

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE
- claimant

CASE NO.

RP420/09
UD413/09

Against

EMPLOYER
- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr F. Moloney
Mr. P. Woods

heard this claim at Dublin on 21st September 2009 and 3rd November 2009.

Representation:

Claimant: Mr. Marcin Szulc, Maguire McClafferty, Solicitors, 8
Ontario Terrace, Portobello Bridge, Dublin 6

Respondent: In person.

The determination of the Tribunal was as follows:-

Respondent's Case:

A director (L) gave evidence. The company employed eight employees, seven of whom were drivers. The claimant was employed as a driver. His work involved delivery of curtain rails to the same shops throughout the country each week. L trained the claimant in on the job, which included loading and unloading the vehicle. During the initial training either he or his partner accompanied the claimant on scheduled runs. The claimant worked Monday to Friday.

There were teething problems in the claimant's first year of employment but these were eventually sorted out.

L received a letter of complaint dated 10th September 2008 concerning the claimant's abusive

behaviour and his unco-operativeness with staff following the claimant's delivery of goods to a store in Co. Cork. He subsequently spoke to the claimant about the incident and showed him the letter of complaint but the claimant denied he was abusive. He took the claimant off deliveries to this particular store.

Towards the end of October 2008 L received a second letter of complaint concerning the claimant's behaviour in a shop in Tipperary and as a result L was asked to take the claimant off delivery to this company's chain of stores. L was informed that the claimant had left goods in a trolley outside the store's warehouse in the rain and refused to bring them into the warehouse, as was normal practice.

L then changed the claimant's run, which entailed the claimant staying overnight in Cork on Thursdays and excluded his delivery of goods to the particular chain of stores. He showed the claimant the new route he wanted him to follow and put the dockets in order of each delivery. The claimant decided to do the Cork runs his own way and as a result one customer was waiting until the following day for their delivery. The claimant did not follow the route in order of deliveries as instructed by L over a period of three weeks. In early December 2008 he spoke to the claimant concerning his changing of the Cork route. He told him that in one week he had clocked up an extra 35 miles and in the second week he clocked up an extra 70 miles by not following the scheduled route. On 4 December 2008 L had enough and he gave the claimant two weeks notice.

L told the Tribunal that he verbally warned the claimant that there could be repercussions for his employment on several occasions and that the claimant said ok to this. He issued the claimant with several verbal warnings but no written warnings. The claimant had not been furnished with a contract of employment. No disciplinary procedures existed in the company.

A Director who contracted the work to L gave evidence. He had been contacted by both a Manager and the Group Buyer of a chain of stores and informed that the claimant would not be permitted to deliver goods to their chain of stores. The claimant had been abusive to staff and the Group Buyer had received numerous complaints from several managers. He wrote to L on 10th September 2008 and 24th October 2008 concerning these complaints.

Claimant's Case:

The claimant gave evidence. He commenced employment on 7th March 2006. His employment ended on 19th December 2008 having received two weeks notice on 5th December 2008. He had never received any complaints about his work prior to this. He did his job as best he could. He had not received a contract of employment. He said there were no disciplinary procedures in the company.

Regarding deliveries he made to a store in Tipperary, he had never been asked to carry the goods inside the warehouse and always left them close to the door. The deliveries were always checked and signed for. No one ever argued with him about this arrangement.

On 5th December 2008 he received a call from L and was asked to meet him in the company's yard. L gave him two weeks notice of the termination of his employment. He informed L that he had changed the Cork route. He had done the two-day Cork deliveries in one day but L did not afford him the opportunity to explain the reasons for his changing of the Cork route.

Under cross-examination the claimant said he always followed instructions. The reason he changed the Cork route on 4th/5th December was to save time as he did not wish to stay overnight in Cork

but wished to travel home to his family that evening.

The claimant told the Tribunal that L had never shown him either of the two letters of complaint regarding his behaviour and uncooperativeness with staff in several stores. He believed the reason L changed his route was because he was short a driver and was trying to look at savings for the company.

He was unaware he had to make a delivery to a certain store at 10 o'clock on a particular morning but when he rang that store to arrange a delivery before 6 pm he did not encounter any difficulty.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. Clearly, there is a conflict of evidence between the parties. The Tribunal has noted the fact that the claimant did not have a contract of employment as required by law and that no grievance procedures existed within the company either. The respondent had been notified of several complaints regarding the claimant's behaviour in a particular chain of stores and on balance the Tribunal accepts that the respondent would have verbally warned the claimant in this regard.

The Tribunal determines that the dismissal of the claimant was not unfair. Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails. The claim under the Redundancy Payments Acts, 1967 to 2007 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)