

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
UD904/2007

against the recommendation of the Rights Commissioner in the case of:
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. A. O'Mara
Mr. S. O'Donnell

heard this appeal at Dublin on 7th February 2008

Representation:

Appellant:

Mr. John Murphy, Construction Branch, Siptu, Liberty Hall, Dublin 1

Respondent:

In person

The determination of the Tribunal was as follows:-

The claimant had worked as a general operative for the respondent for two years at the time of his dismissal. He had been a good employee, with no disciplinary issues ever arising.

On 19th October 2006 the claimant was assigned to be a helper on one of the respondent's bin trucks. As a helper he had no authorisation to drive the vehicle. His only driving licence was for a motorcycle. However, he had previously driven the truck around the respondent's yard and gave evidence that he had done this with the full knowledge of his supervisor. The claimant had undertaken this job on several previous occasions. The driver of the truck parked the truck in Rathfarnham Shopping Centre car park and went into a shop for 10-15 minutes. He left the keys in the truck. Whilst the driver was absent, another truck driver tried to drive into the car park and found his way blocked by the respondent's vehicle. This second truck driver put the claimant under considerable pressure to move the bin truck. The claimant moved the truck out of the car park and onto the public road, drove about 50 metres and parked. In the course of this manoeuvre he

reversed into a parked car, causing over €1,000 worth of damage. This incident occurred mid-morning.

The respondent took a very serious view of this incident, which they first heard off from a member of the public who phoned the respondent's office. The claimant's supervisor phoned the bin truck and asked the driver and the claimant to come back to the respondent's premises for an investigation. That afternoon two senior employees of the respondent, MD and PMcC, held an initial investigation. They interviewed the claimant and the driver, having first advised the claimant that he had the right to have representation if he wished. The claimant chose not to have representation present. MD took the decision to suspend the claimant on full pay pending further investigation, having confirmed this decision first with her manager, PF. The next day PF, MD and PMcC went to the Rathfarnham Shopping Centre, where they spoke to a witness of the incident, and confirmed the facts. On 20th October 2006 the respondent wrote to the claimant and invited him to a disciplinary hearing on 23rd October 2006. The claimant attended this meeting accompanied by two shop stewards from his trade union. The hearing was conducted by PF. MD attended and took minutes. At the hearing the claimant acknowledged the facts as set out, admitted he was wrong, apologised, said it wouldn't happen again and offered to pay for the damage to the car. However, PF took the decision that the incident was gross misconduct on the part of the claimant and, on 27th October 2006, he wrote to the claimant dismissing him. The claimant appealed this decision to the Managing Director of the company, MT. An appeal hearing took place on 10th November 2006. MT conducted the appeal hearing, with MD present to take notes. MT upheld the original decision to dismiss the claimant and this was conveyed to the claimant on 16th November 2006.

Determination

Having considered all the evidence, the Tribunal believes that the incident which gave rise to the dismissal was extremely serious. However, the Tribunal feels that it was unfair to dismiss the claimant having regard to the claimant's clear record of employment and also the circumstance in which he found himself on the 19th October 2006. The Tribunal believes that the claimant nonetheless contributed significantly to his own dismissal and, in the circumstances, it makes an award of €12,000.00 under the Unfair Dismissals Acts, 1977 to 2001. The decision of the Tribunal is by majority.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)