

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD761/2007

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B L

Members: Mr. M. Flood
Mr G. Lamon

heard this claim at Dublin on 2nd January and 7th March 2008

Representation:

Claimant : Mr. William Noone, Branch Secretary, S I P T U, Liberty Hall, Dublin 1

Respondent : Mr Colm Costello, CIE Solicitors, Bridgewater House,
Bridgewater Quay, Islandbridge, Dublin 8

The determination of the Tribunal was as follows:

Preliminary Decision

According to the claimant's T1-A form his date of termination of employment with the respondent was 22 January 2007. That application form was received by the secretariat of the Tribunal on 10 August 2007. Therefore an issue arose over time limits on his application under the Unfair Dismissals Acts. Following contributions from the claimant's and respondent's sides the Tribunal found by majority decision that the case could proceed.

Respondent's Case

As a bus driver the claimant's base was Broadstone garage in north Dublin. There were in excess of two hundred and seventy drivers at that depot. Some of those drivers including the claimant were considered to be out-based drivers. The claimant both resided in and worked in his local Navan area. In outlining the claimant's disciplinary record the service manager for the Broadstone garage stated the claimant was on a final warning at the time of the events that led to his dismissal. That warning was related to the claimant's record of absenteeism and unauthorised use of a vehicle. A

list of the claimant's attendance record for the years 2005 and 2006 was submitted to the Tribunal. The respondent's chief medical officer did not identify any underlying reason for the claimant's high level of absences through illness in that period. The witness outlined the company's policy and procedures on staff absences and sickness. Following an investigation and disciplinary hearing into the claimant's behaviour in August 2006 the company decided to terminate his employment.

The claimant was on leave earlier that month and was due to report back for duty on Monday 14 August 2006. At a disciplinary hearing into his case on 21 August the claimant told the witness that he contacted the Broadstone depot on 13 August and requested a further day's leave for the 14 August. The inspector with whom he spoke to was unable to accede to that request. The witness was happy to accept and preferred a different version of that incident from the relevant inspector. The claimant also stated he phoned the security guard at that depot later that evening and left a note saying he would not be in the next day. The witness did not get a written report from that security man relating to that incident.

The claimant was rostered to commence work on Monday 14 August at 05.00 but failed to show up. That resulted in a two-and-a-half hour delay in a bus service in Navan while the company sought the services of a private operator. The claimant also failed to report for duty or contact the respondent on 15 August again causing disruption to services and increasing costs for the company.

There was no further communication from or to the claimant until 18 August when a medical certificate was submitted to the respondent. That certificate declared him unwell and consequently unable to perform his duties from the 14 to 18 August. The claimant maintained his efforts to submit that certificate earlier were thwarted by factors outside his control. It was the normal practice for drivers absent through ill health to have their sick certificates handed into the company as soon as possible. While accepting that this event taken in isolation did not warrant dismissal the witness felt that due to the claimant's record on absenteeism, and in this case his failure to comply with company regulations, the respondent had no other alternative but to dismiss him. Besides he was absent without proper leave and at some inconvenience to the respondent and its customers.

The service manager was recalled to give evidence on 7 March 2008. He stated that a logbook was not kept at the security gate. The normal procedure was to contact the depot inspector who reported for duty between 5a.m. and 7.30a.m. If an emergency occurred outside of these hours' employees could contact the security gate. The claimant contacted the security gate and the message was written on a piece of paper, which was given to the inspector when he arrived at 5a.m. He did not see the note. At the disciplinary hearing the union representative did not make any reference to the logbook. The normal procedure that was adhered to if an employee was ill was to contact the respondent as soon as possible on the day of the visit to the doctor or the day after for pay roll purposes. The only call that the respondent received from the claimant was on Sunday night that the claimant was going sick. At the disciplinary meeting he asked the claimant three times why he did not contact the respondent and he replied that he had no landline. The claimant told him that he had his medical certificate in his partner's car and could not get it delivered to the respondent and that he should have contacted the respondent.

If a driver was absent he attended a doctor to obtain a certificate. Depending on where the driver lived the medical certificate would be received that day or the next day. He received the claimant's medical certificate on Friday and that would be acceptable if the claimant had contacted the respondent to advise of his absence.

A deputy inspector for twenty-four years told the Tribunal that his primary duties were to monitor

the early drivers reporting for work and he then prepared a roster. On 13 August 2006 he was on duty and at 12.30 and had the roster almost completed when he received a call from the claimant requesting a days leave. The deputy inspector had nine outbases to cover and he had only five covered. He could not grant the claimant a day's leave. The claimant seemed to accept it and the claimant did not give a reason for requesting the leave.

The claimant did not indicate that he was ill on 13 August. He was familiar with the claimant's absences and he knew the claimant at least twenty years. When the respondent received the call on Monday from the claimant no explanation was given as to why he was not reporting for duty. On Tuesday the respondent had to organise a private contractor.

Claimant's Case

The claimant told the Tribunal he worked for thirty-six years with CIE and he was employed twenty years with Bus Eireann. He had received a few reprimands for sick leave and he was informed that he could not go on sick leave again. Prior to the incident he had been disciplined for his absences. He was trying to improve his record and he was put under pressure. When he reported for work the inspectors were present. Another occasion when he arrived at the shopping centre an inspector boarded the bus and pushed passengers back and checked tickets. No discrepancies were found. Another time he was on a fifteen-minute break in the morning and an inspector came out of his car and boarded the bus, this was embarrassing for him. His passengers asked him why he was being harassed by inspectors. When he reported this to the respondent he was informed that the inspectors were doing their job.

The claimant felt unwell on Saturday and he was due to report for work on Monday and on Sunday he felt worse. He telephoned the depot and spoke to Inspector B and asked for a days leave. He did not want to go on sick leave. The inspector told him that he had nine out-base drivers to cover and that he could not give him the leave. On Sunday evening he telephoned the depot, there was no answer and he telephoned the security gate, which was usual practice, and he spoke to the person on the gate. If he told the depot he was sick it could mean taking a sick day and if he said that he was "sick sick" it meant a certificate would be furnished.

He tried to get a doctor's appointment for Monday but was unable to do so. The earliest appointment he could get was Tuesday afternoon. He was informed on Tuesday afternoon that he had a viral infection, which was highly contagious. He endeavoured to get the medical certificate to his employer. He gave the medical certificate to his stepdaughter on Wednesday but he was not informed until Thursday that she had not delivered it.

When he returned to work another driver was there. The claimant asked him what he was doing and he told him he was going to cover mornings. He met the inspector who told him that he had to report to the chief inspector who in turn told him he had to see the service manager. The service manager gave him a letter regarding a disciplinary hearing. The letter outlined that he was absent without leave. He spoke to one of the lads at the gate who told him that the logbook had been disbanded with, it was a small notebook, and he did not know if this was a company notebook. The respondent never questioned the validity of the medical certificate.

On Sunday he did not know how long he was going to be absent on sick leave. Prior to that he was on leave for two weeks. He telephoned to say that he was "sick sick" and in past it was never an issue. While he was on sick leave he met an inspector in town and informed him that he would return to work on Monday. The claimant worked from Monday to Friday and he was never

asked to work Saturday/Sunday. The claimant was dismissed on a previous occasion for poor attendance and on appealing the decision he was reinstated.

He obtained alternative employment two months after his dismissal as a taxi driver and he earns approximately €200 for working three nights.

Determination

Having considered all the evidence and the employment record of the employee and given the ultimate incident leading to his dismissal and the inappropriate way he dealt with the incident when he was on a final written warning the Tribunal find the dismissal was fair and his claim under the Unfair Dismissals Acts 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

