

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

- *claimant*
UD902/2008
MN831/2008

Against

Employer

– *respondent*

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly BL

Members: Mr. D. Moore
Mr. B. Byrne

heard this claim at Dublin on 9th December 2008

Representation:

Claimant: Ms. Áine Curran of O'Mara Geraghty McCourt, Solicitors,
51 Nothumberland Road, Dublin 4

Respondent: Mr. Ray Flaherty, Polaris HR, 60 Main Street,
Appleswood Village, Swords, Co. Dublin

The determination of the Tribunal was as follows:-

The fact of dismissal was not in dispute.

Respondent's Case

The managing director gave evidence. He was in his car on leaving the office at about 8.00pm on the 24th July 2008, he saw a coach waiting to come on to the roundabout at the airport. The claimant was the driver and he had his left hand on the steering wheel. His right hand was resting in the middle of the steering holding a mobile phone. He was texting with the phone.

The managing director followed the coach down on to the M1 motorway. The coach was moving slowly at about 30km per hour, even though traffic was moving well. The coach was in the middle lane. He was in the inside lane. He drew his car level with the front of the coach and had a clear view of the claimant, who was driving the coach, through the glass door of the coach. He tooted the horn of the car to attract the

claimant's attention. When the claimant saw him, he acknowledged him and put both hands on the wheel.

When the managing director got home he phoned the depot and gave instructions that the claimant be suspended. He reported the incident to the service delivery manager and later answered questions relating to the incident. He did not jump to conclusions, but his concern was for the safety of the claimant and the passengers on the coach. He knew about the previous incident.

The claimant did not put on or take off his glasses while under his observation.

The training manager gave evidence. He started with the respondent as a driver. The respondent has a zero tolerance policy concerning using mobile phones while driving. New drivers have the policy explained to them and are shown DVDs of accidents caused by mobile phone use. The mobile phone policy is part of the respondent's injury prevention policy.

The claimant was aware of the mobile phone policy.

On the 23rd May 2008, the training manager was in the yard fuelling coaches. The ground staff at the airport, were waiting for a coach, it was late. The coach was allocated to the claimant. He saw the claimant reversing the coach out of the depot. The manoeuvre needs concentration. Now a banks man is required to assist. He had his left hand on the wheel and was talking on his mobile phone. The claimant was driving extremely slowly. The training manager knocked on the coach door. The claimant smiled and put the phone away. There were no passengers on the coach. He reported the incident to the engineering manager.

The claimant was not suspended because no passengers were endangered. The respondent did follow up on the incident. A disciplinary meeting was arranged but then the claimant was on holidays, the engineering manager was on holidays and he, the training manager, was on holidays.

The training manager was not surprised the claimant was driving slowly on 25th July 2008. The claimant was known to drive slowly. When asked whether the claimant could have been driving at 60km per hour on the M1, the training manager said, in his opinion it was hard for the coach to get up to that speed, when it came off the roundabout. Also the coach was carrying passengers.

It is possible that a warning light came on when the coach was going around the roundabout and the warning light could go out again when the coach levelled out on the motorway. Neither the claimant nor any other driver reported a problem with the coach that day. The claimant did not wear glasses while driving. After the claimant was suspended, several other drivers informed the training manager that the claimant regularly used his mobile phone while driving a coach.

The claimant was asked if he wanted a representative at the meeting on 28th July 2008. The claimant said he would do it himself.

The services delivery manager gave evidence. When he was notified that the claimant

should be suspended for using a mobile phone while driving, he issued the claimant with a preliminary enquiry form, a copy of the disciplinary procedure and an invitation to attend a disciplinary meeting. The claimant provided him with a written response half an hour before the meeting started. The claimant arrived for the meeting on his own but he was asked if he was happy to continue without a colleague or representative with him.

At the meeting on 28th July 2008, the service delivery manager decided that dismissal was the appropriate sanction to impose on the claimant. The respondent has a zero tolerance policy for driving while using a mobile phone. The claimant was informed that he could appeal within 7 days to either the engineering director or the finance officer. The claimant did not appeal.

The managing director did not attend the disciplinary meeting. The services delivery manager never asked the complainer and the complainant to the same meeting.

Claimant's Case

The claimant had worked for the respondent for 2 years. On the 23rd May 2008, He took the coach after refuelling. His mobile phone rang. He picked up the phone and told his mother he would phone her again. The training manager saw this. Then he put his phone in his pocket. He was informed that there would be a meeting but no meeting was arranged. He did not receive a warning. He was aware of the respondent's mobile phone policy.

On 24th July 2008 he started work between 1.00pm and 2.00pm. No coach was ready, so it was about 2.30pm when he arrived at the airport. Later that day he collected passengers at the airport. Going round the roundabout he heard a warning sound and a yellow light flashed on the dashboard. There was a problem with the oil level. He took out his glasses case and held it in his hand. He intended to put on his glasses when he was stopped at traffic lights to read the oil level. He drove forward slowly, the warnings stopped. It is a short distance to the next roundabout. On the M1 roundabout the warnings started again. He drove slowly while waiting to see if the warning went red. He was driving at about 60km per hour.

He heard a horn sounding. He saw the managing director waving at him. He did not know why he was signalled him. His mobile phone could look like a glasses case. Back at the depot he was sent home. The coach was checked by the mechanics and perhaps they put oil in.

The claimant did not get a copy of the managing director's statement before the meeting. He was told he could bring a colleague or a representative to the meeting, but did not see the point. He was driving alone. He used his mobile phone during his break but did not use it while he was driving. At the meeting he was not asked to show his mobile phone or a copy of his phone records.

The meeting lasted about 15 minutes. Then after a break of 15 minutes he was told of the decision. He felt that an appeal would be a waste of time. It is hard to change the boss's mind.

Determination

The Tribunal carefully considered the evidence adduced. The Tribunal is not required to adjudicate on what the claimant had in his hand at the time of the incident that resulted in his dismissal. The Tribunal must determine whether the respondent behaved in a reasonable manner taking into account all the circumstances. The Tribunal finds that the respondent had good grounds for believing that the actions of the claimant constituted a serious breach of its policy. The respondent carried out an investigation and the claimant was given an opportunity to give a response to the allegation. The Tribunal is of the unanimous view that the respondent behaved in a reasonable manner. The decision to dismiss the claimant was arrived at fairly and was justifiable under the circumstances. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

As no evidence was adduced the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

Sgd: _____
Chairman