

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE –**Claimant**

UD183/2010

against

EMPLOYER - **Respondent**

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Ms. M. Sweeney  
Ms. H. Kelleher

heard this claim at Cork on 29 August 2011

#### **Representation:**

Claimant:

Mr. Donal O'Sullivan BL instructed by Mr. Frank Nyhan,  
Frank Nyhan & Associates Solicitors,  
11 Market Square (opposite Courthouse),  
Mallow, Co. Cork

Respondent:

Mr. John Boylan, McNulty Boylan & Partners Solicitors,  
Clarks Bridge House, Hanover Street, Cork

The determination of the Tribunal was as follows:

The claimant was employed in the respondent's Cork branch (the branch) from September 2000. From 2001 he was an account executive. The employment was uneventful until April 2009 when a pay freeze and suspension of bonuses was imposed because of the reduction in turnover that the respondent had suffered.

In August 2009 the respondent's business had deteriorated further and it was decided that redundancies of around ten per cent of the work force were to be implemented. This redundancy programme applied across the respondent and as the branch had some twenty employees at the time this meant that two positions fell to be made redundant.

The respondent dealt in three areas of insurance; motor and household insurance, account handlers and account executives. The managing director of the branch (MD) decided that one of the redundancies would be amongst the eight account handlers in the branch even though their numbers

had dropped from eleven to eight by natural wastage. There were to be no redundancies amongst the two remaining employees in motor and household insurance, as their numbers had also reduced from four by natural wastage. MD decided that the second redundancy would be one of the three at the level of account/business development executive.

In order to select the candidate for redundancy MD used a matrix with the following seven categories: - account retention, new business activity, qualifications, experience, attitude, future needs and ability to work overtime. The better the ranking the lower the score. The claimant scored 23 whereas his two comparators scored twelve and thirteen respectively. The claimant's position was that he was disadvantaged in the matrix because of its weighting towards factors related to sales. The claimant maintained that he looked after a portfolio of clients and was not involved in new sales. The claimant described himself as being "genetically unsuited" to sales. The respondent's position was that the claimant had been requested, at monthly sales meetings, along with all staff, to make sales. It is common case that the claimant attended these meetings.

On 22 September 2009 MD called the claimant in and told him of the need for redundancies and that he was in jeopardy of being selected for redundancy. The claimant was sent home for the rest of the day and the next day and asked to come back on 24 September 2009 when the fact of his selection for redundancy was confirmed. He was informed of the terms of his redundancy package and was paid in lieu of notice. At no stage was the claimant shown the matrix or the resulting scores.

**Determination:**

The Tribunal accepts the respondent's contention that sales were an important aspect of the responsibilities of the claimant and his comparators. Whilst there was a paucity of communication in regard to the implementation of the process of selection for redundancy the Tribunal is satisfied that there was a genuine redundancy situation and that the method of selection of the claimant as the candidate for redundancy was objective and not unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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