

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

Employee

UD116/2008

against

2 Employers

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr J. Hennessy  
Mr D. McEvoy

heard this claim at Waterford on 2nd July 2008

Representation:  
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Claimant :

Mr Austin O'Riordan B.L., instructed by M. W. Keller & Son, Solicitors,  
8 Gladstone Street, Waterford

Respondent :

Mr Patrick Newell, Joseph P. Gordon, Solicitors, Burgery,  
Dungarvan, Co. Waterford

The determination of the Tribunal was as follows:-

The fact of dismissal was in dispute in this case

### **Claimant's case:**

The claimant commenced his employment with the respondent as a lorry driver on 27<sup>th</sup> February 2006. On 22<sup>nd</sup> June 2007 he went to the office in the quarry to collect a docket and the respondent came in and commented on the state of the engine of his lorry. The boren leading to the quarry was not very clean and had locks of water on it. The respondent did nothing to keep the boren clean. The respondent told him to go and said "feck-off". As far as the claimant was concerned he was sacked. He did not receive any previous warnings. His lorry used always be clean, in fact his was the cleanest lorry. His hours of work were 7am to 4.30pm and there was no time to clean the lorry. The respondent did not have to tell him to keep the lorry clean as he always did so. He felt he had no choice but to bring the lorry to the yard and left the keys. While he has been driving lorries for thirty years and has applied for other work since his dismissal, he feels that because of his age, close on fifty-five years, his chances of getting alternative work are not great.

In cross-examination witness denied that there was a mention of his driving at speed and said that it would not be possible to drive too fast on the boren. He did not use the words that he was being picked on. He was told by the respondent to "feck-off" and that he was sacked. In relation to his efforts to get alternative employment witness said that he could get work with lads but that did not suit him as he would have to be up early in the morning and the money was not great.

In answer to questions from Tribunal members witness said that he always had his lorry washed but it was not possible to do so every day or he would get nothing done. It was part of the job to keep the lorry clean and he cleaned it every week with a power hose inside and outside the cab, in the yard.

### **Respondent's case:**

The respondent is a sole trader and he took over the quarry from his father. He has fifteen employees most of whom have been working for him seven years. The boren leading to the quarry is narrow and he was always on to the claimant telling him to slow down. His father lives nearby and has a handicapped child. Ten to fifteen miles an hour would be the speed on this boren. The claimant was not the only one driving at speed, all the employees were told to slow down. If you drive too fast you would drive the muck into the engine. He told the claimant he wanted him to slow down. The engine on his lorry had been serviced the previous day and it was the only lorry with so much muck on the engine. The claimant's response was that he was always picking on him. The claimant then flung the docket on the counter and said he was going home. He parked up the truck and witness was told he looked for his wages. Another driver has been taken on since. Witness did not use the words "feck-off you're sacked".

In cross-examination witness said that since this incident he has got planning permission and has done work on the boren. There are four or five hauliers in the Waterford area hauling from the same quarry.

### **Determination:**

The Tribunal on balance prefer the evidence of the respondent and is satisfied that in the

circumstances the claim fails, therefore the appeal under the Unfair Dismissals Acts, 1977 to 2001 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

