EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:	**CASE NO.**
EMPLOYEE **1st Named Claimant**	UD2228/2010
EMPLOYEE **2nd Named Claimant**	UD2290/2010
EMPLOYEE **3rd Named Claimant**	UD2292/2010
EMPLOYEE **4th Named Claimant**	UD2321/2010
EMPLOYEE **5th Named Claimant**	UD2323/2010
EMPLOYEE **6th Named Claimant**	UD2418/2010
EMPLOYEE **7th Named Claimant**	UD2419/2010
EMPLOYEE **8th Named Claimant**	UD2420/2010
EMPLOYEE **9th Named Claimant**	UD789/2011
EMPLOYEE **10th Named Claimant**	UD790/2011
EMPLOYEE **11th Named Claimant**	UD791/2011
EMPLOYEE **12th Named Claimant**	UD792/2011

EMPLOYEE
13th Named Claimant

UD793/2011
MN856/2011

EMPLOYEE
14th Named Claimant

UD794/2011

EMPLOYEE
15th Named Claimant

UD795/2011
MN857/2011

EMPLOYEE
16th Named Claimant

UD796/2011

against

EMPLOYER

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 BL

Members: Mr N. Ormond
Mr J. Flannery

heard these claims at Tullamore on 25 July 2012

Representation:

Claimants:
Mr Colin Jennings BL, instructed by Mr Ken Enright,
Thomas W. Enright Solicitors, John's Place, Birr, Co. Offaly
Represented the 2nd 5th, 8th, 10th &11th named claimants. There was
No appearance or representation on behalf of the other claimants

Respondents:
Mr Anthony Byrne BL, instructed by Mr John Maguire,
Irish Concrete Federation, 8 Newlands Business Park,
Naas Road, Clondalkin, Dublin 22

The determination of the Tribunal was as follows:

At the outset, being satisfied that all the claimants were properly on notice of the hearing, the Tribunal found, on application on behalf of the respondent, that the claims of the 1st, 3rd , 4th, 6th , 7th , 9th , 12th , 13th , 14th , 15th and 16th named claimants under the Unfair Dismissals Acts, 1977 to 2007 and the claims of the 13th and 15th named claimants under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 all fail for want of prosecution.

Preliminary Issue

The respondent raised a preliminary issue in respect of the 2nd, 5th and 8th named claimants in regard to the length of time between their dismissal and the time when their claims under the Unfair Dismissals Acts were lodged with the Tribunal. It was accepted that the 2nd named claimant was dismissed on 28 October 2009. There was a dispute as to whether the 5th named claimant was dismissed on 28 or 30 October 2009. The 2nd named claimant's claim was lodged with the Tribunal on 27 October 2010 and the 5th named claimant's claim was lodged on 29 October 2010. As neither of these claimants was able to demonstrate to the satisfaction of the Tribunal that exceptional circumstance had prevented them lodging their claims within six months of the date of dismissal the Tribunal found that there was no jurisdiction to hear their claims.

There was a dispute between the parties in the case of the 8th named claimant who asserted that he had been dismissed on 29 May 2010. The respondent was able to provide the Tribunal with documentary evidence that the 8th named claimant's date of dismissal was 29 April 2010. As the 8th named claimant was unable to support his assertion with documentary evidence the Tribunal found that the date of dismissal was 29 April 2010. In circumstances where he was unable to show exceptional circumstance preventing the lodging of the claim within six months of the date of dismissal, it was lodged on 15 November 2010, the Tribunal found that there was no jurisdiction to hear the claim of the 8th named claimant.

Substantive Issue

The respondent is a manufacturer of concrete products including pipes and roofing tiles. It is common case that the respondent is heavily dependent on the construction industry and there is no doubt but that the current economic downturn has had a very serious effect on the respondent's operations. The number of employees has fallen from 165 in 2007 to around 47 and production is at a level of less than 20% of plant capacity.

As a result of the downturn in the activity of the respondent unfortunately it became necessary for the respondent to make difficult decisions in regard to the number of employees and their level of remuneration. The respondent sought to impose a pay reduction on its shop-floor work employees having already implemented severe pay reductions at management level. This resulted in a Labour Court hearing which has no bearing on the issue before the Tribunal.

In January 2010 management canvassed the issue of redundancy with the employees and, eventually, some 31 employees took up that option. This did not represent the level of reduction in workforce that the respondent needed to achieve in order to keep the business going. The evidence of both the financial controller (FC) and a director (AD) who acts as plant foreman was that shutting the business down completely had been under consideration.

In order to effect a further reduction in the numbers of employees the respondent embarked on a programme which involved compulsory redundancies. In order to implement the programme of redundancies the respondent relied on a list of criteria to be used for the selection of candidates for redundancy in the different sections of their plant. The criteria employed were:

- Voluntary
- Length of service
- Ability to achieve objectives
- Expertise/Knowledge
- Self-motivation
- Versatility/Application of knowledge
- Wider personal contribution to the company workforce

At no stage prior to their selection as candidates for redundancy were these criteria made known to the employees.

The 10th named claimant began employment with the respondent in 1980 and was employed as a machine operator in the tile plant. For the last six years of the employment he had primarily operated a machine in the respondent's packing unit. While it is common case that the 10th named claimant was capable of operating a considerable number of other machines, the respondent did not accept that the 10th named claimant was capable of operating all but one machine in the tile plant, in particular pointing out that the 10th named claimant's experience in machine operation was limited to the dry-side of the tile plant.

The 11th named claimant, who began his employment with the respondent in 1989, was employed as a fitter in the tile plant. In addition to his ability as a fitter it was common case that he was able to operate all machines in the dry-side of the tile plant as well as many of the machines on the wet-side of the tile plant.

A score for the employees was compiled on a mark out of ten in six categories with 0.5 for each year of service up to a maximum of 20 years' service. If an employee opted for voluntary redundancy this meant that the respondent was then looking for one fewer candidate as indicated by the matrix. In some cases high scoring employees opted for voluntary redundancy with the effect that lower scoring employees were protected, in some cases lower scoring employees who would have scored low and then been selected for redundancy chose the voluntary option.

The claimants were of the opinion that LIFO should have been the criterion of selection for redundancy. The respondent's position was that whilst LIFO would have been cheaper to

implement it would not have given the right balance for the company to move forward.

Determination

There having been no evidence of the company having any agreed criteria of selection of candidates for redundancy arising from a previous round of redundancies some twenty years earlier there was no requirement for it to adopt LIFO as the means of selecting candidates on this occasion. Having heard the evidence of AD who was among those who scored the employees against the selection criteria the Tribunal is satisfied that the criteria were applied in an objective manner although the lack of transparency in their application was not ideal. It would have been better practice to make the employees aware of what the selection criteria were to be. Accordingly, the Tribunal is satisfied that the selection of the 10th and 11th named claimants as candidates for redundancy was not unfair. It follows that their claims under the Unfair Dismissals Acts, 1977 to 2007 both fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)