

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

EMPLOYEE - *Claimant*

Against

EMPLOYER - *Respondent*

under

### CASE NO.

UD1033/2011

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B.L.

Members: Mr T. O'Grady  
Mr. S. O'Donnell

heard this claim at Dublin on 16th October 2012 and 31st January 2013

### Representation:

Claimant: Beauchamps, Solicitors, Riverside Two, Sir John Rogerson's Quay, Dublin 2

Respondent: Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

### Summary of Evidence

A director of the respondent company gave evidence of having responsibility for sales. The witness knew the claimant for twenty six years including a period with another employer. They had the usual ups and downs but the witness had no issue with the claimants work.

In 2010 sales dropped nationwide and the future of the company began to look bleak. The witness was involved in the decision to introduce redundancies. The respondent made a number of employees redundant in the service area. In the selection process a last in first out policy was adopted. It was rejected that injury claims by the claimant had any influence in deciding to make the claimant redundant. It was also denied that the claimant's unavailability to work on a particular Saturday was considered when deciding to make the claimant redundant. Following two accidents involving the claimant the witness asked the claimant to direct any injury claims to the employer rather than the customers of the respondent where the accidents occurred. Other options were offered to the claimant including short term lay-off and a position in the stores department with less pay. The claimant was given an opportunity to consider the options

but never came back with his preferred choice. The claimant reluctantly accepted redundancy and did not pursue a complaint of bullying which he had made.

The claimant commenced employment with the respondent company in November 2008. He had worked for the company previously and returned in 2008 to the role of service engineer and trainer. His main role was as a service engineer. He never noticed any reduction in jobs coming in and both he and his colleagues were never short of work. He accepted there was a downturn in sales but not in servicing and was aware that the administration staff were notified of wage cuts. The claimant confirmed he had two accidents on customer sites in February 2010 and April 2010. After that period he believed that the MD was distancing himself from him and following his unavailability to work on a Saturday in Oct 2010 he was called to his office. The MD lashed out at that meeting. A memo to all staff followed regarding weekend work. Having sent a grievance letter to the respondent he was asked by another employee to attend a meeting with the MD. He assumed the meeting was related to his letter however at that meeting he was informed that there was not enough work coming in and the company were struggling to get contracts. He was asked to consider two options lay-off or redundancy. No other options were offered however he himself suggested other options in the stores area.

### **Determination**

Having considered all of the facts and evidence adduced at the hearing the Tribunal conclude that the procedure used in relation to the redundancy selection was neither fair nor transparent. There was no evidence that the respondent neither entered into a consultation process with its employees nor was the claimant given any prior notice of the respondent's decision to make his position redundant. On that basis the Tribunal find that his claim under the Unfair Dismissals Acts, 1977 to 2007 is successful and taking into account all of the circumstances the Tribunal award the sum of €7,000.00 compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_

(CHAIRMAN)