

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Noel Carey, Forgestown, Horse & Jockey, Thurles, Co.
Tipperary

CASE NO.
UD963/2008
MN904/2008

against

Liam Carroll Refrigerated & Dry Freight Haulage Limited,
Cabra, Thurles, Co. Tipperary

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy
Members: Mr. M. Forde
Mr. T. Kennelly

heard this claim at Horse & Jockey on 28th January 2009

Representation:

Claimant: Brian D. Hughes & Co., Solicitors, "Longmall",
Slievenamon Road, Thurles, Co. Tipperary

Respondent: XXXX of the respondent

Claimant's case:

The company heard evidence from the claimant who was a delivery driver for the respondent. The respondent is a haulage company. The claimant had a difficulty delivering pallets to a customer (company A). The place of delivery was locked. He could not contact the customer, as there was no contact number on the delivery docket. Eventually, according to the claimant he was advised by the office to leave the pallets with someone at the gate of the customer or if no one was there to drop the pallets off. He dropped the pallets. Crucially, from the respondent's point of view that claimant signed the delivery docket himself.

At a later time or date when he returned to the depot he was told that there was going to be a meeting. He was not told what the meeting was to be about. When he met a person (JM) he was asked if he wished to have a representative at the meeting. He declined and asked what the meeting was about and was not told what it was to be about. Then another manager (POD) arrived. JM asked him if he had made the delivery to the company A and he explained that he did and that he left the pallets covered with plastic. JM told him that the company complained that the pallets were in a mess. He was told that the goods were damaged. He told them that the goods were not damaged. They asked him who signed for the pallets and he told them that he signed for them himself. They accused him of gross misconduct. The claimant was told that as of the following

day he would not be doing the express pallets anymore.

The claimant explained to the Tribunal that as far as he was concerned he did not have a job there anymore, as that had been his job at the respondent, his only job.

He got up to leave the meeting and was told by JM or POD to sit down, as the meeting was not over. He left and went to his car in the yard and JM or POD stood in front of the car. He was told to hand over the keys to the lorry and anything else that he had that belonged to the respondent company. He handed JM or POD the keys and the gate zapper.

The claimant explained that he would have gone to work the following day (It was in his mind to return to work) up until the time he was told to hand over the keys any other property. He left and the company did not contact him.

He had signed delivery dockets before that and there were no complaints about him doing that. He was not given a contract of employment. He was not given terms and conditions of employment. He was not told of disciplinary procedures.

In cross-examination the claimant explained that the name he had signed on the docket was the name of the person that he was to deliver to. The signature system was an on-line electronic system.

The Tribunal heard evidence from another delivery driver. He told the Tribunal that he signed the dockets himself. He did not sign another persons name though; he signed his own name.

Respondent's case:

The Tribunal heard evidence from JD who read a typed version of the notes of the meeting with the claimant into the record.

In cross-examination he explained that there was a huge difference between the drivers signing their own name and in signing another persons name. The witness accepted that it could have been an exaggeration that the goods were damaged, as he had not seen the goods. He did tell that claimant that he would not be doing deliveries, however that claimant never asked what he would be doing (what other work that he would be doing instead). He did not agree that by taking the keys and fob off the claimant that he was telling the claimant that there was no work for him. Regarding if he thought that it was a dismissal, the witness explained that he was waiting for the claimant to turn up for work; he thought that the claimant would turn up for work the following day. He thought that the claimant would return the next day to finish their conversation.

It was put to the witness that the claimant did not turn up for work for weeks and weeks and the witness explained that the claimant could have "gone over his head" and "It was incumbent" on the claimant to contact him "or someone higher-up".

In cross-examination the witness was asked if he made any attempt to contact the claimant and he replied, "No".

The Tribunal heard evidence from POD. He explained that the version of the meeting was true. He explained that the proof of delivery is effectively cash and is treated like a cheque, almost. In his twelve years there he did not hear of drivers having been told that they could sign the delivery note themselves.

In cross-examination it was put to the witness what he would think if he were asked to return his fob key. He replied that it might be to have it re-programmed. He also was asked about the meeting and he explained that he missed three to five minutes of the meeting. He agreed that the claimant was not given written instructions. (re: procedures).

The Tribunal asked the witness questions. He did not know of a document that explained verbal or written warnings. He explained that there was “no dismissal”, that the claimant, “got up and banged the door and thundered out of the building”.

Determination:

The Tribunal having heard the evidence adduced determine that there was a dismissal in this case and that the dismissal was unfair. There were no procedures in the company. The claimant was not given a contract or he did not sign a contract.

The claimant contributed to his dismissal by his actions or lack of actions. Accordingly, the Tribunal awards the claimant the sum of €5,000.00, as compensation under the terms of the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal awards the claimant the sum of €1,014.50, as compensation for two weeks notice under the terms of the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd) _____
(CHAIRMAN)