

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- claimant

CASE NO.
UD706/2007
MN570/2007

against
EMPLOYER

- respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr F. Moloney
Ms. R. Kerrigan

heard this claim at Sligo on 19th October 2009
and 20th October 2009
and 21st October 2009
and 22nd October 2009
and 23rd October 2009

Representation:

Claimant(s) : Mr. Brian Gill, Callan Tansey, Solicitors, Law Chambers, 3Wine Street, Sligo

Respondent(s) : Mr Mark Connaughton SC and Mr. Declan McHugh BL instructed by:
Mr. Seamus Bowe, An Post, Solicitors Office, An Post,G.P.O. (1st Floor), Dublin 1

The determination of the Tribunal was as follows:-

Background:

The claimant was originally employed as a Fleet inspector in Sligo in 1989. In 1999 grades were amalgamated and he became Fleet Inspector for the Sligo area. As Fleet Inspector he is responsible for the maintenance and upkeep of the transport fleet for the respondent and to ensure that an adequate amount of vehicles were available for use of all delivery offices. This role involved travelling to different offices weekly to inspect the vehicles, talk to the garage owners who repaired them and basically solve any problems that arose.

As the respondent was not purchasing any new vehicles and in order to keep deliveries up to date one of the 3 clerks in the office arranged the hireage of vehicles on either a short or long term basis. If the

vehicle were beyond economic repair (BER) it would usually be a long-term contract. If 1 of the 3 clerks could not arrange the hireage he did it. It was up to him to decide if a vehicle was BER and make his recommendation which was a critical part of the process.

The claimant also arranged the service level agreements with various contracted garages and make sure he got value for money in all maintenance, repairs and hireage.

A problem was first noticed by one of the clerks (hereafter known as PC) in the Area Office. A vehicle (fleet number 302F) which had been deemed BER was sold to a local garage owner in October 2003 for € 800. This vehicle was subsequently rehired on 2 separate occasions in December 2003 and January 2004. The owner of the garage was the claimant's brother-in-law (hereafter known as JB). The total cost of incurred by the respondent was € 2,043.00 which was 2 ½ times the amount of which the vehicle was sold.

The matter was reported in writing by the Performance Manager (hereafter known as PM) to the Area Manager (hereafter known as AM) who in turn reported it to the Director (at the time) and the head of Security Services (hereafter known as SS). During the investigation a number of other occurrences were raised.

A matter came to light of the excessive number of vehicles, and at uncompetitive rates, hired from JB between October 2003 and June 2004 costing over € 20,000.

A third matter was the hiring of a vehicle (registered 01 SO 224) of behalf of the respondent from JB where he seemed JB was the owner of the vehicle.

A meeting was held with the claimant on November 24th 2004 and all allegations were put to the claimant and explanations requested. A statement was taken. He was asked to read the statement and the claimant initialled all alterations. He requested a copy of the statement with a view of signing it at a later point, as he did not wish to sign it on the day. He was suspended with pay pending further investigation. An investigation took place and other staff were interviewed. On December 1st 2004 a confidential internal memo was sent from the Investigation Officer (IO) to SS and the Head of Employee Relations, Human Resources.

On December 15th 2004 he was sent a detailed letter from the HR Manager. He stated that he had considered the report from the Investigation Branch and having regard to the statement given by the claimant on November 22nd, the respondent was of the view that it was serious gross misconduct. It also stated that they believed his judgements were influenced, to the detriment of the respondent, by his personal and business relationships with third parties. A detailed invoice to the value of € 22,927.21 of the hireage of vehicles from JB was enclosed with the letter. They felt he had taken advantage of his role of hiring vehicles.

He was informed the respondent was considering taking disciplinary action up to and including dismissal. He was offered to make any explanations, union representation or other representations he may wish to offer. He was also offered an oral hearing if he so wished and could attend with a union representative or a friend. If he wished an oral hearing he was to request it in writing to the author of the letter within five working days of receipt of the letter. 2 contacts numbers were also given to arrange it. He was also informed no further action would be taken against him until January 7th 2005.

On January 3rd 2005 the claimant wrote to the HR Manager enclosing a signed 29-page statement in relation to an allegation that from the period of November 2003 to April 2004 he took advantage of his role in arranging the hire of vehicles, due to the absence of other staff in the Area Office, to place a significant element of the Area hireage requirements with JB. The allegation of the excess rate of

hireage fees of vehicles from JB. The allegation regarding the hiring of a van that had been deemed BER, sold to JB and later rehired at an excessive price and the allegation that he knowingly allowed a vehicle owned by him was hired by the respondent for his personal gain. (2 other allegations made were later withdrawn at the hearing).

On January 12th 2005 the HR Manager responded to the claimant's letters dated, January 3rd, 5th and 7th. In the letter of January 7th, the claimant stated he would not attend an oral hearing. The HR Manager stated he would look into the matters raised by the claimant in his letter of January 3rd. In relation to his letter of January 5th the HR Manager enclosed a copy of the respondent's Disciplinary Code, Code of Conduct of employees serving in designated posts, a summary copy which was circulated to employees subsequent to the Code being adopted in 1999, the Dignity at Work Anti Bullying and Harassment Policy, the Dignity at Work Anti Bullying and Harassment Investigation Procedure and the hireage invoices referred to in his letter, and the attachment, of December 15th 2004.

Any other information requested by the claimant was not afforded to him. He was informed that he would be advised, after further investigation, if the company intended to continue the disciplinary process.

On April 21st 2005 a letter was sent to the claimant from the HR Manager stating the 6 allegations (*Please note 2 of these allegations were withdrawn at the hearing*) and claims made by the claimant were considered and replies given.

Allegation 1: In a period of November 2003 to April 2004 he took advantage of his role in arranging the hire of vehicles, due to the absence of other staff in the Area Office, to place a significant element of the Area hireage requirements with JB. The respondent found that they were satisfied with the information available to them and that the explanations given by the claimant were unacceptable.

Allegation 2: That he was complicit with JB in ensuring that grossly excessive charges billed to the respondent for vehicle hireage was paid. The respondent found, that on the claimant's own admission, he had a longstanding business relationship with JB.

Allegation 3: That he knowingly allowed a vehicle owned by him to be hired to the respondent for personal gain. Registration 01 SO 224.

Allegation 4: That he was complicit in arranging the sale of the fleet number 302F to JB and its subsequent rehire at excessive cost to the respondent.

The respondent's response to both accounts and considering witness statements given, the allegations were well founded.

The claimant was afforded 1 last opportunity to put forward why a recommendation for dismissal should not be made.

On May 25th 2005 a second statement was submitted by the claimant to the HR Manager. A response was enclosed and the claimant was informed the HR Manager would report the matter to the HR Director. The HR Manager replied on June 3rd 2005 stating he needed more time to review his extensive 54-page statement, that he would be taking 3 weeks leave but that the claimant could contact the Head of Employee Relations in his absence.

On June 19th the claimant wrote to the HR Manager, aware he was on leave, requesting raising 2 more issues and that, on reflection, he felt he should bring his predicament to the attention of the Board of

the respondent and 2 government Ministers. He again wrote on July 26th and August 13th.

On August 29th the HR Manager responded refuting he or the respondent had been hostile or defensive regarding the matter. Another offer to the occupational health officer was offered and the HR Director was suggested if he wished to address any concerns regarding the conduct of the process. On September 29th the HR Manager submitted a letter plus 99-page enclosure to the claimant. The claimant responded on October 4th requesting time to consider the 100-page document. He included his telephone number to receive verbal confirmation and stated if this time was not afforded him he would use this and any other correspondence to support his claim. The company responded giving him until October 21st 2005 to respond.

On October 19th the claimant responded stating he may take his claim further. On October 27th the respondent replied stating the internal process was still open giving him another 7 days to submit further information relating to the allegations against him. On October 31st the claimant replied that if the company did not give him confirmation that he could contact the individuals who gave evidence to support his case in order to come to some conclusion he would take the matter further.

On November 4th 2005 the claimant's union representative wrote to the respondent looking for a time frame to try finalise the matter. A response stated the matter was near completion. The claimant was dismissed on February 2nd 2007.

Respondent's Case:

The person who investigated the matter (IO) and the Performance Manager (PM) gave evidence of behalf of the respondent stating their involvement, as set out in the background of the case, in this matter.

Claimant's Case:

The claimant gave evidence refuting the allegations put against him by the respondent company. He stated his relationship with JB was common knowledge with the respondent company, he had no role in agreeing hireage rates with JB at any time, his involvement in the hireage of vehicles from JB's company was very limited and that he had received no personal gain from the hire of the vehicle 01 SO 224.

He stated that he had not signed the statement on November 22nd 2004 as he had not given a statement on that day and was taken quite aback by the whole episode.

JB also gave evidence on the claimant's behalf.

Determination:

Having heard all the evidence and submissions adduced over 5 days the Tribunal are of the view of the argument made by the claimant that the hiring of vehicles from JB at excess rates was not made.

In respect of the vehicle 302F the Tribunal do not accept JB's evidence nor the explanations given by the claimant and find that the case is proved.

There was no dispute that the vehicle 01 SO 224 was the property of the claimant. This vehicle was hired to the respondent company, originally from JB's company. The claimant has failed to give a satisfactory explanation of this matter in his evidence to the Tribunal. In this connection we have regard to his reaction when PM asked him about this vehicle.

During the cross-examination of the claimant counsel asked him on three separate occasions whether the contents of the statement concerning the meeting on November 24th 2004 were true. On each occasion he evaded the question.

The Tribunal is satisfied that two of the three points of the respondent's case has been established. Having regard to the claimant's position of trust, we find that the respondent has found a substantial ground justifying the dismissal. This substantial ground relates to the "conduct" of the claimant, and we make no finding on the adjective "gross". The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails. The Tribunal notes that the claimant was on full pay from November 27th 2004 to February 2nd 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)