

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.

RP796/200
UD931/2008
MN860/2008

Against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr E. Handley
Mr. J. Dorney

heard this claim at Dublin on 17th December 2008

Representation:

Claimant(s) : In Person

Respondent(s) : Mr. Colm Hennessy BL instructed by Daire Eagney of O'Scanaill & Co, Solicitors,
Columba House, Airside, Swords, Co. Dublin

The determination of the Tribunal was as follows:-

At the outset the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001 was conceded.

Claimant's Case:

The claimant gave direct evidence that he was employed as a truck driver for the respondent company from May 2005 until June 2008 making deliveries to and from mainland Europe.

e received a weekly cheque of €729.00. This figure was recorded in two payments, an amount of €353.00 as pay and an amount of €376.00 as expenses. He worked a total of 40 hours per week. In June 2008 when the witness was returning to Ireland he encountered a problem with customs officials at Dublin Port as he had a quantity of wine, cheese and tobacco on board for his own personal use and was over the legal limits. His truck was detained at Dublin Port because of this fact. Some time prior to this incident the witness had an altercation with a warehouse employee in Holland and his truck had also struck a bollard in Holyhead on a previous occasion. In July 2008 the witness was told by his employer that, as a result of these incidents he was being dismissed. His dismissal was polished up by his employer to appear as though he was being made redundant but in actual fact he was sacked.

Under cross examination the witness confirmed that he was the only driver working for the respondent company that did not have an ADR certificate. This certificate enables employees to drive trucks carrying hazardous materials. He has been unsuccessful in his efforts to secure employment since his dismissal and only worked a total of eight days since the 12 July 2008 the date of his dismissal.

Respondent's Case:

A director for the respondent company gave evidence that they had a total of 11 truck drivers in employment in January 2008 and 95% of their business involved carrying ADR chemicals, (hazardous chemicals) to mainland Europe. In May 2008 two drivers both of whom had ADR training ceased working for the respondent. The company attempted to hire two drivers by placing advertisements in the newspapers but were unsuccessful in their attempts. However the company then lost two deliveries to mainland Europe from a customer and no longer required replacements for the drivers who had left in May 2008.

The witness gave further evidence of attempting to have the claimant trained for ADR driving. The company wanted to send the claimant on the necessary training course that would culminate in the claimant sitting an exam to obtain the required qualifications. The company would pay for the training course but the claimant declined to attend, stating that he would be leaving by the end of the year as he was seeking to obtain a PSV license. The witness informed the claimant that work available to him would be very limited as he did not hold an ADR certificate.

The witness went on to give evidence that the claimant was dismissed because there was no work available to him. The amount of non-hazardous work the company had was minimal and the claimant did not have the required qualifications for ADR work. The witness denied that the incident, when customs officials in Dublin Port detained the claimant's truck was the reason for his dismissal although he was not impressed by this incident. The claimant has not been replaced although one individual has been employed as a relief worker when another relief worker was on holidays. This employee did a total of three deliveries carrying non-hazardous material.

In reply to questions from the Tribunal the witness confirmed that two employees who had shorter service than the claimant were retained in employment.

Determination

The Tribunal has carefully considered the evidence adduced in the case of this hearing. The onus falls to the respondent to establish that the termination of the claimant's employment was fair and reasonable in all the circumstances. It was the respondent's contention that a genuine redundancy

situation existed and that the claimant was let go in circumstances where he was not qualified to drive and deliver hazardous material and where such materials now formed the bulk of the work available.

The claimant says he was dismissed for reasons other than the downturn in work available to him. He says he was brought in for a meeting with his employer in July of 2008 at which a number of allegations were put to him as a consequence of which he was dismissed. It was only subsequent to his dismissal that the employer purported to dress the termination up as a redundancy.

A redundancy package was paid and the employee was invited to sign a waiver without being afforded the benefit of legal advice.

Ultimately the Tribunal favours the claimant's version of events. The Tribunal finds that the employer dismissed the claimant for reasons of misconduct which were outlined to the Tribunal. The Tribunal, it should be noted, has sympathy with the employer insofar as the employer was exposed to the customs and excise personnel at Dublin port. Such an exposure, if found to be the fault of an employee, is potentially embarrassing and/or detrimental to business.

However, if the employer had received complaints in connection with its employee then the normal procedure would be to conduct an investigation as part of a disciplinary process. The employer opted not to exercise this option.

The Tribunal therefore finds that the claimant was unfairly dismissed and awards the claimant the sum of €9,000.00 under the Unfair Dismissal Acts 1977 to 2001. It is noted that the claimant has already received €2,562.78 by way of a purported redundancy package and this amount should be deducted from the amount awarded above. The award under the Unfair Dismissals legislation can therefore be reduced by the amount of €2562.78.

The Tribunal also awards the claimant the sum of €1458.00 being the equivalent of two weeks wages under the Minimum Notice and Terms of Employment Acts 1973 to 2001 and as the claims for unfair dismissal and redundancy are mutually exclusive the claim under the Redundancy Payments Acts 1967 to 2003 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

