

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – **Claimant**

UD917/2009

against

EMPLOYER – **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. O'Connell B.L.

Members: Mr. F. Cunneen
Mr. S. O'Donnell

heard this claim at Dublin on 19 February
and 14 May 2010

Representation:

Claimant:

Mr. William O'Brien B.L. instructed by
Mr. Niall Moore, H. J. Ward & Co. Solicitors,
5 Greenmount House, Harold's Cross, Dublin 6W

Respondent:

Ms. Muireann McEnery, Peninsula Business Services Ireland Limited,
Unit 3, Ground Floor, Block S, East Point Business Park,
Dublin 3 on the first day
Mr. Dominic Wilkinson B.L. instructed by Mr. Dermot Flanagan,
Flanagan Solicitors, Gortmhuire, Main Street,
Saggart, Co. Dublin on the second day

The determination of the Tribunal was as follows:

Dismissal being in dispute it fell to the claimant to prove the fact of dismissal

The respondent, which operates a specialist haulage company, employed the claimant as a truck driver from 14 May 2007. This was the second time that the respondent had employed him. Whilst there had been some minor flare-ups between the claimant and the managing director (MD), which had involved the claimant storming off and returning after a short period, the employment was uneventful until Monday 16 March 2009 when the claimant took his truck to a site some three or four miles from the respondent's depot (the site) in order to move a piece of equipment for a customer.

On arrival at the site the claimant became concerned at the condition of the ground he was required to drive his truck over. Timber had been laid to facilitate the truck's progress over the bad ground. The claimant telephoned MD to seek guidance on this issue and, after being told to proceed with caution, drove the truck over the timber. This action led to the timber damaging a fuel pipe on the truck as a result of which it was necessary to call out a mechanic to fix the truck.

After completing his work at the site, whilst attempting to leave, the timber again damaged the fuel pipes on the truck, more seriously this time, such that fuel was lost from the tank and again it was necessary to call out a mechanic as well as environmental remediation of the ground where the fuel was spilled. The cost to the respondent of the two incidents was some €2,500-00 and the truck was ready for work again on 20 March 2009.

The claimant returned to work on Wednesday 18 March 2009 after the public holiday and it is accepted that, at around 8-30am, MD "reared up" at the claimant for five minutes or so. The claimant, who insisted that the damage to the truck was not his fault, felt that MD was "wrecking his head" and went home. The respondent's position is that he had work available for the claimant on 18 March and expected him to come back to work. The claimant's position is that MD told him that there was no work for him on 18 March. When the claimant did not return to work on 19 March MD took it that the claimant had resigned. The claimant sought his P45 on 23 March 2009 and received the P45 when he came to collect his belongings on 25 March 2009. The claimant was not replaced.

Determination:

At the end of the hearing, when the Tribunal was hearing the preference of the parties in regard to remedies in the event of the claimant being successful, MD made an inappropriate remark to which the claimant's representative took exception. The Tribunal afforded the opportunity for the matter to be taken further. Having been reassured by the Tribunal that the remark would not be taken into account when reaching its decision, the claimant's representative was happy for the case to conclude.

The Tribunal, having carefully considered all of the evidence in this case, is not satisfied that MD dismissed the claimant on 18 March 2009. While there was a clash of evidence on a number of important issues, the Tribunal accepts that there had been previous differences of opinion between the claimant and MD. It also accepts that it was the norm for the claimant to resume his

employment shortly after any such altercations. Crucially the claimant was paid for 18 March 2009, the day he claims he was dismissed. The Tribunal believe MD expected the claimant to return to work and therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)