

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee

RP983/2008

**- appellant**

UD1149/2008

MN1055/2008

WT470/2008

against

Employer

**-respondent**

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey

Members: Ms A. Gaule  
Mr G. Lamon

heard this claim at Dublin on 29th January 2009

Representation:

\_\_\_\_\_

Claimant :

Mr Billy Roche, Citizens Information Centre, 3/4 The  
Boulevard, Quinsboro Road, Bray, Co Wicklow

Respondent :

XXXX

The determination of the Tribunal was as follows:-

### **Respondent's case:**

The operations manager in his evidence told the Tribunal that the claimant did not turn up for work on Monday 5<sup>th</sup> May 2008 and he did not ring the respondent. On Tuesday 6<sup>th</sup> May he was given a verbal warning. When he was out sick in January 2008 he rang the respondent and handed in a doctors note therefore he was aware of procedures. A week later on Monday 12<sup>th</sup> May 2008 he was again absent from work. Witness sent text messages to the claimant on Sunday night to let him know his collection point for the Monday morning was to be in Bray at 6.15am. The driver of the truck arrived and waited until 6.30am. When he rang witness he told the driver to carry on and that he would organise another helper for him. Witness could not contact the claimant on his company mobile phone. On Tuesday 13<sup>th</sup> May, pm the claimant's partner rang the office. The next day, Wednesday 14<sup>th</sup> May witness went to the claimant's house and when he got no answer at his door or on the phone he left a letter of dismissal in his letterbox. He went to the house with the dismissal letter already typed up in case he could not make contact with the claimant. The next day, Thursday 15<sup>th</sup> May the claimant rang the office asking for the reasons for his dismissal. The claimant stated that he did not have the pin number for his phone and he was asked why he did not ring on his personal phone. He possibly would have had the pin number but if not, a record is kept in the office, as people tend to forget their pin numbers.

In cross-examination witness stated that grievance and disciplinary procedures were drawn up but it was after the claimant's dismissal when he knew of their existence. The claimant told witness he was at the pick up point at 6.15am. Witness went to the yard at 6.30am and met the driver. The claimant was not contacted with a view to discussing the matter. The claimant was a good worker and this was an unfortunate incident. He kept a record of the warning in the pocket book and on the holiday sheet. If an employee cannot make it in to work the normal procedure is to make contact with the respondent two hours in advance. The claimant was not paid in lieu of notice.

In answer to questions from Tribunal members witness stated that if a driver did not turn up witness would fill in and drive in his place. The main yard is in Wicklow and there is a yard in Kilternan. At the time he received the call reporting the claimant's failure to turn up for work he may have been on his way to Bray. He probably then went to the Statoil station, to check if the claimant was waiting there. When the claimant's partner rang the office on Tuesday 13<sup>th</sup> she enquired as to where was the pick up point for Thursday and witness said to tell her he would call to the house the following morning i.e Wednesday. It was not a regular occurrence that employees would fail to turn up at the pick up point. A text message was sent on Sunday night regarding the pick up point for Monday however this would not necessarily be the same for the week and an employee would be told during the working day as to the pick up point for the following morning. Having now looked at the procedures he probably would have suspended the claimant for two weeks rather than going down the route of dismissal. This was witnesses' first job.

### **Employee's case:**

The claimant in his evidence told the Tribunal that he was a good employee and was loyal to his employer. He had the use of a company phone and would always acknowledge a text message if he got one. His normal pick up time was 6.30am at the Statoil garage and he was there at 6.30am on Monday 12<sup>th</sup> May 2008. He waited until 8.40am that morning and he lives five minutes walk away from the garage. He was told that it was a driver called J that was to pick him up and that driver knew where the claimant lived. Since this was the first time it happened it would have been common sense to call to his house. The claimant was very annoyed. His partner rang the office on the Tuesday from her work place and got the pin number for his phone and she then rang a

neighbour to pass on the details. He then rang the office on Tuesday and was told that the operations manager was not available but he left a message for him. On the Wednesday 14<sup>th</sup> May at 6am, he rang the operations manager and he was told he would speak to him later. There were no other calls and he had the phone with him. When he got back to the house the dismissal letter was in his letterbox. He did not receive notice or holiday pay.

In answer to questions from Tribunal members he stated that when he was not picked up at 6.30am he waited around the garage two and a half hours thinking there was a good reason for his not being picked up. He did not go around to a neighbour's house to ring as the office would not be open at that time and while the operations manager's number was in his mobile phone he could not check it as he did not have the pin number. The garage was open twenty-four hours. He did not ring to get the pin number but asked his partner to do so as he was angry that they had left him waiting two and a half hours. The normal pick up time was 6.30am and he was there at that time on Monday 12<sup>th</sup> May and since his phone was off because of not having the pin number he did not get the text message on Sunday telling him of the change in pick up time.

In cross-examination witness stated that on Monday 12<sup>th</sup> May 2008 having waited at the pick up point for a considerable length of time it did not occur to him to ring the office and leave a voice message. The week prior to this he was micro-chipping bins and his starting time was 9am at the office and he assumed that he was back to the normal pick up time of 6.30am on Monday 12<sup>th</sup> May.

**Determination:**

Based on the evidence before it the Tribunal is unanimous that the dismissal was procedurally unfair. The respondent arrived with the letter of dismissal and he admitted that had he known about procedures he would have suspended the claimant for a period rather than dismissing him. There is some doubt as to whether the claimant was in fact at the pick up point. He maintained that the reason he did not ring the respondent that day, Monday, was that he was annoyed.

On balance therefore, given the procedural deficiencies and the contribution of the claimant to his dismissal the Tribunal award him the sum of €2,000 under the Unfair Dismissals Acts, 1977 to 2007. He is also entitled to €380 which is the equivalent of one week's pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and €76 under the Organisation of Working Time Act, 1997 which is the equivalent of one day's pay. The Tribunal having found that the claimant was unfairly dismissed and claims under the Unfair Dismissals Acts, 1977 to 2007 and Redundancy Payments Acts, 1967 to 2007 are mutually exclusive therefore a claim under the Redundancy Payments Acts, 1967 to 2007 does not arise.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

