

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD303/2007, MN198/2007  
WT94/2007

Against

Employer

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr B. Garvey B L

Members: Mr M. Kennedy  
Mr J. Maher

heard this claim at Dublin on 28th August 2007

### **Representation:**

Claimant : In person

Respondent : XXXX

The determination of the Tribunal was as follows:

### **Respondent's Case**

The financial controller as the only witness for the company outlined his role in this case. On 13 February 2007 the witness received a phone call from a company foreman who told him of an incident involving the claimant and a machine. In giving his opinion on that incident the witness agreed that the instant dismissal of the claimant was justified. He based that opinion on what he was told by that foreman and without speaking to the claimant or engaging in any further investigation into that incident. That foreman then proceeded to dismiss the claimant. The witness defended that decision on the grounds of gross negligence adding that the claimant had compromised health and safety standards and was responsible for inflicting damage and consequential financial loss to the company.

The witness did not have the authority to hire or dismiss staff and was restricted to dealing with the

claimant in terms of wages and time sheets. The claimant did not have a contract of employment. In describing the claimant as a model employee up to that incident the financial controller acknowledged that the claimant had never been reprimanded by the respondent up to that date. According to the witness the claimant damaged company property while attempting to surmount a two-foot wall with a digger to gain access to a site. The financial controller expressed surprise at that attempted manoeuvre. He also said that the respondent wrote to the claimant on 22 February 2007 giving the reasons for his dismissal and indicating an appeal process. The company did not receive a reply to that letter.

The witness also detailed the issue of holiday pay to the claimant and stated that the company had no liability towards him in that respect.

### **Claimant's Case**

The claimant had many years experience in handling and driving construction vehicles. He was very familiar with the machine under his control on 13 February 2007. That morning the respondent's foreman asked him to report to a particular site. When he arrived there he was given further instructions from another contractor to commence to strip a site. In order to do that he had to traverse a wall but in doing so two wheels of his machine sank in the soft ground causing the machine to rest on the wall. Such a move damaged the undercarriage of the digger. The witness accepted in hindsight that he should not have attempted such a task without assistance. The claimant immediately contacted the respondent's foreman and reported the damage. When that foreman arrived on the site he told the claimant that such things happen and that he was not going to give him a hard time because of it. Some thirty minutes later the same foreman returned and told the claimant he was now dismissed. The claimant was surprised at that news and added that he had never had problems with the respondent prior to this incident.

Following his dismissal the claimant attempted to contact the respondent's foreman but "he didn't want to know". The witness did not write to the respondent about his dismissal and the incident. He was not aware of the company's disciplinary procedures but assumed they existed. He felt that he was not given an opportunity to present his case. The witness also maintained the company owed him outstanding holiday entitlements.

### **Determination**

Having considered the evidence the Tribunal finds that the claimant's dismissal was unfair. The respondent's evidence was generally based on hearsay and on a second hand account and could have benefited from further direct input. The claimant was denied natural justice from the respondent in that the company neither at the time or subsequently afforded the claimant an opportunity to present his case. The respondent acted with too much haste to the detriment of all concerned. Accordingly the Tribunal awards the claimant €3,200.00 as compensation under the Unfair Dismissals Acts, 1977 to 2001.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is allowed and the claimant is awarded €800.00 as compensation for a week's notice.

The Tribunal is satisfied that the claimant received all his entitlements under the Organisation of Working Time Act, 1997 and therefore his appeal under that Act fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

