

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee
RP562/2007

UD367/2008

against

2 Employers

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr. J. Goulding
Ms. C. Byrne

heard this claim at Dublin on 10th June 2008

Representation:

Claimant: In person.

Respondent: The Transport Manager, and the General Manager of the company.

The determination of the Tribunal was as follows:

Respondent's case:

The General Manager gave evidence that the claimant had been given a written warning due to a customer's unhappiness with his attitude. He said that one customer - Shannon Logistics – was the core of their business, and if they lost their business the company could not survive. He said that the company had three drivers who were familiar with what was needed to be done and would alternate between the Belfast run one week, and local work the next. The claimant said that he wanted to change to part-time work, so the company facilitated him on this. On a few occasions the claimant was late in collecting his truck, and on the day in question he failed to collect it at all, and did not contact the company about this failure. In fact it was the customer who informed them about it. They were in danger of losing the contract because of the claimant's actions. He treated the

company shabbily, there was no one else available to pick up the truck, so the customer was left in serious difficulties. They had no choice but to dismiss the claimant.

The Transport Manager gave evidence that the claimant had been given a few verbal warnings about his behaviour before the written warning. A customer had complained that he had been abusive to their staff. Regarding the incident on 30 September 2007, he said that the load needed to leave the depot by eleven o'clock at the latest in order to make the cargo terminal in Belfast in time. If they had received a call from the claimant they could have organized alternative arrangements, but they never received a call from him. They rang him several times but got no reply. They eventually got through at 12.20 p.m. and he said he would be there in a few minutes. He said that the company was under severe pressure at this stage. His wife phoned about one o'clock to say that he wouldn't be in due to illness. They got another driver to come in on his day off to do the run, and their customer had to get staff to do overtime in order to deal with the late delivery. The company were now in danger of losing the contract and received a letter to this effect from their customer. However, they still offered the claimant casual part-time weekend work on an ad hoc basis, and gave him his P45. They were very surprised when he then put in a claim to the EAT. He said that the claimant did no more work after the incident on 30 September 2007.

Claimant's case:

The claimant gave evidence that he was never called in to the office about anything wrong with his work. He said that he never received a contract of employment. The company knew that he was ill on the day of the incident. He was asked what time he called the company about his illness, he answered that there was no one in the house to make this call, he was in bed sick. He said that his wife answered the phone when the company rang him at about twelve o'clock. He knew that he wouldn't be able to work when his wife arrived home and he was asleep, so he was unable to call the company. He was told on the following Monday "that's it, good luck" i.e. that he was dismissed. He said that he did not recall the company offering him part-time work. On being asked did he not feel that he should have contacted the company on the day in question, he answered no. He has sought employment since he left, but has been unsuccessful to date.

Determination:

The Tribunal has carefully considered the evidence of both parties. The Respondent has to establish that the dismissal of the Claimant on 1 October 2007 was reasonable and fair. The onus is on the employer to make its case and, on the evidence, the Tribunal finds that the employer can only be making the case that the Claimant was dismissed summarily for Gross Misconduct.

The Tribunal has to be satisfied, on the Respondent's case, that Gross Misconduct existed, given that the employer had no alternative other than to dismiss the Claimant.

The circumstances which gave rise to the dismissal was the failure, on behalf of the Claimant on 30 September 2007, to collect a load for transport to Belfast. It was clear from the evidence that the failure to deliver the load would have had very serious repercussions for the employer whose most significant client was Shannon Logistics on whose behalf the load was to be delivered. It was common case between the parties that the loss of this client would have been disastrous for the employer and consequently to all employees.

The Claimant failed to collect the load on the appointed date and crucially failed to notify his employer of the fact that he was too unwell to make the delivery. The Tribunal must ask if such an

approach is reasonable? Is it reasonable that an employer would find out from its client - Shannon Logistics – that its employee was not taking the load?

The Tribunal finds that the employee did not act reasonably. Insofar as he made no attempt to ensure that he would get cover on the day. It is not good enough to say that he was too unwell to get cover for himself or to notify his employer of his predicament. There has to be some obligation on an employee, in circumstances of ill-health, to contact his employer. This is particularly so where there is no one else to cover absenteeism. These events occurred on a Sunday where no one else was rostered to be available.

The employee simply didn't care what became of the load, the obligation, the client, and the impact on the place of work. The employer summarily dismissed the employee in these circumstances. The Tribunal finds that the employer was entitled to do so. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

As claims for Redundancy and Unfair Dismissal are mutually exclusive, the claim under the Redundancy Payments Acts, 1967 to 2003, automatically falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

