<div align="center">**EMPLOYMENT APPEALS TRIBUNAL**</div>

APPEAL OF: CASE NO.
                                                                           UD1976/2009

EMPLOYER   *-appellant*

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

EMPLOYEE   *-respondent*
-v-

EMPLOYER   *-appellant*

under
<div align="center">**UNFAIR DISMISSALS ACTS, 1977 TO 2007**</div>

I certify that the Tribunal
(Division of Tribunal)
Chairman: Mr. D. Herlihy
Members: Mr. W. O'Carroll
                      Mr. T. Kelly

heard this appeal at Limerick on 5th April 2011

<u>Representation:</u>
Appellant: In person

Respondent: Ms Lucy Collins, Solicitor,
                    55 O'Connell Street, Limerick

Background:
This case is before the Tribunal by way of an employer appealing the Recommendation of a Rights Commissioner ref: r-063593-ud-08/POB. The employer may be referred to as the employer or the appellant and the employee as the respondent or employee.

Appellant/ Employer's case:
The Tribunal heard evidence from the financial controller. The company was twenty years in business. In 2007 sales started to decline and this impacted on the business. In 2008 they let 23 employees go and cut costs by €500,000.00. There was a 68% reduction in revenue. Those employees who were not made redundant had to take a pay cut of anything from 10% to 30%. It was communicated to the respondent employee that staff hours were to be reduced.   The employee was the store manager.

The employer decided to operate with just one manager for the two stores that they had in Limerick. This impacted on the employee (as she was made redundant). The decision was based on business requirements and not LIFO (last-in-first-out). The witness explained that he was at the meeting when it was explained to the respondent employee that he position was being made redundant.

The company had already committed to opening a store in Dublin and they offered the claimant a position in the Dublin store at that time.

In cross-examination the witness agreed that it was not offered to the employee to take a pay cut. It was put to the witness that the company advertised for telesales staff after they made the employee redundant. He replied that telesales was a "new area" for the company and they do not have telesales employees at present. When asked if he had the personnel file for the redundancies he replied that he did not.

Respondent/ employee's case:
The employee gave evidence that she applied for another position in the company in area sales. She was told that regarding her knowledge level she would move into that area as time went by i.e. 18 months or so. She would not have left another job to go into the position as a "flat" store manager.

At one time she met two of the company personnel who told her that she would oversee the two Limerick stores and from thereafter move on to area sales. A few months later she was let go. She asked why she was let go before another manager and she was told it was because she was the highest paid manager. She asked who was going to do her work and was told it was the manager from another store. Then both stores would be overseen by another person. The other manager was paid €30,000.00 and she was paid €45,000.00. The claimant explained further to the Tribunal in her evidence on the management structure how a saving was not made.

She was offered a position in Dublin and she did want a job but she had a mortgage in Limerick. She was never told her job was in jeopardy. When sales assistants were let go she asked and was told that LIFO was taken into consideration.

It had been discussed with her previously that she would manage both stores.

Determination:
Based on the evidence adduced the Tribunal unanimously determine that the employee was unfairly selected for redundancy. The employee was unfairly dismissed. Accordingly, and with having regard to all the circumstances, the Tribunal determine that compensation be the most appropriate remedy in this case. The Tribunal in varying the Recommendation of the Rights Commissioner ref: r-063593-ud-08/POB, awards the employee €7,000.00, under the Unfair Dismissals Acts, 1977 To 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
    (CHAIRMAN)