

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- claimant

CASE NO.
MN1001/2009
UD983/2009
WT431/2009

against
EMPLOYER

- respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr D. Hegarty
Mr F. Dorgan

heard this claim at Cork on 17th June 2010

Representation:

Claimant(s) : Eugene Carey & Co, Solicitors, Courthouse Chambers, Mallow, Co Cork

Respondent(s) : Ms. Jane Anne Rothwell BL instructed by:
Mr Charles Daly, Francis C. Kelleher & Co, Solicitors, 1Pearse Square, Cobh,
Co Cork

The determination of the Tribunal was as follows:-

At the outset the claimant withdrew the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997.

Respondent's Case:

The son of the owners of the business gave evidence. At the time of the claimant's employment there were two employees, including the claimant. The claimant commenced employment in July 2006 in the warehouse and his duties included driving a forklift truck of which he had 20 years experience.

He was a good worker but in the last year of his employment there were a number of incidents which cost the business over € 3,000.00. Oil barrels were damaged by the claimant hitting them with the forklift truck or falling off a pallet. The witness warned him on these occasions and the claimant stated it would not happen again.

On March 18th 2009 the witness came into the yard and noticed the company's truck was damaged. Pictures of the truck were submitted to the Tribunal. He stated that on inspection the air brakes were damaged as well as the side of the truck. He spoke to the claimant who informed him he had scrapped the truck against a bollard on the quay. The witness had to spend the day fixing it which cost € 1,918.00 in parts. He told the claimant he had to let him go because of all the incidents, which had cost so much to the business. He worked to the end of the week and was paid his notice.

On cross-examination he stated the claimant had no contract of employment or terms and conditions of his employment. There was also no grievance, disciplinary or appeals procedure in place. He was also never given any written warnings. He stated the claimant had acknowledged the damages caused but had not offered to pay for them.

Claimant's Case:

The claimant gave evidence. He agreed that the incidents had taken place. In respect of the damaged barrels he stated that the first time the pallet had broken and the second time he had misjudged the forks on the forklift. The respondent's witness had not given him a warning but asked him "did he not realise the price of that f*****g barrel." He was also to improve the way he loaded the barrels.

He agreed he had hit the truck off the bollard in March 16th 2009 but was not aware the air brakes were not working as they had worked for him when he had driven the truck back into the yard and therefore had not informed the respondent's witness. He was told he was let go because of the incidents. He was not given a letter of dismissal and was not given the opportunity to appeal it. He gave evidence of loss.

On cross-examination he stated he had not received a contract of employment or terms and conditions of his employment. There was also no grievance or disciplinary procedure available to him. He again agreed he had damaged two barrels and the truck and had been told in an "impolite" manner how much the damage cost.

Determination:

Having heard all the evidence adduced and submissions made, the Tribunal finds that the claimant was dismissed and that it was an unfair dismissal, as the respondent did not follow proper and fair procedures. However the Tribunal also finds that the claimant did contribute to his dismissal.

Accordingly the Tribunal awards the sum of € 9,090.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)