

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

CASE NO.

Employee

MN200/07

WT95/07

UD305/07

**Against**

2 Employers

**Under**

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. Cagney B.L.

Members: Mr J. Horan  
Mr A. Butler

heard this claim at Dublin on 25th July 2007 and 16<sup>th</sup> October 2007.

**Representation:**

**Claimant:** Mr. Daniel Simms B.L., instructed by Lee & Sherlock, Solicitors,  
Unit 5, Ground Floor, Block F, Nutgrove Office Park, Rathfarnham, Dublin 14

**Respondent:** Mr. John Kinsella B.L. instructed by Plunkett Kirwan, Solicitors, 175 Howth Road  
Killester, Dublin 3.

The determination of the Tribunal was as follows:-

Dismissal as a fact was in dispute.

**Respondent's Case:**

The Managing Director informed the Tribunal that the company is involved in a highly regulated industry and must comply with legislation that governs its activities. It is involved in the movement of hazardous waste. The company employs three drivers, the claimant being one of them. When drivers are recruited they are fully trained, taken through documents to be completed and given written examples. On every consignment the driver is given a partially filled C1 form and must ensure that it is completed at the end of the delivery. Other duties include labelling the

waste correctly and completion of other documents. The driver carries reference papers with him and a mobile phone is supplied to every driver should he experience any difficulties.

The Managing Director told the Tribunal that the company was dissatisfied with the claimant's performance over a given time. The reasons for the dissatisfaction were waste tins containing ink being transported in incorrect containers, refusal by the claimant to close the vehicle's orange plates when requested to do so, departing the depot without his workload for following day and failure to answer his telephone when contacted by the office, inaccurate and incomplete C1 documentation and failure to complete two jobs assigned to him on a particular day.

On one occasion the claimant decided to finish work at 2.15 pm approx without prior approval of his manager. On another occasion the claimant left the vehicle ignition on all night and he drove the vehicle for 17 hours on another day and then went home.

After giving the claimant a verbal warning on 21<sup>st</sup> November 2006 his performance improved over the next two weeks. The company was satisfied that the claimant could complete forms correctly but felt he couldn't be bothered. After two weeks, the claimant reverted to his old ways. There were times when the claimant was unshaven and was impossible to talk to. His paperwork was atrocious. He didn't keep his vehicle clean.

On 13 February 2007, the Managing Director instructed the Depot Manager to tell the claimant to come to his office as he wished to speak to him privately. The claimant refused. The Managing Director then went down to the claimant who was near his truck and spoke to him. The claimant refused to engage in conversation with the Managing Director saying he wanted notice of any such meeting. He warned the claimant that if he continued to refuse to report to his office he would have no alternative but to suspend him and he was suspended. Another employee of the company witnessed this incident.

A disciplinary hearing took place on 26<sup>th</sup> February 2007 and the claimant was represented by his solicitor. At this meeting the Managing Director spoke at length about the claimant's work performance. Both the claimant and his solicitor left the meeting for approximately 25 mins. On return all his solicitor said was that the claimant "loves his job and is a family man".

Under cross examination, the Managing Director said the company employed three drivers and that memos and corrective action/prevention action request forms issued to all drivers the main purpose being to improve employees' performance. What the company would have accepted from the drivers two years previously was no longer acceptable. He said the accurate completion of C1 forms was an ongoing issue. The driver's job was to be most helpful to the customer. The claimant was not up to standard. There was an ongoing lack of performance by the claimant.

At the disciplinary hearing on 26<sup>th</sup> February 2007 the Managing Director may have raised his finger in anger but there was no abusive language between the claimant and himself. The company often gave the claimant time off for family reasons. He was accommodated on Tuesday evenings to leave the premises early. The Managing Director agreed he hand-delivered a personal details form to the claimant the purpose of which was to get up to date information for company files. The company had always tried to facilitate the claimant with delivery/collections in locations close to the claimant's home as he lived 1 ½ hrs drive away from the depot. The claimant was fully aware of the company rules and procedures. The Managing Director's belief was always that if the claimant applied himself he had potential. The culmination of the claimant's poor work performance and disobedience to perform reasonable and lawful instructions from the

company's management resulted in the company's decision to dismiss the claimant.

The Depot Manager gave evidence. He was responsible for supervising employees. He found the claimant to be very disruptive, he had poor communication skills, he cut his workloads where possible, was unsure how to carry out his duties correctly and appeared to have a negative influence on the other drivers.. In late November 2006, he issued a memo to all drivers to ensure vehicles were washed frequently. The claimant didn't clean his vehicle until end January. The claimant did not ensure the interior of the cab was kept clean and tidy. He felt this was a poor reflection on the company. The claimant postponed a collection one particular day and took it upon himself to collect the waste the following morning. One week the claimant had several cheques in his possession and had not followed the company's procedures regarding cheques.

The claimant frequently did not complete the C1 form fully. All drivers were trained how to complete the forms and instructed that should they encounter any difficulties to telephone the company for advice. If drivers are unsure about waste identification no. they consult a sheet detailing waste type, class, UN Number, Label and EWC Code.

The Depot Manager cited an incident when the claimant left the ignition turned on in the vehicle while parked overnight in the country. The company had a tracking system and became aware that the vehicle was not shut down properly. The vehicle had toxic waste on board. The Managing Director spoke to the claimant about this serious incident the following week.

On 12 February 2007 the Depot Manager spoke to the claimant by telephone about the completion of the C1 forms. The next day, 13 February 2007 he spoke to the claimant about the issue of C1 forms and the claimant became quite irate and stormed out of the office and started doing his own work. The Depot Manager spoke to the Managing Director and the Managing Director insisted that the claimant be called up to this office. The claimant refused to go to his office and asked that the Managing Director come down and talk to him. The Managing Director spoke to the claimant at his vehicle and after that discussion the claimant was suspended.

Both the Depot Manager and the Managing Director were present at the disciplinary hearing held on 26 February 2007 together with the claimant and his solicitor. At the outset of the meeting, the Managing Director set out a number of issues for discussion and spoke for approximately one and half hours. The claimant and his solicitor left the meeting for a short time to deliberate. After approximately 25 mins. the claimant and his solicitor returned to the meeting. The claimant's solicitor said that the claimant enjoyed his job and was a family man and that the claimant was being blamed for customer mistakes.

Under cross-examination the Depot Manager said the company rules were issued to all staff 18 months previously. He was unsure if the same rules applied to all staff. He was part of the decision-making that resulted in the claimant being dismissed. The company saw the claimant as a liability because of his behaviour, lack of respect and refusal to perform legal instructions. The decision to dismiss the claimant was made on 27 February 2007.

### **Claimant's Case**

The claimant was employed as a driver for 6 years. He drove a 7 ½ ton truck. When he joined the company in 2000 he signed an employment contract. He never received the company rules. He had no difficulties in the company in his first few years. When he telephoned the company when he was unsure about waste collection at any venue he was told just to pick up the waste and

complete Part A of the form. If he didn't collect the waste he was told off. After the verbal warning he received on 21st November 2006 he received no further warnings. He certainly had no indication at that time that this warning could lead to his dismissal. He indicated that he was afraid of the Managing Director and he had had a few arguments with him over his bonus cheques and about his vehicle.

On the morning of 13 February 2007 he spoke to the Depot Manager about problems with the C1 forms. At 5 o'clock that day while he was off loading his truck the Depot Manager asked him to go up to the Managing Director's office. He said he had no time to go to the office as he had family commitments. The Managing Director came down to him and he felt bullied and under pressure. He was told to get off the truck and leave. He was suspended with pay.

The claimant attended the disciplinary hearing on 26 February, 2007. He realised that this was a serious meeting and hoped that all issues could be addressed during the course of that meeting. He had thought that he might be suspended. After he was dismissed from the company the claimant sought employment elsewhere and eventually secured work on 13 August 2007.

Under cross-examination, the claimant said when he phoned the company with queries on the C1 forms, sometimes he was told how to complete and sometimes not. He did not realise he had to fill out the full form. He had constant difficulties. While the company said he had to complete the forms, he felt he shouldn't be completing them, as it wasn't his job. The claimant denied he had a number of cheques in his pockets and that he mishandled them. While he had an opportunity to air his grievances and to respond to issues at the disciplinary hearing, he instructed his solicitor to act on his behalf.

The claimant's solicitor spoke about his attendance at the disciplinary hearing on 26<sup>th</sup> February 2007. The company put forward their issues to the claimant. Both he and the claimant left the room and he took instructions from the claimant. On their return to the meeting he spoke on the claimant's behalf saying the claimant valued his job, had two children, he felt he was penalised for customer mistakes, he found it offensive being told what to do and because of the way he was treated he was withdrawing his goodwill regarding the completion of the C1 forms.

### **Determination:**

The claim under the Organisation of Working Time Act, 1997 was withdrawn.

It is clear to the Tribunal that serious matters concerning the claimant's attitude towards his work and his superiors had arisen over the course of his employment with the respondent company which culminated in the decision to suspend him in February 2007. It is also clear to the Tribunal that the claimant was afforded the opportunity to respond to these matters at the subsequent disciplinary hearing, either directly or through his solicitor who was also present.

The claimant by his own evidence to the Tribunal was aware of the serious nature of the disciplinary hearing. The Tribunal is of the view, however, that notwithstanding this he failed to address the concerns of the respondent in any meaningful way.

The Tribunal is satisfied that the dismissal of the claimant without notice was not unfair and accordingly dismisses the claims under the Unfair Dismissal Acts 1977 to 2001 and the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

