

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**Claimant**

UD2297/2009

MN2130/2009

WT975/2009

against

EMPLOYER– **Respondent**

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. C. Egan B.L.

Members: Mr. D. Morrison
Mr. M. McGarry

heard these claims at Sligo on 25 November 2010

Representation:

Claimants:

Mr. Vernon Hegarty, SIPTU, Sligo Branch,
Hanson Retail Park, Cleveragh, Sligo

Respondent:

Managing Director of the respondent

The determination of the Tribunal was as follows:

The claimant was employed as a truck driver in the respondent's freight business from October 2006. The respondent's position was that the claimant, whilst personable, was prone to carelessness in his work. There were no disciplinary sanctions taken against the claimant until 7 July 2009 when the claimant received a final written warning from the Managing Director (MD) over some goods the claimant had been due to deliver the previous day not being delivered to their correct destination. The claimant was threatened with dismissal if the missing goods were not found. In the event the missing goods were found later on 7 July 2009.

The respondent's position is that, on his return from holidays in early August 2009, MD received correspondence from their insurance brokers about a road traffic accident (the accident), which had occurred in July 2007 in Mayo, in which the respondent's truck driven by the claimant had reversed into a wall. MD was previously unaware of the accident.

The claimant's position is that on the day of the accident he exchanged details with the other party and that the respondent became aware of the accident on the day it occurred even though he, the claimant, was unable to contact the respondent or the directors by telephone to tell them of the accident.

As a result of receiving the letter from their insurance brokers MD called the claimant in to dismiss him for a Grave Breach of Discipline, that is involvement in a blameworthy road accident, as set out in his contract of employment. The respondent contends this occurred on 6 August 2009 and the claimant contends this occurred on 12 August 2009. It is common case that the claimant worked until 21 August 2009.

The respondent's position is that the claimant, who was not afforded the opportunity to be represented, told MD that he had forgotten about the accident. There was no question of an appeal as it was a clear breach of the claimant's contract of employment. The claimant's position is that MD told him that in times of recession there was no more work for him.

Determination:

The Tribunal notes that the claimant, whilst contending that MD told him there was no more work for him, did not lodge a claim under the Redundancy Payments Acts. The Tribunal is satisfied that the claimant was not notified of his impending dismissal before 12 August 2009. He was notified of dismissal after being called to a meeting without being told what the agenda was. He was not afforded the opportunity of representation and MD made it perfectly clear to the Tribunal that there was no possibility of an appeal. Such dismissal was without any, or fair procedure and was therefore unfair. The claimant accepts his involvement in the July 2007 accident. The Tribunal is satisfied that the claimant did not notify the respondent of the accident at that time and that this failure represents a breach of his contract rendering him subject to dismissal. In the circumstances and taking into account the serious contribution of the claimant to his dismissal the Tribunal measures the award under the Unfair Dismissals Acts, 1977 to 2007 at €7,500-00.

Having found that the claimant was notified of dismissal on 12 August 2009 the Tribunal awards €264-00, being three days' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The respondent produced records showing that the claimant had received his entitlements to leave under the Organisation of Working Time Act, 1997 this was accepted as accurate by the claimant and the claim under that Act was then withdrawn.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)