

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

RP957/2008  
UD1122/2008  
MN1030/2008

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. M. Levey BL

Members: Mr M. Kennedy  
Mr J. Maher

heard this claim at Dublin on 1st December 2008

Representation:

\_\_\_\_\_

Claimant(s): Mr. Marcin Szulc, Maguire McClafferty, Solicitors,  
8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent(s):XXXX

The determination of the Tribunal was as follows:-

### **Respondent's Case**

The MD told the Tribunal that he was in business since 1999. On 26 September 2007 the claimant approached him and told him that he was involved in a road traffic accident. He asked him why he did not approach him before this and the claimant told him that he tried to resolve the matter. The claimant worked in Dublin following the accident. The claimant left the respondent in a very precarious position and the respondent could have a PI claim against it if an employee drove into a vehicle. The claimant told the MD that he did not have time to notify him as he was working at a site in Arklow. The MD had time sheets and details of the claimant's whereabouts and he was not in Arklow on the day of the accident, he was working at the Point depot at the time. The claimant told him that he was involved in a near miss, in fact it was an accident and it cost €3,246,00 to repair the damaged vehicle. On the morning of the 26 September he contacted the insurance company in relation to the accident. The MD was informed that the claimant had a load of timber, which was untied on the roof rack of the ford transit van, which he drove. When

the claimant applied the breaks the load fell off the roof rack and went through the windscreen of the car in front of him.

The claimant asked the MD what the implications of this were. On 26 September 2007 the MD was not sure what damage was done to the vehicle and he had a very sketchy interpretation of events. The claimant was dismissed due to damage to the respondent vehicle and the respondent took that action after investigation of the case. At this time the respondent had twenty employees and it endeavoured to be a good employer. He told the claimant on 30 November 2007 that he did not report the accident to the respondent. The respondent felt it was gross misconduct and the MD terminated the claimant's employment in the presence of a colleague and the claimant was given a letter. On the 15 November 2007 the claimant was summoned to the office. The claimant was not represented at this meeting, and he was not informed that he could be represented. The MD did not believe everything that the claimant told him.

In cross-examination the MD stated that the accident occurred in Drumcondra on the 20 September 2007 and the claimant worked in the Point Depot. He did not have a site in Arklow at this time. The claimant's van hit the back of the vehicle that was in front of him. The claimant informed the MD of the accident on 26 September 2007. The MD spoke to the insurance company and broker. The broker did not speak to the claimant. The MD did not believe that anyone else apart from the claimant loaded the van on 20 September. The MD had the time sheet, which indicated that the claimant was on the site on his own, it was not the case that another employee loaded the van. He asked the claimant about the load and the claimant told him that he did not secure the load. The claimant admitted that he drove the respondent van on 20 September only when the matter transpired.

Two investigations were undertaken; one by the insurance company and the other was an internal investigation. After he spoke to the claimant and the insurance company he telephoned CB the foreman. CB informed him that this was the first time he had heard about the accident. It cost €3,246 to repair the van. He was given bits of information. The MD and PD attended the meeting on 15 November. He did not tell the claimant to bring his colleague to a meeting. Asked if he put to the claimant on 15 November that it was a disciplinary meeting and the outcome could be dismissal he replied yes that the claimant was told to come clean.

In answer to questions from the Tribunal he stated that he did not have disciplinary procedures in place at the time of the accident but he now has. All employees hold safe pass cards. If the claimant had to go on site he was given the use of a company van. The MD along with KJ undertook the investigation. The MD was involved in the decision to dismiss the claimant. Asked if the claimant was advised he could go to a third party he replied that his representative would have advised him of this.

The foreman CB told the Tribunal that on 20 September 2007 the claimant worked in the Point Depot and he worked there the next day the 21 September 2007. The claimant did not work on Saturday and on the following Monday he undertook work in the yard. Four days had elapsed before he heard about the claimant's accident. An employee completed a time sheet for each week worked and was paid based on the calculation of the time sheets. The claimant was paid for overtime on the night of the accident. The claimant had a mobile phone and the foreman was in the same site as the claimant.

In cross-examination he stated that on the day of the accident the claimant started work at 6.30 a.m. and left at 8 p.m.

## **Claimant's Case**

The claimant told the Tribunal that he was involved in an accident on the evening of 20 September 2007 on Drumcondra Road. He did not report the accident immediately. He could not recall working on Saturday. The MD was not in work on Saturday and on Sunday there was no one to report the accident to. He reported the accident to the MD on the following Monday morning. The claimant told the MD that he had a serious problem and that he had a road traffic accident. He had a very good relationship with the MD. The claimant did not know what to do and he was never previously in a situation like that with a company van. The car he crashed into had three children as well as the driver. The driver told of the other vehicle told him it was her husband's car and the claimant was told not to call the gardai. The driver's husband took the claimant's details and he then telephoned the claimant and told him that he wanted €3000 for the damages to the car. The claimant worked with a couple of colleagues and he assumed that they put a strap around the planks of wood on the roof rack. He saw a strap on the roof rack and he thought that the load was secured.

After the accident the MD told him to return to work and the claimant was informed that everything would be all right. One month later he received an insurance form relating to the accident and he was told to complete it and provide details about the accident. He had a very good relationship with his colleagues in work. He needed help to complete the insurance form and he asked the staff in the office to help him complete it, as he did not want to make a mistake. On 15 November 2007 he met his manager KJ in the yard and he told him that he would have to improve and he was letting a couple of employees go. KJ told him that there was not enough work. At the meeting on 15 November which KJ and the claimant attended, the claimant did not know if it was official as it was held in one of the cabins, they spoke about the quality of the claimant's work and KJ told him that there was not enough work.

He was never told about the seriousness of the accident. Three days before the 30<sup>th</sup> November KJ told him that the respondent did not have enough work and that he was the first person that had to go. The claimant was told that he had to go on Friday. On Friday the bookkeeper came to him and gave him an envelope, which contained a cheque for holiday pay, his notice pay and his P45. He was upset, as he had worked for the respondent for over two and a half years. He did not read the letter that was included in the envelope. He went to his solicitor a couple of days later and he discovered that he was dismissed along with a colleague. Some of his colleagues had shorter service than he had and a couple of his colleagues undertook the same job.

In cross-examination he stated that he did not receive a contract of employment. He considered himself a truthful person. He did not remember everything. His wages were paid into his account every week. He could not recall how many planks of timber he had on the roof rack. He did not damage the company van. He stated that it was too late to telephone the MD on the night of the accident. He had never contacted the MD outside of working hours. After the accident occurred he put on his hazard lights and checked on the occupants in the other car. He completed the accident report with KJ. He asked the MD about his redundancy. A couple of days after the accident he was told everything would be all right. The letter of dismissal was not read to the claimant. He stated that the MD gave him a letter, payslip and a cheque and he never saw the letter before he opened the envelope.

He had surgery on 14 December 2007 and he was discharged two days later. He then spent a week in Poland and returned to Ireland on 21 December 2007. Asked if he was able to work after his

operation he replied he could not lift “things”. He was in receipt of social welfare payments for one and a half to two months. He obtained alternative employment on 1 March 2008.

### **Determination**

There was a considerable conflict on the evidence given by both sides. The claimant maintained he was not aware of any issue due to the car accident and that he was let go due to a downturn in business. He maintained that he did not read the letter of 30 November 2007 dismissing him as it was included in the documents give to him when he was laid off along with his cheque, P45 and payslip.

The respondent maintained that there were meetings regarding his failure to report the accident immediately. His failure to secure the load on his van was gross misconduct and consequently viewed by respondent as gross misconduct and the claimant was consequently dismissed.

The respondent acknowledged that no procedures were in place for dealing with disciplinary matters. The claimant was not informed of his right to a representative at the meeting they alleged having with the claimant. Accordingly we find that the claimant was unfairly dismissed. However the Tribunal are not satisfied that he was available for work during the entire period he was out of work i.e. December 2007 to March 2008. For these reasons the Tribunal award six weeks pay in the amount of €2880.00 under the Unfair Dismissals Acts, 1977 to 2001. As the Redundancy Payments Acts, 1967 to 2003 and the Unfair Dismissals Acts, 1977 to 2001 are mutually exclusive no award is being made under the Redundancy Payments Acts, 1967 to 2003. The claimant received his minimum notice due to him and he is therefore not entitled to compensation under the Minimum notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

