

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

CASE NO.

RP471/08

UD572/08

Against

Employer

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 B.L.

Members: Mr J. Horan
Mr P. Trehy

heard this claim at Dublin on 15th September 2008.

Representation:

Claimant : In person.

Respondent : In person.

The determination of the Tribunal was as follows:-

The claim under the Redundancy Payments Act, 1967 to 2003 was withdrawn during the hearing.

Respondent's Case:

The claimant was interviewed for the job of driver and hired by a staff member who no longer works for the respondent. The claimant commenced employment on 7th June 2005.

In early December 2007 following an incident in the company, the respondent came under pressure from their insurance company to check all driving licences of employees and to forward copies to them. The insurance company stipulated that all drivers must be over 25 years of age and hold a full C driving licence.

The claimant offered several excuses when asked to produce his driving licence. Before Christmas 2007 the respondent explained to the claimant that if he did not produce a full driving licence when

he returned to work after the Christmas break he would have difficulty employing him. On 2nd January 2008 the claimant produced a copy of his provisional licence. The respondent spoke to the claimant and told him he would have to let him go on a temporary basis but as soon as he received his full driving licence he could return to work. He expected the claimant to return to work and had no problem re-employing him. He gave the claimant two copies of a letter one of which was for Social Welfare and one for the Department of the Environment, so that the claimant could get priority for his driving test. The claimant was paid to 28th December 2007.

Claimant's Case:

During the claimant's interview for the job of driver the claimant produced his provisional licence. The person who interviewed him took a photocopy of his licence. He worked on smaller lorries in the beginning but later drove bigger lorries. He commenced work on 7th June 2005. He sat and failed his driving test in September 2007. His employer was not aware of this. He renewed his provisional licence on 28th September 2007.

The respondent had seen his provisional licence at Christmas 2007 and never mentioned that he would have to let him go. He rang the respondent on 1st January 2008 and was told there was no work for him. The next day the respondent discussed the difficulty he had with him driving with a provisional licence and the pressure they were under from the insurance company that all drivers must hold a full driving licence. He was told by the respondent that he would have to let him go and could not guarantee giving him his job back when he received his full driving licence. He subsequently received his P45. He never re-sat his driving test. He had worked for the respondent for two and half years and had no problems. He had not secured employment since his dismissal and became ill in May 2008.

Determination:

The Tribunal has carefully considered the evidence presented by the parties. The Tribunal accepts that the respondent came under pressure from its insurance company to demonstrate that all named driver/employees had full and valid Class C drivers' licences.

It is surprising to note that the claimant had been allowed to drive trucks without holding the requisite licence for a period of more than two years. Once this fact came to light the respondent was in a difficult position with respect to the insurability of the claimant.

There is no doubt that the respondent expected and wanted the claimant to obtain the full driver's licence as soon as possible. In so far as he could, he paved the way for the claimant to seek priority in sitting the test.

The question is whether the respondent was unfair in terminating the employment at that time.

It is noted that the respondent drafted a letter, which purported to assist in getting employment benefit and to ensure a priority listing for the test. The intention seems to have been that the claimant could return when he got his C licence. The claimant stated in evidence that this was not guaranteed and the claimant opted not to sit the test and return to work.

On balance the Tribunal finds that the respondent was hasty in letting the claimant go in circumstances where a full two and a half years of satisfactory performance had preceded the revelation of an inadequate licence.

Had the parties co-operated it seems likely that a test could have been conducted by the middle of January 2008 and surely in the meantime the claimant could have worked in the yard. Equally, the insurance company could have been notified of the claimant's status and invited to allow him be part of the policy for a short period given the experience the claimant no doubt had.

The Tribunal therefore finds that the dismissal was unfair but notes that the claimant did little or nothing to mitigate his losses for the five months post termination.

The Tribunal awards the claimant the sum of €1,500.00 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

