

## EMPLOYMENT APPEALS TRIBUNAL

### CLAIM OF:

Employee

- claimant

### CASE NO.

WT473/08  
UD858/08

### Against

Employer

- respondent

### under

### ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr D. Moore  
Ms. E. Brezina

heard this claim at Dublin on 28th November 2008 and 27th February 2009.

### Representation:

Claimant: Ms Catherine Keane, Gaffney Halligan, Solicitors, 1 Upper Kilmacud Road, Dundrum, Dublin 14

Respondent: Ms Anne Brennan, O'Mara Geraghty McCourt, Solicitors, 51 Northumberland Road, Dublin 4

The determination of the Tribunal was as follows:-

### Respondent's Case:

The Managing Director gave evidence. The company supplied frozen and chilled products to the foods services sector in Dublin and the surrounding areas. The respondent employed 13 staff.

The claimant initially worked part time for the respondent and commenced full time employment in late November 1995. He was employed as a van driver. His hours of work were 7.30 a.m. – 4.00/4.30 pm Monday to Friday. He worked in the Dublin area, primarily on the south side. He delivered orders to customers. He was extremely punctual and generally good at his work.

Numerous complaints were received from members of the public concerning the claimant's driving during his tenure. The claimant's reaction was a blanket denial that these ever happened and that

people had nothing better to do with their time.

The complaints were a serious source of concern for the company. Each complaint of his driving was discussed with the claimant. The respondent contemplated terminating the claimant's employment but really wanted to resolve the matter in a way that was fair to both sides. The claimant had personal problems and the respondent was trying to be amenable to him.

The claimant attended a meeting with the Managing Director and a Director on 14<sup>th</sup> March 2008 to discuss the most recent complaint regarding the claimant's driving. Subsequently, the claimant was suspended with full pay and a disciplinary meeting was arranged for 25<sup>th</sup> March 2008.

At the disciplinary meeting the latest complaint regarding the claimant's driving was discussed. The claimant said none of the incidents described by the complainant had in fact happened. The Managing Director undertook to contact the complainant again for clarification of her allegations and revert to the claimant. The complainant confirmed her recollection of events and made one small change. The claimant was given an opportunity to respond by 27<sup>th</sup> March 2008 and said he was unhappy with the complainant's new version of events.

The Managing Director gave careful consideration to the relevant evidence. There was a clear conflict between the two sets of recollections in this case. He found the complainant's evidence to be very compelling. The complaint bore all the hallmarks of tailgating. At the end of the day his position was to safeguard the company and staff. He felt there was a situation where the claimant's driving became very dangerous. The claimant took no responsibility and there was no admission that anything had happened. The Managing Director deemed the appropriate sanction to be dismissal.

By letter dated 28<sup>th</sup> March 2008 the claimant was dismissed. The claimant was offered a right of appeal within seven days and by close of business on 4<sup>th</sup> April 2008. The claimant did not contact the respondent during this period and therefore no appeal was lodged. The respondent made two ex gratia payments in good faith to the claimant together with outstanding holiday pay.

The Managing Director said the company's reputation was being put at risk, there was an exposure to an insurance risk and the health and safety of the public had to be safeguarded. This finally led to the decision to dismiss the claimant.

Under cross-examination the Managing Director contended that it was a standard role of a van driver to collect money on delivery of goods. Mostly, drivers were paid by cheque for deliveries and cash was offered in a small number of deliveries. As the claimant lived close to the respondent company it suited him to drive the van to and from work and park it outside his house. This was also convenient for the respondent. A driver who worked part time for the company during Christmas 2007 and early 2008 replaced the claimant for a short period of time following the claimant's dismissal.

Very serious allegations were made against the claimant's driving and the Managing Director brought these to the claimant's attention on numerous occasions and he deemed these to be serious misconduct. In relation to the most recent complaint regarding the claimant's driving on 12<sup>th</sup> March 2008 in the Bray area, this incident bore all the hallmarks of the claimant's previous driving incidents. He had assured the complainant that the company took a very grave view of the complaint and the complainant was happy for him to deal with the incident internally. The claimant said that the complaint was fabricated and that it never

happened.

The Managing Director contended that he never received the claimant's appeal letter of 1<sup>st</sup> April 2008, which was posted to the company. The claimant had always hand delivered letters to the company. The claimant was summarily dismissed and therefore not entitled to minimum notice. The Managing Director re-iterated that as the most recent complaint lodged with the company was consistent with all other complaints received in the company, he was left with no alternative but to dismiss the claimant.

### **Claimant's Case:**

The claimant commenced employment in 1994 as a Van Driver. He had a good working relationship with his colleagues. He valued his job. He worked hard.

Regarding the most recent complaint of 13 March 2008 concerning his driving in Bray, he was unaware of any driver being annoyed with him that day. A truck had blocked a particular road and he had to reverse down a road behind another driver. When he left that road he drove back to the depot. It was at the depot that he was informed a complaint had been lodged with the company. He thought it was very strange that a complaint had been lodged against him. Two days later he attended a meeting with the Managing Director and the Director and was suspended on full pay. Two weeks later he attended a disciplinary meeting. He was confused. He was told he could have someone accompany him to that meeting but he chose not to. The meeting lasted approximately ten minutes and was informal. He presented a letter representing his version of events of the day in question. His version differed to that of the complainant. The Managing Director undertook to contact the complainant with the claimant's version of events that day and to ascertain her recollection of events. She offered one small change. The claimant was furnished with a copy of her statement in a letter dated 26<sup>th</sup> March 2008 and replied by even date and disputed the complainant's new version of events. He was not given an opportunity to cross-examine the complainant. A letter dated 28<sup>th</sup> March 2008 was couriered to him informing him of his immediate dismissal. He could not believe he was being dismissed and it was a shock to the system. It took him three months to recover.

By letter dated 1<sup>st</sup> April 2008, the claimant wrote to the Managing Director asking that his dismissal be re-considered. He received no reply. On 8<sup>th</sup> April 2008 he was informed by a letter from the Managing Director that the closing date for his appeal had passed and notifying him of payments due to him. He was also furnished with his P45. That day he rang the Director regarding the decision that had been made. The Director informed him that he had not received an appeal from him and that he was dismissed.

The claimant established loss for the Tribunal.

Under cross-examination the claimant accepted that he had a good relationship with his employers and that they were reasonable. He was aware of the clauses regarding disciplinary rules, disciplinary procedures and grievance procedures set out in the terms of employment. Some complaints regarding his driving had been communicated to him.

He had seen the letter of 3<sup>rd</sup> June 2004 regarding serious driving complaints made against him, one complainant referred to his driving as reckless. The claimant said these incidents did not happen. He contended that one of the incidents could have in fact referred to any of the company vans. The claimant said the details of a complaint lodged by another delivery driver in March 2005 from

another company were incorrect and did not happen. The claimant said if indeed any of these incidents happened he would have apologised even though he did not have anything to apologise for.

The claimant did not accept that he had ever been unpleasant or rude. He believed all the complaints notified to the company regarding his driving were exaggerated and all doctored up. Regarding the second complaint received in March 2005 concerning his dangerous driving, he believed his driving posed no danger to anyone. Following this complaint the claimant said he asked that he be made redundant.

In relation to the complaint regarding the tailgating of a car and dangerous driving in July 2006, the claimant said this complaint was alien to him. This complaint had never been put to him in writing. Neither could he recall being informed of a driving incident that occurred on 1<sup>st</sup> September 2006. The claimant said he could recall being asked to slow down. Regarding the complaint received in February 2008 the claimant said he disputed it.

The claimant said that the most recent complaint regarding his driving in March 2008 did not happen in the way it had been described. He would have been ashamed if he had driven recklessly. He believed the driver that day exaggerated what had happened on the road. He believed the whole incident was not properly investigated.

The claimant said that no matter what he said his employer did not accept it. He had worked for fourteen great years in the company. He did not need to reform his driving as suggested by the respondent. He believed he was literally sacked over an anonymous complaint.

The claimant agreed that between eight and nine complaints had been made regarding his driving during his tenure. He took his job seriously.

### **Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. Numerous serious complaints regarding the claimant's driving were received by the respondent in the period 2002 to 2008 and the claimant was made fully aware of these. The Tribunal finds even if some of these were made by over zealous road users, the number and nature of the complaints in themselves indicates, in the Tribunal's view, that there was a valid basis for them on the balance of probability. The Tribunal believes that there was sufficient evidence for a reasonable employer to dismiss the claimant. The company had at all times to protect the health and safety of the public, adhere to its insurance obligations and safeguard the reputation of the company.

Accordingly, the Tribunal determines that the claimant was not unfairly dismissed and the claim under the Unfair Dismissals Acts, 1977 to 2001 fails. The Tribunal is satisfied that the claimant received his holiday entitlements and the claim under the Organisation of Working Time Act, 2001 fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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