EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.

EMPLOYEE UD1745/2010

Appellant

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

EMPLOYEE

Appellant

and

EMPLOYER

Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL
Members: Ms A Gaule
Mr G Whyte

heard this appeal at Dublin on 23rd April 2012

Representation:

Appellant(s): Mr Paul Henry, SIPTU, Construction Branch, Liberty Hall, Dublin 1

Respondent(s): Mr Brian Conroy BL instructed by Mr Martin Browne, DFMG, Embassy House, Ballsbridge, Dublin 4

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by an employee appealing against the recommendation of the rights commissioner reference no. r-085021-ud-09/SR dated 20th August 2010.

Respondent's Case

The property manager told the Tribunal that the claimant was initially employed part time but as the shopping centre became busier he was employed full time. The claimant was employed to carry out general maintenance and repairs. The construction of an extension of the shopping

centre began in 2003 to and was completed in 2005. The older parts of the shopping centre were refurbished. New plant and equipment was introduced and the claimant's work began to diminish as specialist contractors were instructed to take care of the new equipment installed inthe shopping centre. Due to the economic downturn in 2007 and 2008 the shopping centretenants sought a reduction in the service charges they paid. Corresponding reductions in costswere achieved across a number of areas including cleaning, gas supply, maintenance andsecurity.

At the height of the boom it was beneficial to have a general maintenance person on site. In more difficult times the maintenance person was seen as a luxury. The property manager dealt with several shopping centres and the other centres never had full time maintenance staff. At the other shopping centres contractors were used to carry out repairs.

The claimant's role had diminished with the introduction of new equipment. The manager in the shopping centre issued the claimant with a job list each week. The work of the claimant was being reduced. Larger projects were undertaken by specialists. The claimant's work was reduced by 70% or more. The claimant painted pillars and doorways but he did not paint larger areas. Redundancy had been up for discussion for some time and the respondent tried to retain the claimant as long as it could.

The property manager provided the owners with a financial update on a weekly basis. 2008 was a difficult trading period and the retailers were very vocal in making that clear to her. The property manager was instructed by the landlords to make the claimant redundant.

In cross-examination the property manager said that since the shopping centre had been upgraded new locks had been installed on the doors. It was a swipe card system and the claimant had a limited ability to repair them. Prior to the installation of the new swipe card system, if a door lock was damaged by a trolley then the claimant would have replaced the lock. Part of the claimant's remit was to check roof areas and air conditioning. The claimant dealt with blockages in the toilet. Toilets had been refurbished so that the blockages were less frequent. The property manager agreed that the claimant had worked full time before he was made redundant. It was her evidence that the respondent had found it increasingly difficult to keep the claimant busy. The decision to make the claimant redundant was made by the consortium which owned the shopping centre. The construction manager was instructed on Friday morning to make the claimant redundant on Friday evening.

The respondent had seasonal displays at Christmas, Easter and on Mother's Day. The claimant was involved in the Santa hut but that work was no longer required as "Santa" now brings his own hut and equipment. The claimant's job was to undertake general repairs and maintenance and when refurbishment took place a large proportion of his work was gone.

Claimant's Case

The claimant told the Tribunal that he commenced employment with the respondent on the 10th March 1995 as a carpenter, maintenance worker and caretaker. He undertook the tasks that were documented on a checklist. His main task was to look after the toilets and there was a major blockage every two to three weeks. He undertook painting and woodwork. He worked eight hours a day from 2005 until 2009. He was willing to work a two day week and he thought that he might end up working part time because of the recession. The claimant had painted the gas pipes on the roof, he started that job and no one was brought in to help him. He could do

plumbing, plastering, block-laying and electrical work. The claimant has not obtained alternative employment since the date of termination of his employment.

In cross-examination the claimant stated that he was out of work beginning in 2005 for fourteen months. The claimant did not accept that there was a redundancy situation. He would have accepted part time work. He had no idea that he would be made redundant. When swipe card locks were placed on the doors he still undertook maintenance on the doors. The claimant had received a redundancy lump sum payment of €17,652.

The claimant's second witness told the Tribunal that he worked on the premises for fifteen years. While he was there he observed the claimant painting corridors and doors, tiling, doing cobble lock and working on the toilets constantly.

Determination

The Tribunal has carefully considered the evidence and the submissions made by both parties.

The Redundancy Payments Act 1967 at section 7(2) provides that for the purposes of subsection (1), an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to—

" (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish."

The Tribunal finds that the requirements of the respondent to carry out work of the particular kind for which the claimant had been employed had ceased and/or diminished. The claimant had been employed as a general maintenance operative at a shopping centre. The shopping centre had been refurbished and as a result of these refurbishments less maintenance needed to be done and some of the work which the claimant had done previously could only be carried out by specialist contractors as the claimant lacked the skills to undertake the maintenance of the new equipment himself. No issue arises as to the fairness of selection for redundancy as the claimant was the only employee performing the tasks in question. The Tribunal finds that the employer had no suitable no alternative work available for the claimant. The maintenance tasks which might need to be carried out in the future were of a lesser order and did not justify the retention of an in-house maintenance operative. Some of the remaining work which had been carried out by the claimant was absorbed into the functions of the cleaning staff.

The claimant felt that the manner in which his employment was terminated was *"humiliating, deeply distressing and uncalled for."* The claimant had been informed on Friday evening by the property manager that he was being made redundant. He was told that the employer wanted the matter finalised that day. The claimant asked that he be allowed to work even one week of his six weeks notice as he felt he needed the time to adapt to the loss of his job after fourteen years of service. He also wanted to take the time to say his goodbyes to the staff, tenants and customers. The property manager refused this request. The claimant responded, stating that he would not sign the redundancy papers immediately. When the claimant returned to his workplace on Monday morning at 8am the property manager told him that he had to sign the paperwork and vacate the premises by 9am. When he asked for some time to speak to his union representative before signing the paper he was told to report back by 9.10am to sign the forms. While the claimant was attempting to ring his wife, and then his union representative, he was

approached by a security officer who said he had been instructed to help him pack. The security officer told him that the property manager had mentioned calling the police. The claimant spoke with his union representative. By the time the union representative had telephoned a second time, advising the claimant that a meeting had been arranged with the property manager off site (on the coming Wednesday) some time had passed. The property manager told him that it was 10.30am and that she had to see him off the premises before she could go. The claimant had loaded two shopping trolleys full of tools into his car and while he was loading his car the property manager stood over him accompanied by two security officers. When the claimant explained that he could not fit everything into the car and would have to come back later the property manager told him that she could not permit that and that he would have to hand over his keys.

The claimant was 63 years of age and had given his employer 14 years of service when he was informed by the property manager that he could not work out his notice and he was given one hour to pack up and leave the premises. The Tribunal accepts that the manner in which the dismissal was carried out was unnecessary, unduly insensitive, brusque, demeaning to the claimant and generally inappropriate. It appears probable that had the respondent displayed ordinary standards of tact and decency when terminating the claimant's employment then the respondent might have avoided having to defend itself before the Rights Commissioner and the Employment Appeals Tribunal.

The Tribunal has considered the case of the Danninger and Danninger Ltd v Philip Preston UD342/2008 and holds that the termination of an employment in a sudden or abrupt manner does not of itself transform what would otherwise be a redundancy into an unfair dismissal. The selection of this claimant for redundancy can be distinguished from Danninger as the decision was not arbitrary but was based on the business needs of the respondent to discontinue this role and no other employee performed the role which was to be eliminated.

The Tribunal finds that the claimant was not unfairly dismissed. The Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007 fails and the Tribunal upholds the decision of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)