

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

- Claimant

CASE NO.

UD1023/2008

MN948/2008

WT425/2008

against

Employer

- Respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr E. Handley
Mr. J. Dorney

heard this claim at Dublin on 24th February 2009

Representation:

Claimant: Ms. Elaine Hickey, Eugene Smartt Solicitors, Newlands
Retail Centre, Newlands Cross, Clondalkin, Dublin 22

Respondent: In person

The claim under the Organisation of Working Time Act 1997 was withdrawn prior to the hearing.

The determination of the Tribunal was as follows:

Opening Statements

The employer stated that gross misconduct led to the dismissal of the claimant. The claimant was aware of the safety procedures in place and in ignoring them breached company policy, therefore the dismissal was justified and fair. The claimant's failure to follow the safety policy in place could have led to death or serious injury to the claimant and the public and would breach Health and Safety legislation.

The claimant's representative stated that fair grievance procedures were not followed, the claimant was not aware of the grievance process as there was no staff handbook on disciplinary policy and

procedures. The claimant was summarily dismissed, Minimum Notice entitlements were not given to the claimant.

Respondent's Case:

Giving evidence the Service Manager employed by the company for 16 years and managing for 8 years, stated that the claimant did not follow proper safety procedures. The company fit wheel indicators to all their trucks to show the position of the wheel studs, not all wheels on the truck have them fitted. There are ten studs on the wheel all fitted with indicators, each set of two indicators shaped like arrows point towards each other when the studs are correctly tightened and in the safe position. At a meeting on the 28th of April 2008, which the claimant was present, the importance of checking wheel indicators was stressed and the claimant was aware that they should be paid special attention.

The claimant was dismissed following an incident where all ten studs had come loose on a wheel fitted with indicators and the wheel came off the truck. The Service Manager states that it is not possible for the studs to have come loose in two hours if the claimant checked them properly that morning. He states that wheels do not come loose unless under special circumstances, for example there is brake or bearings failure, which was not the case with the claimant's truck. The company serviced the truck 6 weeks prior to the incident where the wheel studs were replaced on one side of the truck. The wheel studs had not been checked again prior to the incident. The claimant's representative stated that according to manufacturers guidelines the wheel studs should be tightened to a specific torque with a torque wrench to which the Service Manager replied that they were tightened 6 weeks previously but without using the torque wrench.

The employer stated to the Tribunal that there was no contract of employment given to the claimant, but he was told verbally on commencement of employment and at the meeting of the 28th of May 2008 that it was his job to check that the wheel indicators were in the correct position. Up to the meeting of 28th of May 2008, where the safety statement was issued and discussed there was no written policy in place for driver responsibility in regard to wheel indicators. The service manager said that for all ten wheel studs to come off at once without the 6 week loosening process, there would have to be broken or stretched wheel studs, which was not the case with the claimant's truck. The claimant would have felt the loosening of the wheel studs in the steering wheel while driving.

The Tribunal questioned whether the wheel indicator item on the agenda of the meeting on the 28th May 2008 is substantiation of what was discussed at the meeting and therefore the extent of the claimant's knowledge on the safety policy. The Service Manager confirmed that the claimant was not the only person driving the truck but the claimant was held responsible for the incident.

The disciplinary procedures were escalated in the claimant's case due to the severe nature of the breach in safety policy. The claimant was immediately dismissed after the Managing Director had a meeting with the technical team. The claimant was issued a letter informing him of his right to an appeal which was held on the 21st of August 2008. The employer confirmed to the Tribunal that failure to check the wheel indicators is not listed in the Disciplinary Procedures as gross misconduct.

Claimants Case:

The claimant told the Tribunal that he did not receive a contract of employment or any information on the Grievance Policy. On the day the incident occurred the claimant collected the truck and undertook the usual safety checks. The rear wheels had indicators on the studs. He delivered the goods on the truck and went back to the yard. He then changed vehicle from the truck to a tipper and completed two deliveries. On return to the yard he changed back to the truck but it wouldn't start, a fitter arrived and fixed the truck. On the M1 slip road the claimant saw the wheel on the road and he pulled into the hard shoulder. The claimant returned to the yard. The following day the claimant went to work as normal and was told by the Managing Director that there was no point starting the truck, to gather his belongings that he was sacked.

The truck in question had been repaired on the 28th of May 2008. Four tyres were changed, the claimant expressed concern that the nuts and bolts were breaking away. An air compressor gun and bar was used to tighten the bolts that were replaced on one side. The claimant signed the breakdown report sheet after he expressed concern about the repairs. Questioned by the respondent the claimant confirmed he checked the wheel indicators the morning of the incident and although he expressed concern over the repairs he took it for granted the mechanic knew what he was doing so signed the breakdown sheet. The wheel came off on the side that the bolts were not replaced.

A mechanical engineer giving evidence for the claimant stated that under certain circumstances the wheel bolts could loosen without moving the indicators. The breaking and accelerating action coupled with naturally occurring vibrations from the road could loosen all ten studs. The bolts need to be re-tightened after 50 to 200km depending on the manufacturers specifications with a torque wrench to an exact torque, which did not take place in this instance. The loosening of the bolts in these circumstances could happen over a short period of time i.e. from being checked by the claimant that morning to the incident 2 hours later.

The claimant originally sought re-instatement but has reconsidered and now prefers compensation as the remedy. The claimant was dismissed on the 9th of July 2008 and started working in a new job on the 26th of January 2009. The claimant was looking for work during the period between jobs and did not claim social welfare benefits. The claimant is earning similar wages in his new job. The claimant submitted his P45 to the Tribunal.

Closing Submissions

The claimant's representative states that the respondent did not meet the burden of proof. The claimant was not issued a contract of employment. Gross misconduct did not occur by the legal definition, the respondent did not adhere to grievance procedures.

The employer states that the dismissal was fair, the claimant was fully aware of his responsibilities in regard to the safety policy and did not check the wheel indicators on the morning of the incident therefore is guilty of gross misconduct.

Determination

Following consideration of this case the Tribunal unanimously finds that the claimant was unfairly dismissed. The respondent did not adhere to the grievance policy and procedures in place. There was no Minimum notice given. Compensation has been calculated from the claimant's P45. The Tribunal awards the claimant €17,500 under the Unfair Dismissals Acts, 1977 to 2001. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 also succeeds and the Tribunal awards the claimant the sum of €928.93, this being the equivalent of one weeks pay.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)