

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee
-claimant

UD1084/2008

against

Employer

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr M. Kennedy
Ms. C. Byrne

heard this claim at Dublin on 27th January 2009
and 11th May 2009

Representation:

Claimant :

Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot
Street, Dublin 1

Respondent :

Ms. Helen Barry, IBEC, Confederation House, Waterford
Business Park, Cork Road, Waterford

The determination of the Tribunal was as follows:-

Respondent's case:

The transport manager in his evidence told the Tribunal the claimant worked as a car transporter driver. The job requires a HGV licence and two/three weeks training was provided to learn re loading and health and safety issues. Late in the evening of 4th June 2008 the claimant was involved in an accident close to Dublin airport. Witness became aware the next morning when the claimant told him of his involvement in the collision. The claimant stated he was okay but shaken. Witness took a brief outline of the accident which occurred near the airport long-term car park where the claimant was taking a right hand turn and collided with a vehicle. It was suggested that the claimant get a coffee and witness had to inform his superior. A few days later the accident forms were filled

out and the claimant gave his account of the accident. The details were sketchy initially but it could be seen that this was a heavy collision from the damage to the truck. At a meeting the next morning, 6th June 2008, the claimant provided an account of the accident and a fellow driver was requested to attend the meeting to act as translator for the claimant. He was suspended with pay pending investigation and this was confirmed by letter of 9th June 2008. This letter was signed by witness and he recalled giving it to the claimant.

The respondent investigated the accident and the human resources personnel were involved. The claimant had taken photographs at the accident site and these were sent to the respondent's office in New Ross. A sketch of the accident site was also drawn by the claimant. He told the respondent that as he approached the junction on-coming traffic was also turning right. As his view was obstructed he did not see the on-coming vehicle and the collision occurred. The claimant accepted he was at fault at the initial meeting. On 12th June 2008 the claimant was called to a further meeting and his fellow driver again attended to assist with translating. The respondent concluded the investigation and in light of the considerable damage to both vehicles and the third party being hospitalised, it was deemed to be gross misconduct. The respondent expects a very high standard of their drivers and they are very health and safety conscious. When in charge of a HGV one is a professional driver. Witness considered the matter with his human resources colleagues and the claimant was dismissed with effect from 20th June 2008. His dismissal was confirmed by letter dated 12th June 2008 and he was paid one weeks pay in lieu of notice. Since witness deals only with operational issues he referred the claimant to his human resources colleagues when he asked him to consider his being re-instated.

In cross-examination witness stated that the damage to the third party vehicle would require a small amount of repair but it was roadworthy. The gardai were called but no charges were brought against the claimant. The claimant was informed by telephone of the meeting of 12th June 2008 and during the course of such meeting he was told of the gravity of his situation. He was sure the claimant had a copy of the Employee Handbook and at the conclusion of his training he would have signed off to say he understood its contents. The truck was rigid vehicle.

In answer to questions from Tribunal members witness stated that the respondent company has been in operation for twenty-five years. The claimant's job was to transport cars from the port to the compound in addition to occasional runs to local areas in and around Dublin covering a thirty mile radius. His hours were generally 8am to 4pm but most days he could start earlier. The accident happened around 4.30-5pm and the claimant was not busy earlier that day. The extent of the damage to the third party vehicle and the personal injury was a factor in reaching their decision to dismiss the claimant. There was no question of the incident being deliberate on the part of the claimant. There was no previous difficulty with the claimant in respect of the safety of his driving or other work.

The human resources manager in his evidence to the Tribunal stated that the disciplinary process in place in the company is standard. The training programme which was conducted over a two/three week period included driver training, terms and conditions, health and safety, breakdowns and deliveries. When recruiting the claimant it was expected he was a professional driver. He was made aware of the accident by email on 5th June and having found out as much as possible he recommended that the claimant be suspended with pay. He looked up the details on the accident report form and got the garda information all of which was weighed up to see how the disciplinary procedures applied. The conclusion arrived at was that this was gross negligence on the part of the claimant as (1) the claimant's actions put his life and others in danger, (2) the cost of the damage and (3) the reputation of the company. The respondent's understanding was that the

claimant caused the accident and he was represented at the meetings. Witness was involved in the decision to dismiss the claimant. Over the previous four to five years two drivers had been dismissed due to driving incidents. In accordance with the disciplinary and grievance procedure the appeal process is to the line manager or to the next level up or an employee can also appeal to the managing director or to a third party. The claimant rang witness in the weeks after his dismissal seeking re-instatement and it was explained to him where his actions fitted in and that he was dismissed for gross negligence.

In answer to questions from Tribunal members witness stated that most of the damage was to the third party truck and the respondent has third party insurance cover. The cost of damage to the truck was €50k and there is also a personal injuries claim pending. He discussed a lower level of sanction with the other area manager but when the full facts of the incident emerged this was not appropriate. The gardai were contacted but no prosecution was imposed. The procedures are brought to the employees attention through the recruitment and induction process and they can also be read in the canteen.

The Tribunal also heard evidence from the claimant's driver colleague who attended the meetings to translate for him but his standard of English is not very good. He was in contact with the claimant after his dismissal and he was looking for work. The claimant then went back to Poland.

In cross-examination witness stated that he worked with the claimant on the day of the accident i.e. Wednesday 4th June 2008. There were four or five cars between his and the claimant's truck therefore he saw the scene after the impact. After the accident he stopped and went to the claimant. The other driver got out of his truck also and both drivers moved the trucks away from the cross road in ease of traffic movement. It did not look like the other driver was hurt. They delivered the cars and witness finished work at 5pm or 6pm. He remembered the gardai being at the scene. He worked on the Thursday but he could not remember if the claimant worked. He attended the meeting on 6th June and while he could not recall who asked him to attend he did not think it was the claimant. The respondent stated that the matter had to be investigated. In relation to the meeting of 12th June 2008 he could not remember who asked him to attend but he thinks it was probably through a telephone call and it probably was not at the claimant's request. It was during this meeting that the claimant was told it could lead to his dismissal. When he started working with the respondent he received a book outlining procedures and he could not say if the procedures were displayed in the canteen.

Another witness for the respondent told the Tribunal that he had a conversation with a gardai in relation to the accident. At the junction where the accident happened there were two lanes of traffic on both sides. The claimant was turning right and there was no filter light. The other vehicle coming from the opposite direction was also turning right. A high-sided vehicle stopped and may have obstructed the claimant's view.

In answer to questions from Tribunal members witness stated that this was the reason that the gardai did not go ahead with the prosecution as there would be a risk. The other document was for the insurance company. Initially he was not aware of the high sided vehicle being parked there until he received the sketch on 5th June. Witness prepared a report and he emailed it to the respondent on 6th June 2008 after 2pm. The meeting with the claimant was in the early morning of 6th June.

The respondent's representative agreed that the claimant was suspended in the absence of having the email. While there was a problem with the junction it was the view of the respondent that the driver should wait until he had a clear view and the claimant had used this junction on previous

occasions. A driver cannot take a chance at such junctions.

Claimant's case:

The claimant in his evidence told the Tribunal that he has held his driving licence for twenty-nine years and has had no other road accidents. He started working that morning at 6.45am and the accident happened in or around 6pm on Wednesday 4th June 2008. This was his 3rd job that day. He was coming up to the lights, was stopped at red and he was waiting for the green light. When he saw the green light he drove really slowly. He was turning right and there was a truck in front of him which obstructed his view. He tried to see and in an instant he could see a truck coming towards him. He could not react as the truck was driving very fast. He was carrying vehicles and his truck was twenty two metres in length therefore he was focused more on the back of the truck in order to have enough space to turn. It happened in a few seconds. He has a lot of experience in driving but it was not possible to stop.

During his twenty-nine years driving he has driven the biggest and smallest of vehicles. While working for the respondent for a year he never had a problem. The employer's thought he was one of the best employees. He has driven in Ireland, U.K. and Germany and never had any problems. In Poland he worked as a sales representative where he drove a small truck transporting windows and doors. His work always included driving. He also worked for a car hire company, transporting and collecting cars for and from clients on trucks. He has been in Ireland for three years.

After the accident he and the other driver, in order to free up traffic, drove on to the side of the road and waited for the gardai to arrive. After the gardai arrived the cars were brought to Hertz and the claimant went back to the company. He finished up at around 8pm. He rang the transport manager that evening but got no answer as it was late. He took pictures with his camera of the damage to both trucks which he gave to the transport manager the next morning. The damage to the claimant's truck was on the side and the damage to the other truck was on the front left of his cab. His truck is normally twenty metres long and its possible to extend it to carry cars which brought it up to twenty-two metres.

The claimant started work the next day, i.e. 5th June, at 6.30-7am in an attempt to get ahead of the traffic on the M50. After speaking with the transport manager and giving him the pictures he collected his cars as usual. He finished work at 4.45pm. He just completed one job as he had to fix his truck. After work he left his truck back at the respondent's yard and at that time there was a new security guard in the company. On 6th June the transport manager asked him to go to the canteen and asked about the accident. The claimant told him what had happened and he was then told to go home and wait for the company decision. He was not told his job was at risk. He was just told not to drive and that he was suspended. He did not receive a letter of suspension. The first time he saw this letter was at the hearing of this case before the Tribunal. He was unsure if the next meeting was on the 11th or 12th June. He received a telephone call from the transport manager asking him to come to the company where a meeting was held. His colleague driver was there to translate the proceedings. The claimant was told that because of the accident he was being dismissed and that he would receive the next weeks payment. He received a letter dated 12th June confirming the dismissal. He never received the staff handbook therefore he was not aware of the appeal process. There was no garda conviction or fine imposed on the claimant.

The claimant then gave evidence to the Tribunal in respect of his efforts to obtain alternative work. He went back to Poland from 4th November 2008 to 20th January 2009 and was not working during this time. He then obtained a job in Poland in April 2009.

In cross-examination witness stated that in some sense he did take a risk in relation to the accident on 4th June 2008 but he was driving very slow whereas the other vehicle was driving really fast. He was not offered representation at the two meetings. He felt it was not right to dismiss him as there were no previous problems during his employment with the respondent.

In answer to questions from Tribunal members witness stated that after the accident his colleagues tried to avoid that junction by going another way. It was only on the day of his dismissal that he knew the respondent thought seriously about the accident. He was not aware that his job was at risk when he was suspended. He knew he was suspended because of the accident but he did not think it was that serious. During the first discussion with the transport manager he accepted he was at fault because of the rules of the road. He is a careful driver and this was his first accident in twenty-nine years. He had travelled through this junction two or three times prior to 4th June 2008.

Determination:

Employees need to understand in relation to health and safety issues that if you take a risk and have an accident you pay the price. However, the onus was on the respondent to put the employee on notice if relying on that as a defence. The onus was also on the respondent to justify the dismissal. Significantly, no authorities were cited to the Tribunal in this regard. Even more significantly, the respondent did not satisfy the Tribunal that the claimant was made aware that his job was in jeopardy if he was involved in a road traffic accident nor was he made aware that his job was at risk even when negligence amounts to gross misconduct. His contract indicated that an act of negligence could amount to gross misconduct but the type of negligence or the circumstances in which a negligent act might be sufficiently serious so as to warrant a summary dismissal was not made clear. No procedures were followed. It was a case of summary dismissal. The Tribunal finds the dismissal was unfair however the claimant by his conduct clearly contributed to his dismissal. Taking this contribution into account on a 50% basis the Tribunal awards him the sum of €3,600.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

