He received a written warning on August 14th 2008 over the servicing of a machine. He received a coaching note on August 1st 2008 for clocking out after disrobing rather than before disrobing. He had gone to the bathroom to use the toilet at 15.24 and had disrobed. He did not put on his protective clothing again before going to clock out at 15.30.

The claimant became very stressed at work and believed that the company did not want him anymore. The claimant went on sick leave from January 2009 due to work related stress. The claimant remained on sick leave until the statutory redundancy was paid. He was paid an ex-gratia payment of €600 in addition to his statutory redundancy of €24,000.

During cross-examination he stated that he could not recall receiving coaching notes prior to 2007. He agreed that he was required to follow service procedures and he believed that he did so. He received a warning for not following the procedures, but he disagreed with this. He did not appeal as he felt it would not make any difference. Regarding clocking out he was aware that he was supposed to disrobe after clocking out.

He was aware that there were productivity discussions in conjunction with the redundancy negotiations and that unless the discussions were concluded by September 30th 2008 the enhanced redundancy offer would be withdrawn. The discussions were not concluded and the offer was withdrawn.

He was aware that the company had introduced 'lean manufacturing' to improve productivity. He did not find the new standards difficult but he found the way it was put intimidating. He was aware of the grievance procedure but he had not invoked it. He spoke to his trade union representative about his difficulties. He did not speak to the trade union representative on his own, but as a part of a group. He thought the trade union representative had spoken to the company. He felt that once the enhanced redundancy offer was withdrawn management began to harass and intimidate him. He was aware of the bullying and harassment policy and how to go about making a complaint. He did not know the names of the nominated individuals employees could go to. He did not know his shop steward was one and he did not go to her. He received three coaching notes on January 14th 2009. He was aware that other employees received coaching notes.

He understood that the company and the trade union agreed on ex-gratia payments of €600, €800 and €1000 based on service. He wrote to the company on February 23rd 2009 to apply for redundancy as he had had enough and wanted to move on. The trade union representative told them to write to the company if they wanted to accept the redundancy payment. He was unhappy and it was affecting his health. He did not notify the company that their treatment of him had caused his illness as he felt it would be a waste of time. His sick certificates stated work related stress. He was aware that it was a different redundancy package when he applied for it. He did not know that the ex-gratia payment was €600. He found out before signing the form.

After hearing the first claimant's evidence the Tribunal decided to hear the respondent's case before hearing from the rest of the claimants.

Respondent's Case:

The trade union representative gave evidence that he represented the union's members at the company from 1999 until 2010. The company advised him that they had lost a major contract in 2007. The company operated a significant amount of short time from 2007 on. The company indicated that in order to maintain and create business it had to increase its competitiveness and they required flexibility for that. He held a meeting and brought back expressions of interest for voluntary redundancy. Employees were split into groups A and B based on whether they wanted to stay or go.

They agreed a redundancy package of statutory redundancy plus two weeks ex-gratia per year of service through talks at the Labour Relations Commission. The offer was dependent on the remaining employees agreeing to a change in work practices. They could not reach an agreement with the remaining workers and he was notified of the withdrawal of the redundancy package offer on October 2nd 2008.

Short-time working continued to be a problem and it looked like temporary lay-off may become a feature into 2009. Members were interested in a voluntary redundancy package and so he endeavoured to negotiate a new package. The company offered statutory redundancy plus €600, €800 or €1,000 depending on service. He made a counter proposal but the company refused. He instructed staff at a general meeting that they should write to the company if they were interested.

The first claimant had not indicated to him directly that management was bullying him. He referred to it at general meetings about the frequency of the coaching notes and the general attitude of management. There was more scrutiny of his work. He did not make a complaint on the claimant's behalf. More coaching notes were issued to staff from the mid 2000s on.

During cross-examination he stated that the company needed to reduce numbers as they had lost a major contract. The trade union wanted to maximise the work available to its members. Approximately 23 employees expressed an interest in the voluntary package. Significant changes were sought from the remaining employees in relation to shifts and four-day weeks. Their incentive was more hours.

There was a change of tone by the management in the letter from the managing director of November 7th 2008, which was not helpful to maintaining good relations. The letter was addressed to all employees and outlined the difficult trading conditions the company was in and the prospect of shorter working hours. The letter stated that approximately 73 were performing satisfactorily, but went on to state that:

“Unfortunately a small number of employees, through their attitude, disruptive behaviour (to the extent that work colleagues feel intimidated) and/or sub-standard work performance are preventing us from fixing the problems and improving conditions for all. They are costing you thousands of euro in lost workdays and bonus. They must change now; management will assist them through coaching and training. However, should they fail to respond, they face disciplinary procedures. I would prefer if this could be avoided, however I have instructed management to take appropriate and timely action when the situation requires it.”

I have suspended investment until I am confident that unacceptable behaviour and substandard work is eliminated from the business. I will do my utmost to regain lost work once this situation is rectified but not before.”

He met the claimant and two other employees at the claimant's house, but he did not recall the claimant asking him to make representations on his behalf. He recalled that they discussed the redundancy package in general and changes to the maintenance department. He accepted that the claimant said he was stressed and that he was on sick leave due to work.

During re-examination he agreed that the managing director had been trying to implement changes to work practices for a number of years without success.

In response to the Tribunal he stated that he outlined the final offer to staff at a general meeting in February 2009. He was satisfied that the claimant was aware of the final terms before he wrote to the company to accept voluntary redundancy. He recalled that the claimant had attended the meeting.

The managing director gave evidence that he had been with the company since it started in 1982. He brought the trade union in and agreed terms and conditions from the start. The company lost a major customer at the end of 2007, which represented one third of their business. By January 2009 they were losing €30,000 per week. The company needed to increase its competitiveness and had tried over the years to implement changes without success. The Plant Manager was involved in the negotiations with the trade union.

The coaching notes had always been there. They started documenting them ten years previously. They changed them over the years to set out expected actions and allow for signatures. In regard to his letter to staff he wanted to set out the challenges facing the company and he felt that a small number of staff were sabotaging the company. He did not instruct managers to go after these people but he instructed them to implement 'zero tolerance' of bad behaviour and to seek compliance with proper behaviour. He didn't consider the letter a threat. He didn't think that employees realised the serious situation the company was in.

He introduced 'lean manufacturing' to the company to reduce waste and increase efficiency. The company had 73% efficiency at that time and they had increased this to 95% since early 2009. Downtime had been markedly decreased. They held various meetings with staff to instruct them on lean manufacturing. Staff numbers were reduced by approximately 20 employees. The evening shift was removed in January 2009. The company had not been entirely successful at replacing the lost business.

During cross-examination he stated that there were currently 53 employees with the company. The first redundancy package came about because the trade union approached the company about the short-time work in place. They made the offer of the enhanced package as part of a two-sided offer. The remaining employees would have to change their work practices. Agreement was not reached and the offer was withdrawn. He was not involved in the negotiations. Lean manufacturing was introduced in June 2008 after Enterprise Ireland visited the company.

In regard to the first claimant he was disappointed with his performance. He read the report on an audit he carried out in August 2008. The claimant received ten coaching notes before the redundancy offer was withdrawn at the end of September 2008 and seven were issued for the rest of the year. They were not 'coming down' on employees; they were implementing better management

in accordance with lean manufacturing. Coaching notes were not part of the disciplinary process. He did not accept that the management's attitude made it impossible for employees to stay. There was always a positive atmosphere as long as an employee did their job. It would have been foolish to invest while the company was losing €30,000 per week.

The plant manager gave evidence that he was the main point of contact for the trade union. There was a high level of trade union involvement. On the loss of the major contract the trade union indicated that they wanted to preserve as many jobs as possible and both parties agreed to work towards that. The company had lost competitiveness and they wanted to address this and to up-skill staff to develop the business. They wanted to automate the packing system and move these staff to other areas. After many meetings there was no agreement on changes of work practices for the remaining employees and the enhanced redundancy package was withdrawn.

The lean manufacturing process was introduced during the negotiation period in 2008. There was some inertia from staff at the beginning but the company explained that it would address their competitiveness issues and preserve jobs. Staff received better bonuses for increased productivity.

Coaching notes were well established in the company. When management spoke to an employee over a performance issue it was recorded. The level of coaching notes increased in 2008/2009 as the company was addressing its competitiveness issues through lean manufacturing. The number of coaching notes the first claimant received was not unusual to him. All staff were subject to the same scrutiny. In 2008 neither the trade union representative nor the employees ever raised the level of coaching notes as a grievance.

From January 2009 staff worked one week on one week off. The trade union came back to the company about an ex-gratia payment and as a gesture of goodwill the company offered €600, €800 or €1,000 extra based on service. The company became aware that employees were accepting the offer when they started receiving letters of application. The first claimant's letter of application did not state why he was applying. The plant manager accepted the claimant's application. The claimant received €1,600 plus statutory redundancy. He received an extra €1000 as he had 20 years service which would have entitled him to a gold watch but he opted for the money instead. He met the claimant when he came to the office. There was little conversation. The claimant did not state why he was applying for redundancy. There was a bullying and harassment policy in place and staff were familiar with the grievance procedure which was supplied at the induction training.

During cross-examination he stated that he had been with the company since 1982 and knew the employees fairly well. The enhanced package was reduced as it was contingent on a change in work practices by the remaining staff. The exit option was raised by the trade union as some employees were interested. The company envisaged losing 20 employees and securing fulltime and some part-time work for the remaining employees. The company were locked into a 1982 agreement with the trade union regarding overtime and shift premiums. The company wanted to change these to improve their competitiveness.

He knew the first claimant for a number of years. He had difficulty following procedures on occasion. On the second day of hearing the company submitted a revised summary of the coaching notes that had been issued to staff. The previous summary had included 2009 notes as well. The first claimant had received nine coaching notes in 2008 prior to the withdrawal of the first redundancy offer on September 30th 2008 and one afterwards. He received six in 2009. The first claimant was not singled out. He had a difficulty complying with procedures. Coaching notes were

there to keep employees away from the disciplinary process in order to discuss issues. They could lead to disciplinary procedures if performance did not improve.

He recalled receiving a letter from the trade union representative on behalf of one of the seventh named claimant which made a formal complaint against the company for isolating the claimant in her work and excessive monitoring. The witness replied on January 7th 2009 seeking specific details and incidents, but he did not receive any further correspondence from either the claimant or the trade union representative. He assumed that she had decided not to pursue with her complaint.

He knew which staff were interested in taking redundancy as the trade union had submitted a list of names. The company was aware how much the original package would cost. The company did not refuse anyone the voluntary redundancy scheme.

Eight employees served RP9 forms. The Tribunal decided to hear evidence from the employees who had served RP9 forms. Three of these employees gave evidence that the company produced the completed forms for them to sign. One claimant, the second named claimant, gave evidence that she did not make a complaint of bullying against the company through the grievance procedure. She complained once to her trade union official that she was short-staffed on the production line. Another claimant, the third named claimant made a complaint to her supervisor also about being short-staffed on the production line. She was aware of the grievance procedure.

The respondent's representative submitted that the company accounts department filled them in as the trade union representative told the company that some of the employees wished to avail of redundancy by virtue of being on short-time.

The Tribunal decided to continue hearing the cross examination of the plant manager. He explained that at a meeting with the trade union representative and staff in early 2009 the question of the staff's entitlement to apply for statutory redundancy came up. Staff were working week on/week off at this stage and the week on was not quite a full week on average. He told staff that if they wanted to apply the company would facilitate them.

A few weeks later the trade union representative told him that a number of employees would be availing of this. The lower ex-gratia payment was subsequently agreed. The company received a number of applications. The trade union representative requested that the company provide the paperwork. The assistant plant manager notified the employees and they came to sign the forms. The employees signed the RP9 forms and a few weeks later signed the RP50 forms and received their redundancy payment. He understood that the claimants worked their notice though he agreed that it appeared that some employees did not work their notice or were paid in lieu of notice.

The company did not receive any official complaints from the claimants. In previous years complaints had been made through the grievance procedure and he was satisfied that the claimants should have been aware of the grievance procedure.

The assistant plant manager (APM) gave evidence that it was her responsibility to communicate what lean manufacturing was to the staff. She held a general meeting with the staff and in May 2008 brought a group of staff to Enterprise Ireland for a workshop. The group identified common problems at the factory. The company decided to focus on three: productivity, downtime and meat waste. The idea was to work smarter, not harder.

A lot of downtime was due to equipment failure. They identified that procedures were not being

followed by maintenance staff. Another key problem was meat falling on the floor and therefore being wasted. The company did not change the procedures already in place but sought to have them implemented properly. They checked every two hours that they were at the point they were supposed to be. There was more interaction between management and staff as management had to be on the floor more in order to be aware of what was happening. There was some resistance but through training and coaching employees realised they had to change.

The majority of employees received more coaching notes. The APM had been involved with coaching notes for ten years. The redundancy package was restricted to certain skills. It was open to grade 1 employees in packing and maintenance. 75% of grade 1 opted to take redundancy. There were grade 1 employees who did not opt for redundancy and received an increased rate of coaching notes. She was not aware of a drop in performance after the withdrawal of the first redundancy package. She was not aware of any employee raising a grievance of being bullied and harassed.

The first claimant was issued with a written warning for not identifying a problem with a gearbox which could have led to an injury and not filling in reports on services. The MD's son was present for some of the coaching notes to provide technical knowledge of how things should be done. He had accepted the coaching notes issued previously. They discussed what went wrong and what the correct procedure was. He gave a commitment to follow the procedures, but this didn't always happen.

During cross-examination he explained that the first claimant received three coaching notes on July 31st 2008 as he wasn't following procedure. All were issued at the same meeting. Coaching notes were to provide support and assistance. He was issued with a further coaching note on August 1st 2008 when the MD's son realised when he was authorising the pay that the claimant had clocked out on July 30th 2008 without his work wear on. The clocking procedure applied to everyone. He received a further coaching note on August 6th 2008 for failure to complete a report. He was warned that a third time would lead to disciplinary action. He received a further note on August 13th 2008. They asked the claimant if he wanted any refresher training and he welcomed it. She was concerned when she saw that the claimant went on sick leave for stress, but considered that it was a pressurised time for everyone.

The witness processed the paperwork for the redundancies as the trade union asked them to. She sat down with each employee and confirmed that they wanted to take redundancy. They confirmed that they did and signed the form. She did not say to anyone that if they did not sign or if they did not sign before the end of March that they would not get anything. She did not tell one of the claimants that if she stayed she would be put on patty stacking. That was a charge hand's job.

The MD's son gave evidence that while auditing the service on two machines he found that one of the machines was unsafe. The claimant had carried out the service. He addressed the issue with the claimant and the claimant did not disagree. The witness was covering holidays at the end of July and the beginning of August for the maintenance supervisor at the time.

He was also covering the clocking. As he was on his way to the bathroom one day he saw the claimant disrobed in the changing room. When he was checking the clocking times a few days later he saw that the claimant had clocked out at 3.30pm. He went to his manager and checked the cameras. The claimant should have been in work wear when he clocked out. He was not constantly watching the claimant; he was just doing day-to-day tasks.

During cross-examination he denied that he was trying to create an atmosphere that would encourage employees to leave. He only began working closely with the claimant in December 2008 when he took over as engineering manager.

Claimants' Case:

The seventh named claimant gave evidence that she started with the company in September 1985. She went on sick leave on January 14th 2009. The trade union representative phoned her and said that the company would give her redundancy if she wanted, but that she would have to come off disability benefit. The claimant wasn't fit to go back to work so she decided to say no. The trade union representative phoned again and said that she didn't have to go back to work and that she could write to the company to seek a redundancy payment. She wrote to the company and received a reply from the plant manager. She went to the workplace as directed on April 8th 2009 and met the plant manager. She received €18,000 statutory redundancy and a €1,000 ex-gratia payment.

Her experience with the company was good until 2001. She was a trade union representative. She received a final written warning in 2004. Things eased off after that, but in 2008 she received another final written warning in relation to Saturday work. She could not work on two Saturdays as she had appointments. The APM had her name on the roster. They had a row and the claimant received a written warning as the APM wanted her to apologise. She received a final written warning from the plant manager for not putting it in writing.

In November 2008 the MD criticised how she was stacking boxes. She told him that it was normal procedure. He told her not to answer back. The next day she was put on labelling boxes on her own. She was told that the MD gave the order. She had to either label boxes or work on pallets lifting boxes over her head all day. She did this for eight weeks. She made a complaint through her trade union representative in December 2008. He received a reply from the plant manager. She rang the trade union representative to find out what was happening. He said he was waiting for the plant manager to come back to him. She felt that she had no choice but to take the voluntary redundancy.

During cross-examination she stated that there were a lot of issues between the staff and the company in 2008. Employees were afraid of management. She had been involved in a lot of grievance processes for herself and others. She had brought a grievance for being bullied in 2002. She was one of the people involved in introducing the bullying and harassment policy to the company. Maybe one person had come to her to complain about being bullied by management, but he didn't want anything done. She believed that people didn't complain as they were afraid. She did not make any complaints to management about employees being bullied. She couldn't talk to management anymore. She went through her trade union representative.

She did not receive an increase in coaching notes after the first redundancy offer was withdrawn. She was moved to a position she wasn't physically able for. The labelling work was lighter but she was on her own all day and a colleague was told not to talk to her. She was being watched while she worked.

She became aware of the small ex-gratia payment on offer at a meeting with the trade union representative. She applied as she felt she didn't have a choice. She didn't write about her complaint as she had left it to the trade union representative.

The sixth named claimant gave evidence that she started with the company in 1997. She worked mainly on packing. She was on sick leave when lean manufacturing was introduced. Staff numbers on the production line was reduced. She received two coaching notes in 2007. She applied for the first redundancy package as she was sick at the time. She was disappointed when it was withdrawn.

She went back to work on 20 hours per week. The atmosphere was not as good as it was previously. There were fewer people working on the line. After thirty minutes they speeded up the machine resulting in products backing up. She asked for the machine to be turned off and was told no.

When she went to accept the revised redundancy package she told the APM that she wasn't happy with the amount. The APM made a few calls but ultimately told her it was the final offer. The APM told her that she would be put on the patty stacker which the claimant refused. The APM said there was no other option but to take the redundancy payment and that if she didn't sign by March 30th the deal was off the table. She said that there would be no grade 1 work available if she stayed.

During cross-examination she stated that the trade union representative told her that she could enquire about how much she would receive at the office. When she went to the office she felt intimidated into accepting the redundancy offer. She did not contact the trade union representative afterwards as she had already signed and she knew she had to go. She agreed that she had applied by letter on March 2nd 2009 and went to the office on March 23rd 2009. She did not have any specific complaints but she could see what was going on. She did not raise a grievance with the company.

The eight-named claimant gave evidence that she had been with the company for over 24 years. She worked on packing. She applied for redundancy as she was suffering from a frozen shoulder from the repetitive nature of the work she did. She worked part-time from 2006. She was on sick leave from the beginning of 2007 until 2008. She told the APM that she was not fit to pack but that she could do the boxes. The APM said that job wasn't there. She went back to work and took the second redundancy offer. She received €12,000 statutory redundancy and a €1,600 ex-gratia payment.

During cross-examination she stated that she had not been bullied or harassed by the company. She felt well treated until 2008, and then she felt that what she was doing wasn't good enough. She received four coaching notes on 2008. She had received one note previous to that. When she injured her shoulder she applied for shorter hours and the company accepted it. She told the APM that it was due to the repetitive nature of the work. She was told that box making was being automated but it still hadn't happened. She did not make any complaint as she felt it was pointless.

During re-examination she stated that she found management approachable but she felt that they were picking on people who had opted to take redundancy.

The ninth named claimant gave evidence that she worked for the company for 11 years. She worked on packing. She opted for the first scheme as she felt that it was an unhappy place to work. She did not receive any coaching noted. She wrote to the plant manager to apply for the second scheme. She went to the office, signed the form and left.

During cross-examination she stated that she went on sick leave in August 2008 due to back pain

and did not return to work. She was not present when the first offer was withdrawn. She applied for redundancy as the work was very hard, they were short staffed and she wanted to get out. She had complained to the plant manager once about the machine going too fast for them and burgers were going on the floor. She could not remember when this was.

The tenth named claimant gave evidence that she worked for the company for 27 years. She worked on packing on the line. She changed to part-time in 2006. She enjoyed working there for the first 20 years. In 2008 things changed. She went on sick leave in late January 2008 due to pregnancy related illness. She opted for the first redundancy package. She did not return to work after her maternity leave, which commenced in June 2008, due to medical reasons. She heard from other staff members about the atmosphere in the company. She felt she could not return to work there.

She received a redundancy payment of €13, 804. Nothing was said when she went to collect her redundancy payment. The plant manager shook her hand. She had received two or three coaching notes over the years.

During cross-examination she stated that she did not consider speaking to management about her position when she was on sick leave. She based her opinion on what she heard from colleagues.

The eleventh named claimant gave evidence that he started his employment with the company in 1985. He started on burgers but progressed to materials. He answered to two managers there. It was an enjoyable place to work for 20 years, but then he was subjected to numerous coaching notes. He received seven notes in 2008 and eight notes up to April 8th 2009. He was issued with a verbal warning on December 2nd 2008 for damaging the cold store door with the forklift vehicle he was operating. The claimant appealed the warning. He had reported the incident immediately.

He began to refuse to sign the coaching notes issued to him. He felt they were for petty reasons. He received one coaching note on February 2nd 2009 and four on February 3rd 2009. He felt demoralised by this. He went to the trade union representative on numerous occasions but nothing came of it. He opted for the redundancy package as he felt he would either walk out with nothing or be dismissed. He felt he had no option but to take the redundancy offer. He found alternative work six weeks later on higher pay.

During cross-examination he stated that he was aware of the grievance procedure. He believed it wasn't used much as employees were afraid of what might happen. He did not invoke the grievance procedure as he believed he was in danger of losing his job. He told the trade union representative about his concerns at meetings and on phone calls. He represented the claimant in regard to the warning. His appeal against the warning failed.

The twelfth named claimant, the brother of the previous witness, gave evidence that he started with the company in 1993. He worked as a batch operator and did some forklift work. He opted for the first package as he felt under pressure at work. He received 13 coaching notes in 2008, 12 before the offer was withdrawn and one after, and two in 2009. He received a verbal warning on January 27th 2009 for his performance in 2008. The APM told him that if he didn't improve it would lead to a written warning, a final written warning and possible dismissal. He accepted the second redundancy offer as he felt he was a coaching note or two away from being dismissed. He did not feel that appealing would help as the APM was next in line and she had warned him about further disciplinary procedures. He felt management was watching him and a team leader had told him that this was so.

During cross-examination he agreed that he did not receive any further warnings in 2009. He did his job afterwards. He became aware of the second package in March 2009. He applied because of the pressure of work and the number of coaching notes. He told the trade union representative about the number of notes he was receiving. He did not complain to management. He accepted the coaching notes. He has completed a couple of courses since leaving. He had a mild heart attack in 2010 and was still on disability pay. He did not receive any coaching notes between September 25th 2008 and January 14th 2009. At a November 2008 review meeting he was not warned that he was going to be issued with a verbal warning. He was surprised in January when it happened.

The thirteenth claimant gave evidence. He had been employed with the respondent since June 1982. He reiterated the evidence given by previous claimants regarding the original redundancy package and the removal of the offer. He received a large number of coaching notes – 1 in 2007, 25 in 2008 and 4 in 2009. In one week alone he received 5.

On August 6th 2008 he attended a meeting with APM regarding his performance. He received a verbal warning and subsequently a written warning on August 14th 2008. On February 27th 2009 he applied for the redundancy package. He lodged an RP6 form in order to leave earlier than originally thought. His last day was May 25th 2009. He had informed his union representative of his grievances but had not made a formal grievance to the respondent company. He told the Tribunal that he felt he got so many coaching notes because he had applied for the redundancy package. He felt under pressure to leave the company.

The fourteenth named claimant gave evidence. He commenced employment with the respondent in December 1999 firstly on machinery and then on tool care. He had been working the night shift but was then changed to days. He opted for the original redundancy package. He received 1 coaching note in 2007, 3 in 2008 and 3 in 2009 for not carrying out his duties properly.

He felt that management's attitude changed towards him. The rostered hours would be pinned up by the end of the week. On one occasion it was not and he asked the team leader who informed him they would contact him later. He never received a call. He attended work the following Monday to see he was not rostered to work his normal day and was sent home. He applied for the voluntary redundancy package and signed an RP9 form. He had not applied for the original package.

When asked did he feel he was being picked on he replied that he felt he had carried out his duties to the best of his abilities. He told the Tribunal that his job had been very stressful and was not happy receiving the coaching notes.

The fifth name claimant gave evidence. He had worked for the respondent for eight and a half years in different jobs. He received 4 coaching notes in 2007, 8 in 2008 and 5 in 2009. It said it could be unbearable to work there at times and could be called into the office once or twice a week. He did not know how the atmosphere had changed. He had signed an RP9 form but did not know what it was for. He asked his union representative to apply for the redundancy package for him. He never raised a grievance with the respondent in relation to work pressures.

All 14 claimants gave evidence of loss.

Determination:

The Tribunal gave consideration to the evidence given in this case. The coaching notes were described as not being part of the disciplinary code by the employer's side but were intended to be helpful to the recipient in the performance of their duty. These notes were always used in the workplace but there was a very large increase in the use of these notes in the last year of the claimants' employment that had the effect of increasing the stress in the workplace. The Tribunal having looked at the coaching notes, their frequency of issue and the caution given find that such notes do form part of the disciplinary procedure and the use of them in this matter was excessive.

The use of the RP9 forms in this situation did not conform with the requirements of Section 11 of the Act of 1967 for the use of such forms. A number of the employees were in fact out on sick leave when such forms were signed. The Tribunal holds therefore that the employees who were dismissed in this case were entitled to their statutory minimum notice. Those who were out sick and unavailable for work would have no loss and therefore are not entitled to compensation in lieu of notice.

All the claimants gave evidence that they were put under pressure by the use of the coaching note system and as a consequence claim that they were unfairly dismissed. They all accepted redundancy. There was a grievance handling procedure for airing complaints within the employment. None of the claimants availed of the procedure. Some of the claimants did mention their difficulties to their Union Official but the employer was not approached on the matter. In the circumstances the Tribunal must hold that they were not unfairly dismissed.

All fourteen claims under the Unfair Dismissals Acts, 1977 to 2007 fail.

In relation to the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 the following claimants were entitled to some notice.

The first, second, fourth, sixth, seventh, eighth, and tenth named claimants were not eligible for an award under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 as they were not available for work.

The Tribunal awards the following sums in relation to the remaining claimants:

The third named claimant is awarded the sum of € 3,181.52, this being eight weeks gross pay.

The fifth named claimant is awarded the sum of € 2,080.00, this being four weeks gross pay.

The ninth named claimant is awarded the sum of € 2,400.00, this being four weeks gross pay.

The eleventh claimant is awarded the sum of € 2,160.00, this being four weeks gross pay.

The twelfth named claimant is awarded the sum of € 2,400.00, this being four weeks gross pay.

The thirteenth named claimant is awarded the sum of € 4,568.00 this being eight weeks gross pay.

The fourteenth named claimant is awarded the sum of € 1,032.00, this being three weeks gross pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)