

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – **Claimant**

UD1161/2011

RP1518/2011

MN1249/2011

against

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr M. Noone
Mr F. Keoghane

heard these claims at Dublin on 13 February 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:

At the outset the claims under both the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 were withdrawn.

The claimant was a systems engineer with the respondent and its predecessors for in excess of 40 years. The respondent installs and maintains telephone and particularly conference call systems. It was common case that, due to both the economic downturn and the development of more modern technology, the respondent has experienced a very significant reduction in its level of business and that following other cost reduction measures it became necessary in 2010 for the respondent to make a reduction in its headcount. The two systems are time division multiplexing (TDM) and internet protocol (IP). The respondent had reduced its workforce from 68 in 2007 to 59 at the end of 2009 and this reduced further to 27 by the end of 2010.

During the spring of 2010 the directors put together a plan for the survival of the business and this necessitated a total of eight redundancies six of which were to come from the ranks of the systems engineers. There was an agreement between the respondent and the union that the selection criteria for compulsory redundancies were to be based on LIFO. It was the respondent's position that over the previous few years they had sought, unsuccessfully, to negotiate a change to this policy. The operations director (OD) compiled a matrix of the 23 systems engineers with the help of the respondent's engineering managers based on their knowledge of both TDM and IP systems as well as a rating in terms customer focus and flexibility. OD also compiled statistical analysis of the engineers' performance in fielding technical phone calls following the introduction of an updated call analysis system.

On the morning of 7 May 2010 the directors of the respondent met the employees' union representatives, including their full-time official (FT) and the claimant, to give them forewarning of an announcement later that day of redundancies which were going to be implemented in order to save the company. The directors then called a general staff meeting to deliver the news about the redundancy programme, individual employees were then taken into one to one meetings and it was at these meetings that the claimant became aware that he had been selected as a candidate for redundancy on statutory terms. While it was the position of the respondent that the then finance director (FD) told the meeting on 7 May 2010 that LIFO had not been used as the selection criterion the letter from FD to the claimant in which she informed him formally that he had been selected for redundancy makes no mention of what criteria had been used in the selection. This letter gave the claimant eight weeks' notice of the termination of his employment.

As a result of discontent among the workforce which resulted in industrial action the parties attended a conciliation conference at the LRC on 19 May 2010. Following on from this conference the members of the union attended a meeting in Liberty Hall on 26 May 2010 at which they voted, by the narrowest of margins, in favour of accepting a proposal whereby ex-gratia payments were to be made to those with more than 20 years' service and an additional ex-gratia payment for those with more than 30 years' service. FT confirmed acceptance of the enhanced terms for those with more than 20 years' service in a letter to the managing director (MD) on 27 May 2010. The claimant received his statutory redundancy lump sum payment and, once the respondent had received its rebate from the fund, received the agreed ex-gratia payment.

Determination:

Whilst at the time the selection of the claimant as a candidate for redundancy was made the agreed criterion was LIFO, the claimant, as the second most senior of the engineers, must have realised that LIFO could not have been used in his selection. Whilst there was a lack of detail in the matrix provided by the respondent in regard to the selection of the claimant the Tribunal is satisfied the process was sufficiently objective as to justify his selection as a candidate for redundancy. It was contended on behalf of the claimant that there was never any change to the agreement that LIFO was to apply arising from the conciliation conference. The Tribunal cannot accept this contention; FT's letter of 27 May to MD accepts the redundancy of those selected for redundancy in return for enhanced terms for those, including the claimant, with more than 20 years' service. The Tribunal is

satisfied that the claimant was selected for redundancy in accord with the agreement communicated to MD on 27 May 2010 and, accordingly, the selection of the claimant as a candidate for redundancy was not unfair and the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)