EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:		CASE NO.
EMPLOYEE	***-Claimant***	UD1928/2010
		MN1863/2010

against

EMPLOYER ***-Respondent***

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B.L.

Members: Mr J. Browne
Mr A. Butler

heard this claim at Wexford on 6th June 2012

Representation:

Claimant: Mr. Karl Sweeney B.L. instructed by Mr Darren Murphy,
Neville Murphy & Company, Solicitors, 9 Prince of Wales Terrace,
Bray, Co Wicklow

Respondent: Garahy Breen & Co, Solicitors, 4 Castle Street, Enniscorthy, Co Wexford

The determination of the Tribunal was as follows:

Summary of Evidence:

The respondent is a hardware company. The Managing Director gave evidence that the business is split into parts; a shop and a yard. The claimant was employed as a yardman.

The business began to decline from late 2007. Details of the reduction in turnover throughout the last number of years was opened to the Tribunal. The decline in turnover continues to date. The yard sales suffered a more dramatic reduction than those in the shop. A number of measures were examined such as increasing sales, cost analysis and reducing bad debts. As labour was the largest cost the Managing Director was faced with either reducing working hours or implementing redundancies. He decided to put employees on reduced working hours rather than implement redundancies in the hope that the business would improve. This decision was taken in late December 2008 and was conveyed to staff at a meeting in February 2009. In evidence the claimant confirmed that this was when he first became aware of the company's economic situation. It was agreed at the meeting with staff that reduced hours would beimplemented for a period of six months and after that time the situation would

be reviewed. Atthe end of the six months the business was still declining. It became apparent that the recessionwas long-term and that redundancies might have to be implemented.

A number of staff were also placed on short-time in the latter part of 2009. In or around September 2009 the option of voluntary redundancy was put to a number of staff (including the claimant) but none of the employees accepted this offer. In September 2009 the Managing Director reached a decision to make one employee redundant in the yard and one in the shop. The claimant's colleague in the yard and the Assistant manager in the shop were subsequently made redundant.

A further staff meeting was held in October 2009 and staff queries were also answered on an individual basis. However, it was the claimant's evidence that no further meeting was held between October 2009 and March 2010.

In spring 2010 the business was still in decline and in order to protect the business and the jobs the Managing Director had to again make the decision to implement further redundancies. It was again decided that one position would be selected from the yard and one from the shop. The claimant's position in the yard was selected on the basis of "last in first out" as the remaining employees in that section had longer service than the claimant. The claimant confirmed this fact during cross-examination. The claimant was informed in early March 2010 that his position was selected for redundancy. The claimant was paid three weeks redundancy per year of service, as a goodwill gesture that the company had extended to all employees who were made redundant.

Staff were returned to full-time hours in March 2010 as they had agreed to short-time for a temporary period and in addition there was a lack of consistency to the respondent's business as staff were working fours weeks on; four weeks off.

During cross-examination it was put to the Managing Director that the claimant could have carried out the role of another employee who was retained in the shop and who was employed some six months after the claimant. It was the Managing Director's evidence that this employee managed goods inwards and merchandising. It was the claimant's evidence that healso dealt with goods inwards as did all shop and yard employees and he believed he could havecarried out this position had he been retained in the respondent's employment. The ManagingDirector did not dispute that the clamant may have been able to perform this role but a differentskillset was required. He refuted that this employee also regularly worked in the yard andstated that when this employee is on annual leave his position is covered by a shop employeeand not a yard employee.

It was put to the Managing Director that there was an issue regarding a complaint the claimant had made to one customer about another customer. The Managing Director confirmed he became aware of this issue in or around September/October 2009. The claimant had made an allegation that one customer had incorrectly paid for goods for another customer.

The Managing Director carried out an investigation and found that in fact the correct customer had paid for the goods but the address of the other customer was incorrectly put on the invoice. He spoke to the claimant about the matter a number of times and told the claimant that there was no basis to his accusations and showed the claimant the proof he had. However, the claimant continued to pursue the matter and while the Managing Director took a dim view of this the claimant was not disciplined in relation to this matter. It was the claimant's

evidencethat this issue was badly managed by the Managing Director.

The claimant gave evidence pertaining to loss.

Determination:

The Managing Director gave evidence that from 2007 onwards the business was in decline and to date is still declining. He stated that the business was broken up into two parts, the yard and the shop. Different criteria were adopted for each section of the business. In the yard it was the "last in first out" approach. In the shop subject to exigencies it was done on an economic basis. The claimant took issue with the respondent's split approach to the redundancy. The object of the redundancy was to save the business and the jobs of the remaining employees. The respondent company is entitled to adopt whatever approach if feels appropriate to meet its objective so long as it is fair and transparent.

All of the staff was informed of the financial position within the company. Also the claimant was offered voluntary redundancy and he did not accept. The Tribunal is satisfied the claimant was fully aware of the pending situation.

The Tribunal is also satisfied that the business had two distinct parts and is satisfied based on that fact that the respondent company was perfectly within its rights to adopt the approach it did. The "last in first out" approach adopted for the yard staff is one of the best known approaches albeit not the most commonly used in modern times. It is fair and it is objective andit is transparent.

In relation to the claimant's obligation to mitigate his loss, it is commendable that he did courses and up skilled however that does not satisfy his legal obligation to mitigate. There wasno evidence of any attempts to gain employment of any sort whatsoever.

Based on all of the evidence the Tribunal finds that a genuine redundancy situation existed within the respondent company and that the selection process was fair. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, also fails as the claimant was paid in lieu of notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)