**EMPLOYMENT APPEALS TRIBUNAL**

| CLAIMS OF: | CASE NO. |
|---|---|
| EMPLOYEE | UD756/2011 |
| WT315/2011 | MN823/2011 |
| Against | |
| EMPLOYER | |

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**
**ORGANISATION OF WORKING TIME ACT, 1997**
**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. O. Madden B.L.
Members: Mr. J. Goulding
Mr. F. Barry

heard this claim at Dublin on 12th September 2012 and 6th December 2012

Representation:

Claimant:
Carmody Moran, Solicitors,
8 The Avenue, Tyrrelstown Town, Centre, Dublin 15

Respondent:
Mr. Eddie Keenan, Construction Industry Federation,
Construction House, Canal Road, Rathmines, Dublin 6

**At the outset the claimant withdrew his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.**

**<u>Respondent's case:</u>**

The respondent is an industrial glazing company. There were two strands to the respondent's operations. One is the on-site fitting of glass and windows and the other is the assembly of the windows at the respondent's premises. The claimant was employed as an assembly line supervisor at the respondent's premises and did not work on construction sites.

The claimant commenced employment with the respondent on 24th August 2009 and was placed

on lay-off from 12th November 2010. At the time of the claimant's lay-off thirty one other staff were also on lay-off. There were three assembly line supervisors and the claimant was the only one to be laid-off. The two supervisors kept on were working on an assembly line supplying a site in Enniskillen which predominantly required wooden window frames. The claimant was not initially involved on that particular line and did not have the skill sets required for that line while the other two supervisors did. However when the assembly line on which the claimant worked was closed down in March/April 2010 he was transferred to the Enniskillen project as there was a small amount of aluminium work (his specialty) to be completed on that line. When this work came to an end the claimant was placed on lay-off. The respondent denied that the claimant had been sent on a "train the trainer course" in relation to the Enniskillen line.

The respondent was tendering for other projects and was hoping to call those workers on lay-off back to work but was unable to do so as no new contracts were secured. In February 2011 the respondent made all the staff on temporary lay-off redundant, including the claimant.

The Enniskillen assembly line continued until completion in approximately late July 2010 at which time one of the remaining supervisors was made redundant and the other one remained until December 2010 because he was involved in assembling roof lights.

It was put to the witness for the respondent (CD) that the claimant was in fact working on the Enniskillen line and that he was the first supervisor to be assigned to it in May 2010. CD denied that the claimant was the first supervisor on the Enniskillen line and added that this assembly line had started long before May 2010.

CD was asked about a complaint made by the claimant against his manager and stated that the claimant had indicated to her, just prior to being placed on lay-off, that he wished to make a formal complaint but that he had never actually made such a complaint. CD subsequently wrote to the claimant enquiring as to whether he wished to proceed with a formal complaint but she received no reply to her letter.

There was a general meeting held in March 2011 and the CEO of the respondent informed all those present that there were going to be redundancies. The witness for the respondent was confident that the claimant was invited by letter to this meeting but could not say whether the claimant attended this meeting. Prior to the economic downturn the respondent employed 137 people and currently only employs 18. There were no alternatives to redundancy and therefore the respondent had no discussions in this regard.

The respondent denied that the claimant was unfairly selected for redundancy.

**Claimant's case:**

The claimant was employed by the respondent from 24th August 2009 until he was made redundant on11th March 2011, having been on temporary lay-off since 12th November 2010.

Immediately prior to lay-off the claimant had complained to the HR Manager about how he was being treated by his Line Manager. He was not satisfied with how his complaint was being

handled and requested the intervention of an independent mediator. However this request was rejected.

The respondent operated two assembly lines and when the line on which the claimant was a supervisor closed down in March/April 2010 he was transferred to the Enniskillen project. The claimant told the Tribunal that he and a General Operative were sent on an in house training course which was referred to as a "train the trainer course". He then trained one of the other supervisors. That supervisor was not placed on lay-off in November 2010 and ultimately remained in employment until December 2011. The claimant contested that it ought to have been he who was kept on until December 2011 as he had longer service with the respondent.

The claimant did not receive any notice of the general meeting in relation to redundancies and did not attend the meeting. His representative pointed out that there was no consultation between the respondent and the claimant prior to his redundancy and that he was not given an opportunity to explore alternatives to redundancy.

**Determination**

It is noted that the claimant withdrew his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

There was no evidence adduced in respect of the claim under the Organisation of Working Time Act, 1997 and therefore that claim is dismissed for want of prosecution.

The claimant was made redundant along with 32 other employees of the respondent company who, like the claimant, were already on lay-off. Had the claimant felt aggrieved by the initial decision to select him for temporary lay-off in November 2010 then this was the time to raise such a grievance. He failed to raise any such grievance. The Tribunal are therefore satisfied that having accepted the initial lay-off period, the ultimate decision to make him redundant, along with the other 32 employees in such similar circumstances, was fair and reasonable in all the circumstances. Therefore the Tribunal finds that the claimant's claim under the Unfair Dismissals Act 1977 -2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)