

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE - claimant

CASE NO.  
UD355/2008

against

EMPLOYER - respondent

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Hayes BL

Members: Mr. W. Power  
Mr. P. Trehy

heard this claim in Dublin on 28-29 October 2008, 10-11 February 2009 and 15th May 2009

Representation:

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Claimant(s):

Mr. Oliver McDonagh, Branch Organiser, MPGW Group, SIPTU,  
35 Lower Gardiner Street, Dublin 1

Respondent(s):

Ms. Mary Paula Guinness BL instructed by  
John Shiel, Solicitors, 15 Clanwilliam Terrace, Dublin 2

The determination of the Tribunal was as follows:-

The claim was that, after working as a van driver for the respondent (a company which supplied sandwiches and refreshments to businesses) from December 2005 to December 2007, the claimant was accused of falsifying documents (an allegation which he denied) and was dismissed. The respondent's defence was that the claimant was dismissed for gross misconduct following an investigation in accordance with the respondent's disciplinary procedure.

The respondent contended that, although an employer might be contractually bound to give employees breaks according to the Organisation of Working Time Act, 1997, this did not mean that an employer could not set those breaks. Dishonesty could cover many things and trust was integral to an employee-employer relationship. An employer was not obliged to justify a dismissal to the Tribunal but only to show that it had behaved reasonably and made its decision to dismiss on reasonable grounds. An example of this might be where an employee could not give a satisfactory

explanation when asked for one.

Regarding an allegation that the claimant had been found (on the respondent's van tracking system) to have gone home on unauthorised breaks, the respondent's case was that the claimant had given the explanations that he had not been driving the van, that he had not been at home and that he had not been at home for long. It was alleged that the claimant had been taking unauthorised breaks in addition to those that were authorised and that the claimant had not been able to give an explanation. The claimant alleged that he had taken authorised breaks at home but the respondent's case was that the claimant had taken breaks which were additional to those that were authorised and that, therefore, these additional breaks were unauthorised. The claimant accepted that he had got the breaks to which he had been entitled.

The respondent believed that it had acted fairly and followed fair procedure in that it had put its evidence (including van tracking records) to the claimant and his representative but that, when the claimant could not give a satisfactory explanation, the respondent believed that the claimant's recollection was very selective and that there had been a clear breach of trust justifying dismissal.

The claimant's case was that his problems had started when he had started to talk back to the respondent about terms and conditions. There was no evidence of signed contracts or that the respondent's ethos had been indisputably communicated to the claimant. Van tracking showed when a van was stationary but not why it was stationary. Tracking could not show what an employee was doing. It was the claimant's case that it appeared incredible that the respondent had had evidence from tracking for two years and had never previously called the claimant into question. The claimant was saying that there had been different explanations with respect to different days e.g. that he had not been driving the van or that he had not been at home. It was argued that the respondent had treated the claimant unfairly and that trade unions would only agree to tracking if it was not used in disciplinary matters.

### **Determination:**

The Tribunal does not find the sanction of dismissal to be appropriate in this case and, accordingly, the unfair dismissal claim succeeds. However, the Tribunal considers that the claimant, by his actions, contributed to the respondent's coming to the decision to dismiss him.

Accordingly, the Tribunal allows the claim under the Unfair Dismissals Acts, 1977 to 2007, and in all the circumstances of the case, deems it just and equitable to award the claimant compensation in the amount of €5,000.00 (five thousand euro) under the said legislation.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)