

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

-claimant

CASE NO.

UD96/2009

MN1447/2008

WT612/2008

against

Employer

-respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Mac Carthy SC

Members: Mr. P. Pierson

Mr J. Le Cumbre

heard this claim at Tullamore on 23rd June 2009 at 10.30 a.m.

Representation:

Claimant: Mr. Donal Farrelly, Donal Farrelly & Co. Solicitors,
Tullagh House High Street, Tullamore, Co. Offaly

Respondent: Mr. Andrew Croughan IR/HR Executive, IBEC,
Confederation House, 84/86 Lower Baggot St. Dublin 2

Respondent's case:

The Tribunal heard evidence from the respondent transport operations manager. He explained that the respondent company is a commercial truck transport company based in Portlaoise. There are eleven trucks and it is a family-run company and they employ thirteen people.

Dublin Freight Terminal (DFT) is the freight terminal that the drivers frequently went to. Their main customer was constantly phoning about late loads/collections. He noticed that it was mostly the claimant who was the driver in question. He phoned the claimant and asked him if it was possible to go to the DFT on time like all other drivers do. The claimant would argue that it was his way of doing things. This situation was prevalent in the last three months of the claimant's employment. He found it increasingly difficult to deal with the claimant. He had difficulties with the claimant, and tried to explain matters to the claimant.

The DFT opens at 6.00 am and the drivers are there at 6.00 am. They did not expect the drivers to exceed the tachograph limitations.

He had a conversation with the claimant about being at the DFT for a collection at 6.00 am and the claimant told him that he would not be able to leave until 8.00 am (because he had to take a break).

He told the claimant that he reckoned that he finished the evening before at 6.00 pm (and therefore would be able to get to DFT at 6.00 am). He then asked the claimant if he would do a collection in Clonmel and the claimant refused. He then told the claimant to bring the truck back to the base; he told the claimant that he had no work for him. He had no work for the claimant after he missed his load in Dublin. He dismissed the claimant because the claimant would not work. The claimant lacked direction and would not take instructions. If he had to do it again he would ensure he was procedurally correct.

Cross-examination:

The witness was asked about the reasons why he had dismissed the claimant and the reasons that he had outlined in the letter of dismissal. He explained that the reasons were that the claimant would not work, because he was late in the mornings and he was not on time. He did not give these reasons during the telephone conversation.

It was put to the witness that the claimant explained to him the night before the dismissal, why he could not travel to Dublin and the reason was because, legally, he had to take a break from driving. The witness disagreed that the claimant explained this to him and that he had a conversation with the claimant that night as the claimant got his delivery duties sent by sms. He also further explained that the claimant had refused to go to Clonmel

The witness explained that their main customer was not happy with the claimant. He agreed that the contract of employment contained no disciplinary or grievance procedures. Regarding the claimant checking into DFT at 7.30 am he did speak to the claimant about this and he did not give the claimant written warnings. The DFT opened at 6.00 am and therefore the drivers would get there at 5.30 am, therefore it was a “no-no” to have there drivers out late. The situation (that the claimant could arrive late to the DFT and therefore finish late and claim extra allowances) was causing conflict with the other drivers.

Claimant’s case:

The claimant told the Tribunal that he had not received letters of complaint about his work. The claimant explained the events of the day previous to his dismissal. He was outside the place of delivery at 6.00 am, as he had slept in the tractor of his transport the night before. He left with the goods to go to Belfast. He arrived at 10.00 am and he left the freight in Belfast. He received a call from the operations manager to go to the docks in Belfast, which he did, (to make a collection). He then left to deliver to Enniscorthy. He arrived at Enniscorthy at 7.00 pm and finished the delivery at 9.00 pm.

The operations manager wanted him to be at DFT at 7.00 am but he could not be there at that time as he could not leave his location until 8.00 am as he had to take eleven hours break. He had finished at 9.00 pm and had to take a required eleven hour break. He had spoken to the manager at 10.00 pm to say that he finished at 9.00 pm and that he would not have the required time to be there at 7.00 am. The manager told him that he did “not care” that he had to be at DFT at 7.00 am. The manager told him that he had to “be there or else”.

The claimant took his eleven hours break and awoke the next morning. Then he got a phone call to say that he was dismissed.

The claimant explained that he could not do what the manager asked him because if he had hit a car

while driving he would have been in trouble, as he should not have been driving.

Cross-examination:

When the claimant was asked if the manager raised the topic of his timekeeping he replied, "he never did". The claimant in explaining about the manager bringing up the matter about travelling to Clonmel explained that the manager phoned him about Clonmel at 8.45 am and the manager had sacked him at 8.30, therefore he had not refused to go to Clonmel. He told the manager, "You are after sacking me, I am bringing the truck back".

Determination:

There was a conflict in the respondent's own reasons for dismissing the claimant, as between thereasons stated in the letter of dismissal and the evidence by the witness for the employer. That witness agreed that there were no disciplinary procedures or grievance procedures in the claimant's contract of employment. He told the Tribunal that he "spoke" to the claimant about the tardiness, but did not give the claimant any warning letters. The respondent has not satisfied the Tribunal as to the "substantial grounds justifying dismissal", under the Act, or as to the procedures followed.

The Tribunal are unanimous that the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds. Having heard evidence from the claimant as to his loss and determining that compensation be the most appropriate remedy the Tribunal accordingly, awards the claimant the sum of €45,000.00, as compensation, as being "just and equitable having regard to all the circumstances", under section 7 of the Act.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, was withdrawn by the claimant.

The claim under the Organisation of Working Time Act 1997 was withdrawn by the claimant.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)