

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

*claimant*

MN1534/2009

UD1551/2009

WT659/2009

Against

EMPLOYER

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: Ms D. Donovan BL

Members: Mr J. Flanagan  
Mr A. Butler

heard this claim at Dublin on 23rd August 2010

Representation:

\_\_\_\_\_

Claimant(s): Mr Padraig Murphy, 54 South William Street, Dublin 2

Respondent(s): MD of respondent

The determination of the Tribunal was as follows:-

The claim under the Organisation of Working Time Act, 1997 was withdrawn prior to the hearing.

### Respondent's Case

The MD told the Tribunal that the claimant commenced employment with the respondent on 30 January 2006. The claimant was a good employee and did the job efficiently. The claimant had a couple of minor accidents during his time with the respondent. On 19 May 2009 the claimant drove his daughter's car and was involved in an accident with a third party. Both parties were asked to submit insurance details. As a result of an investigation into the accident the MD discovered that

the claimant was not insured to drive the car and that his driving licence had previously been endorsed. He arranged a meeting with the claimant and asked him would he like a representative. The claimant declined a representative and informed the MD that he knew what was happening. The claimant accepted that he drove a car with no insurance on a customer's site. The claimant was issued with a letter of dismissal on 3 June 2009.

In cross examination he stated that he became aware after the accident on 19 May 2009 that the claimant did not have a licence to drive and the claimant did not drive for the respondent after that.

In answer to questions from the Tribunal he stated that the claimant's employment ceased on 3 June 2009. The claimant was suspended between 19 May 2009 to 3 June 2009. The claimant was employed as a driver and his contract of employment specified his duties. The respondent has a disciplinary process in place for its employees. It was quite difficult to check valid driving licences and all licences were checked four years ago. The respondent tried to update driving licences as best it could and all European drivers applied for Irish driving licences. He did not know what date the claimant's driving licence was endorsed. Drivers were insured in a group policy.

### **Claimant's Case**

The claimant told the Tribunal that he was employed as a driver for the respondent. On May 19 2009 he was involved in an accident while driving his daughter's car. He lit a cigarette and he did not see a truck in the mirror. He had never driven his daughter's car prior to this. After the accident the transport manager helped him and gave him medical treatment. The next day he went to work, he was not suspended and he continued to drive a truck for the respondent for the next two weeks. Then he was called to the office and he was asked to return the respondent's mobile phone. He stated he had a tachograph card, which he did not have with him at the hearing, which would indicate that he drove for the respondent for two weeks after 19 May 2009. When he undertook deliveries he signed invoices and if he returned goods to the respondent he signed for them.

The claimant's driving licence was taken from him in September 2008 and he was disqualified from driving for two years and a day. He stated that the MD told him he would go with him to the Court case regarding his driving conviction and the MD told him to return to Poland to get a new driving licence.

In cross-examination when asked what date he was in Court with the MD he replied he could not remember the date but it was mid March. He did not have legal representation with him in Court.

In answer to questions from the Tribunal he stated that he did not receive a contract of employment.

When asked if he was provided with a written disciplinary procedure he replied he received something. A Polish Translator who he did not know was present in Court and told him that he had lost his licence. His licence was returned to him in January 2010. He applied to numerous employment Agencies after he was dismissed and he obtained alternative employment in February 2010.

### **Determination**

The claim under the Organisation of Working Time Act, 1997 was withdrawn prior to the hearing and no award is being made under this Act.

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal finds that the

reason for the claimant's dismissal was because he was disqualified from driving and could not therefore lawfully perform the purpose of his employment contract. Therefore, the claim under the Unfair Dismissal Acts, 1977 to 2007 fails.

The claimant was not in a position to work any notice period because of the driving disqualification. Therefore, the claim under the Minimum Notice and Terms of Employments Acts 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

