

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD1356/2008

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O’Leary BL

Members: Ms. J. Winters  
Mr. O. Nulty

heard this claim at Dundalk on 7 May and 2 July 2009

Representation:

Claimant: Mr. Stephen Reel of Brian Berrills & Co., Solicitors,  
5 Francis Street, Dundalk, Co. Louth

Respondent: Ms. Cathy McGrady BL, instructed by Ms. Sheila Maguire of  
Daniel O’Connell & Son, Solicitors, Francis Street, Dundalk, Co. Louth

The determination of the Tribunal was as follows:

#### **Respondent’s Case**

The general manager gave evidence. The claimant was a professional truck driver. He was meticulous and well regarded in his work. No issues arose prior to 24 June 2008. The claimant’s last trip was to take an export load to Poland. The end of the trip was a ferry crossing from Liverpool to Dublin, followed by a 95km drive back to the depot.

The general manager arrived at the depot at about 9.00am on the morning of 24 June 2008. The claimant was in the canteen. He could stand only with support, his speech was slurred and he was using abusive language. The general manager requested that the claimant go to the porta-cabin office. The claimant said that he met an old friend on the boat and spent the night drinking brandy. It was unbelievable that he could have driven from the port to the depot in that state.

He left the claimant in the office while he spoke to a colleague. The colleague confirmed his opinion that the claimant was under the influence of drink. The claimant came out of the office and walked unsteadily to his car saying, 'I'm going home'. The general manager said that he would not allow the claimant to drive and would have him left home. The claimant was annoyed by this suggestion, but got into his car and spent a long time getting the key into the ignition. The general manager pulled the key out of the ignition. The managing director drove the claimant home.

A couple of days later the claimant phoned to ask if there was work for him. The general manager told the claimant it would be later in the week before work would be available. The claimant was not suspended. The next day the claimant phoned again, the general manager told him it was a serious matter and needed to be dealt with correctly. The general manager arranged a meeting between the claimant, the managing director and the claimant for the following day, 1 July 2008, at 6.30pm. He did not tell the claimant that he could be dismissed.

The general manager spoke to several members of staff who had seen the claimant on the morning of 24 June. He had no handwritten notes; he typed everything up all his notes. He did not tell the claimant about the statements or give him a copy of them. The general manager and the managing director met the claimant. The claimant was informed that it was a disciplinary meeting and that he could have someone with him. The general manager asked the claimant what would have happened had he been stopped by the police on the 24 June. The claimant replied that he would have lost his licence. The general manager read to the claimant from the employee handbook. The claimant did not deny the allegation that he had been drunk. The claimant said his actions amounted to gross misconduct. The meeting adjourned for 15 minutes. The general manager and the managing director discussed the matter. Then the general manager typed the letter of dismissal and handed it to the claimant.

The claimant was allowed 7 days in which to appeal. He did not appeal within that time. The claimant's solicitor wrote asking for an appeal. The general manager felt the time limit was reasonable and did not conduct an appeal.

Since then there has been a 20% fall in turnover. There is less work now and fewer employees.

The managing director gave evidence. On 24 June the general manager came to his office with the keys to the claimant's car. The general manager said the claimant appeared to be drunk and was in his opinion unfit to drive. The managing director phoned his wife to ask her to collect him from the claimant's house. He then coaxed the claimant into the passenger seat of the car and drove him home. The claimant acted in an inebriated way. His speech was slurred and he kept repeating himself.

On 1 July the meeting between the claimant and the general manager had started before he arrived. They were reading from the staff handbook when he joined the meeting. The claimant looked dispirited. The general manager told the claimant he had no option but to dismiss him. The managing director agreed, feeling that otherwise every other employee would expect a second chance. The managing director came to the conclusion the day before the meeting that the claimant would have to be sacked. There would have been no point in having an appeal meeting; he had made up his mind.

A driver for the respondent gave evidence. On 24 June he saw the claimant drive to the depot. The claimant overshot the entrance and had to reverse before turning into the entrance. The trailer on the claimant's truck was damaged. The claimant told a fellow driver that he was drunk.

The transport manager gave evidence. On 24 June he came to work just before 9. The claimant was in the office. The claimant was unsteady on his feet and appeared to be intoxicated. The claimant said he was drunk and that he had been drinking all night. The transport manager thought it a miracle that the claimant had driven to the depot in that state.

The assistant transport manager gave evidence. He saw the claimant in the office, unsteady on his feet and banging into the wall and the desks. The claimant told him he had been drinking with a buddy. The assistant transport manager told the claimant to lie down until lunchtime and the claimant was verbally abusive. The assistant transport manager did not test the claimant to establish if he was drunk. He did not bring CCTV pictures to show the damage to the trailer.

The accounts manager gave evidence. She was on holidays on 24 June. On 1 July the general manager and the managing director came to discuss the matter with her following their meeting with the claimant. The claimant had admitted being drunk. Therefore in her view it was a black and white issue, the claimant had to be dismissed. The general manager used a template letter of dismissal to type the letter of dismissal for the claimant.

She ensured that there was a health and safety statement in existence since 2005. The statement was distributed to all staff. Each member of staff received a copy of the staff handbook. She has no record to show that the claimant received a copy of the staff handbook.

### **Claimant's Case**

The Claimant gave evidence. He started working for the respondent in 1987. He had no contract of employment. He first saw the safety statement and the staff handbook on 1 July 2008, the day of his dismissal.

Leading up to 24 June the claimant was on a trip to Poland. He took the ferry from Liverpool to Dublin. He got on the ferry between 7.30 and 8.00pm. He went to his cabin and then went to the bar. He met an old school friend in the bar. He drank 5 or 6 pints, but did not drink brandy. The bar closed at 11.30pm and he went to his cabin. The next morning the drivers were called at 4.30am. He drove off the ferry, gave his ticket to the man at the gate. There were no customs checks that day. He drove out of the port, north through the tunnel and along the motorway. The road is narrow. In the yard he hit the trailer and ripped the cover.

He waited until the general manager arrived to tell him that he hit the trailer. He did not admit to being drunk. He took his things out of the truck and put them in his car. He went into the portacabin. Coming out he missed the step and fell. He did not need help to get up. There could have been a smell of drink off him. The managing director wanted to drive him home.

On Friday 1 July the claimant phoned the general manager to see if there was work for him. The general manager wanted to talk to him and said come up on Tuesday. The claimant wanted to work before then so the general manager said come at 6. The claimant was not told the purpose of the meeting. He thought it was about hitting the trailer. He was not told of the allegations against him.

He drove to the depot. He went into the portacabin with the general manager. The general manager gave him a book off a table and asked him to read p.19 to 25. The general manager left him alone to read the pages. The claimant read that instant dismissal was the sanction for being drunk.

The general manager and the managing director came in and told the claimant he could have someone with him. The general manager told him it was a disciplinary meeting. The general manager asked him how many family cars he drove past on 24 June. He replied, not seriously, 'hundreds at that hour of the day'. When he was asked, what would have happened if he had been stopped by the police, he said he did not know. The managing director told him that they had to sack him. He was not given a letter, he got it the following week. The letter said he was unfit due to drink. He was disappointed because he was not drunk. The claimant was told that if he resigned they would say he was unfit to work. The claimant said no.

The respondent's representative made a submission. The claimant admitted to drinking and by his behaviour contributed 100% to the dismissal. The question of a valid route of appeal is irrelevant after dismissal.

The claimant's representative made a submission. A high standard of proof is required to prove incapacity. The respondent could have had a test done to confirm the claimant's inebriation. The respondent could have called the Gardaí. It is unlikely that the claimant could have driven the difficult route to the depot without incident if he was inebriated.

The claimant was not notified in advance that the meeting was a disciplinary meeting. He was not given the statements collected by the general manager. The accounts manager did not attend the meeting. The managing director came late to the meeting. When he appealed no appeal meeting was arranged.

## **Determination**

The Tribunal carefully considered the evidence adduced. The respondent had serious concerns about the claimant's fitness to work on 24 June 2007. The Tribunal finds that there were flaws in the procedures adopted by the respondent to investigate and respond to these concerns. The claimant was not given notice of the disciplinary meeting. He did not receive a copy of the witness statements and was not given an opportunity to respond to these allegations. Also the managing director decided to dismiss the claimant in advance of the disciplinary meeting. The flaws in the procedure were sufficiently serious to render the dismissal unfair. The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds.

Taking into consideration the contribution made by the behaviour of the claimant the Tribunal makes an award of €3,600.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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