EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:		CASE NO.
EMPLOYEE	*-Appellant*	UD1650/2010
		TE196/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER *-Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr R. Murphy
Mr F. Barry

heard this appeal at Dublin on 5th January 2012

Representation:

Appellant:	Mr. Cathal McGreal B.L. instructed by Ferrys, Solicitors, Inn Chambers, 15 Upper Ormond Quay, Dublin 7
Respondent:	ESA Consultants, The Novum Building, Clonshaugh Industrial Estate, Dublin 17

The determination of the Tribunal was as follows:

The claims came before the Tribunal by way of an employee (the appellant) appealing against the decisions of a Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 and the Terms of Employment (Information) Act, 1994 (references: r-082720-ud-09 and r-082715-te-09).

The General Manager of the respondent company gave evidence that the company exports labels to the UK and Europe for the beverage and personal care sectors. The company has 44 employees and the appellant's employment commenced in September 2004. The company has an on-going relationship with a union.

In 2008 the sterling weakened against the euro with the result that towards the end of 2008, the company had lost in the region of €800,000. By early 2009 the company found itself in a perilous

position. Twelve staff members had been made redundant during 2008 and the remaining employees were placed on a three-day week. Before considering the possibility of redundanciesagain in early 2009 the company negotiated improved rates with suppliers but despite this thecompany faced the prospect that another four positions had to be made redundant. It was agreedthat a matrix system would set out the criteria upon which staff would be scored. The GeneralManager confirmed that he had first prepared a matrix in or around May 2008. He prepared asecond matrix in January 2009.

It was the appellant's evidence that he was unaware that his position was in jeopardy or that there were redundancies on the horizon. On Friday, 23 rd January 2009 the Production Manager mentioned to the appellant that he would have to pick up the slack if there were redundancies. The appellant enquired if he was obligated to do this and the Production Manager replied in the negative.

On Monday, 26th January 2009 the appellant was brought to a meeting in the office by the Production Manager. The General Manager gave evidence that this meeting was held to explain the matrix to the appellant who became upset and left the meeting. As a result the company subsequently wrote letter dated 28th January 2009 to the appellant but no response was received. During cross-examination the General Manager accepted that the appellant may not have had sight of the matrix at the meeting as he became upset and departed the meeting.

It was the appellant's evidence that at the meeting he was informed by the General Manager that his position was being made redundant. The appellant enquired about how his position had been selected. The Production Manager stated that he had been making a lot of mistakes. The appellant requested information regarding these mistakes but nothing was shown to him nor was he given sight of the matrix. At this point he became angry as he worked hard in his position and he knew every aspect of the role. The appellant felt the selection of his position was unfair and that he needed to seek legal advice on the matter. The company did not discuss any alternatives to redundancy with him. The appellant's understanding was that the process of last in first out would be utilised if redundancies were ever being made. He was aware that two of his colleagues had less service and experience than he had in his role. He did not make mistakes; in fact he had only made one mistake when new to the employment in 2004. He did not receive a contract of employment during the duration of his employment. The appellant outlined a range of duties that he performed in order to be as helpful as possible to the company.

The General Manager confirmed that correspondence was received from the appellant's solicitorsbut the company did not respond to this letter having previously set out the position in letter dated 28th January 2009 and he believed the matter was closed.

The appellant was paid his statutory redundancy. There was a grievance procedure in the company but no complaint was received from the union regarding the matrix. One other employee has been made redundant since 2009. The company's performance has improved but the appellant's position was not replaced for a period of some twenty months. When a vacancy arises the company contacts the union first when sourcing employees.

It was the appellant's evidence that as far as he is aware, the two employees with less service and experience continue to work for the company. There has been no request from the company to return him to his position. The appellant gave evidence pertaining to loss and his efforts to mitigate that loss.

Determination:

The Tribunal has carefully listened to the evidence adduced. The appellant brings this claim in circumstances where he believes that he was unfairly selected for redundancy. The onus rests with the employer to demonstrate that a genuine redundancy situation existed and that the employer's criteria for selecting the appellant above any of his comparators was as fair, reasonable and transparent as might be reasonably expected.

The appellant was told of the fact of his redundancy at a meeting on the 26th January 2009. Prior to this meeting the appellant had no idea that his particular job had come under scrutiny for the purposes of redundancy. Indeed the appellant states his direct line manager had in a casual way on 23rd January 2009 stated that the appellant would be expected to pick up the "slack" if redundancies were made in the workplace.

There was no evidence adduced to suggest that the appellant ever knew what criteria were used, if any, in the making up of a matrix which was being used by the employer.

What appears to have happened is that on the 26th January 2009 the appellant was told that he had been selected for redundancy. The appellant was told at the meeting that the line manager was relying on "mistakes" that the appellant had made in the course of his employment though there was no documentation adduced to show to the appellant what "mistakes" were being relied upon. In addition, the appellant states he was never subjected to disciplinary procedures, warnings or re-trainings such that would suggest that his work was anything other than up to standard

What is clear is that the appellant left the meeting of 26th January 2009 in a very upset way and in fact the employment relationship was never again resumed. It is worth noting that the RP50 confirms that the date of termination was the 26th January 2009, the day that the appellant was told that he was being made redundant. In other words the appellant was not being given notice of termination.

The respondent relied upon a matrix which appears to have been agreed in conjunction with the union operating in the workplace. The appellant states he did not have any prior knowledge of the type of matrix that applied in the workplace nor was he shown a copy of the matrix at the meeting on the 26th January and the matrix only became known to him well after the date of his selection.

The Tribunal cannot find that the process for selection was reasonable, fair and transparent in all

the circumstances and the appellant was not afforded any opportunity to open up meaningful talks or consultation such that would present the possibility of reversing a decision that had been made even before the 26th January 2009. The Tribunal awards the appellant compensation of €46,000 under the Unfair Dismissals Acts, 1977 to 2007 thus upsetting the Rights Commissioner's decision reference: r-082720-ud-09.

The Tribunal also varies the Rights Commissioner' Decision under the Terms of Employment (Information) Act, 1994 reference: 082715-te-09 by awarding the appellant the sum of €1,771.00 being the equivalent of four weeks gross pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)