

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE-*claimant*

CASE NO.  
UD771/2010  
RP1044/2010  
MN722/2010  
WT330/2010

Against

EMPLOYER           *-respondent*

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman:   Mr P. Hurley

Members:   Mr G. Andrews  
              Mr T. Kelly

heard this claim at Roscrea on 3rd October 2011

### **Representation:**

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Claimant:   Mr Lorcan Connolly B.L. instructed by Mr. Michael Moroney,  
              Meehan Moroney, Solicitors, One Michael Street, Limerick

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

The claim under Organisation of Working Time Act, 1997 was withdrawn at the outset.

### **Respondent's Case**

The Director (ER) of the respondent, a motor sales and repair garage, gave evidence. The respondent's business decreased significantly from June 2008. A change in the VRT laws, the completion of a large service contract and less service work due to fewer cars sold all contributed to the downturn in the respondent's business. As a result a 10% pay-cut was implemented in the respondent and the staff were put on notice of the possibility of redundancy on the 17<sup>th</sup> of September 2009 by letter. There was not enough work available for short-time or lay-off to be considered as alternatives.

The claimant was issued with a letter on the 24<sup>th</sup> of September at a meeting notifying him that

redundancy was a possibility. The respondent met with the claimant and another staff member regarding redundancy on the 7<sup>th</sup> of October 2009. On the 13<sup>th</sup> of November 2009 the respondent met with the claimant and the other staff member and gave them a blank copy of the redundancy selection matrix. The respondent then gave the claimant a summary sheet of the matrix and informed him that he had the lowest score. The respondent requested a meeting with the claimant on the 19<sup>th</sup> of November but the claimant was busy and said he would come in the following Saturday. The claimant did not come in on Saturday so ER had a meeting with the claimant on Monday the 23<sup>rd</sup> of November and gave him notice that his position was being made redundant. The formal notice of redundancy was dated the 13<sup>th</sup> of November but issued to the claimant at a later date. The claimant was given the opportunity to appeal this decision and offered representation. The claimant appealed the decision by letter of the 30<sup>th</sup> of November 2009. On receipt of the letter of appeal the respondent (ER) explained the matrix and the claimant's scoring to him in detail. The claimant could have objected to having the appeal with ER. Both of the respondent Directors made the decision to make the claimant redundant.

The respondent met with the claimant on the 4<sup>th</sup> of December 2009 for the appeal. The claimant felt he 'had been done by a hatchet job'. The respondent went through the selection criteria again and the redundancy process again. A further meeting was arranged for the 11<sup>th</sup> of December 2009 but the claimant did not attend. The claimant attended the respondent on the 15<sup>th</sup> of December and requested a Social Welfare form to be signed; again he was told he could appeal the decision. The claimant said he 'understood things were quiet and he would go for a few pound.' An appeal meeting was set up for the 18<sup>th</sup> of December but again the claimant did not attend so the appeal did not take place.

Three different senior staff members completed the redundancy matrix. ER gave detailed evidence on the selection criteria and scoring; comparing the claimant to the other comparable staff member.

### **Claimant's Case**

The claimant was aware that business was bad within the respondent. The claimant never received the letter of the 17<sup>th</sup> of September 2009. The claimant, a mechanic with the respondent met with ER to discuss redundancy on the 24<sup>th</sup> of September 2009. A 3-day week, a 2-day week and working a full day on Saturday were proposed as options. The respondent did not revert to the claimant regarding these proposals.

At the meeting on the 13<sup>th</sup> of November 2009 the claimant was shown the marks he received on the redundancy selection matrix. There was no detailed discussion on the matrix. The claimant only discovered the details when he was leaving and never saw a detailed comparison. The claimant asked why LIFO was not applied and was told 'that's just the way it is.' The claimant received the notice of redundancy on the 23<sup>rd</sup> of November 2009 and was informed that he'd 'be leaving that day'.

The claimant gave the respondent the appeal letter with the assumption that the decision would be reversed. It became clear to the claimant that the respondent was adamant that he wasn't going to change his mind and as a result the claimant did not attend the appeal meeting arranged for the 18<sup>th</sup> of December. The claimant believed that the conversation held when he handed in the appeal letter was the appeal meeting.

### **Determination**

Having carefully listened to the evidence adduced by both parties the Tribunal is satisfied that the claimant was dismissed by reason of redundancy and that the matrix used in selecting the claimant for redundancy was not unfair. This was a fair selection and accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Accordingly the Tribunal finds that the claimant is entitled to payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria;

Date of Birth	16 <sup>th</sup> November 1966
Employment commenced	16 <sup>th</sup> May 2005
Employment ended	27 <sup>th</sup> November 2009
Gross weekly pay	590.10

This award is made subject to the claimant having being in insurable employment under the relevant Social Welfare Acts.

The Tribunal award the claimant €590.10 being the equivalent to one weeks' pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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