

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD643/2010

claimant

against
EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr M. Murphy
Ms M. Finnerty

heard this claim at Navan on 27th August 2010
and 24th January 2011

Representation:

Claimant(s) :Richard Grogan & Associates, Solicitors, 16 & 17 College Green, Dublin 2

Respondent(s) : Mr Conor O'Toole, Coughlan White O'Toole, Solicitors,
Moorefield Road, Newbridge, Co Kildare

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent's Managing Director (MD), and owner, and Operations Manager gave evidence. They stated the claimant had been employed for a period of 13 months. During the course of this time they had various problems with him, some very serious costing the respondent compensation. They stated complaints had been lodged about his attitude to customers and he was verbally warned concerning these matters. However a number of serious incidents lead the MD to dismiss the claimant.

The respondent had successfully obtained a contract to provide cement to Dublin Airport for works being carried out. These supplies were to be delivered "airside" and health, safety and security had to be strictly attired to. On September 24th 2007 the claimant was delivering a shipment to the Airport. He was stopped by the Airport Police and then arrested by An Garda Siochana for having an 8-inch dagger on his possession. The MD attended the Garda station and the claimant was

released. The claimant did not give an explanation why he was carrying it and he was issued a written warning stating that dismissal would occur if any similar circumstances arose in the future.

On February 26th 2008 he caused damage to a company lorry tyre due to negligence, which he admitted. The following day he was issued with a written warning and was advised that the respondent would impose a deduction in his salary if he caused a similar loss again.

On May 1st 2008 he was delivering a loading of insulating panels from Cavan to Trammon. A member of the public phoned the respondent and informed him the load was not secured properly. The claimant was contacted and a staff member drove to where he was located to help strap down the load properly. Later that day another call was made to the respondent from Slane. The claimant had been driving the same truck, which had a crane attached to it. The crane had not been secured properly and had brought down an overhead electrical cable. It caused the respondent to pay a considerable payment to repair the damage. The claimant was given another written warning.

On July 10th 2008 the claimant was driving a cement lorry, with supplies in it. The respondent stated the claimant had been driving a straight road and had moved too far to the side of the road resulting in the lorry to turn over into the ditch. Pictures of the accident were submitted to the Tribunal for viewing. The MD arrived at the scene and was not given an answer as to how it had happened; the claimant just shrugged his shoulders. He dismissed the claimant on the side of the road. The MD later returned to the quarry and came upon the claimant speaking to what seemed a friend pointing at the damaged cement truck and laughing. The MD asked why he was still there and told him to leave. Damage to the truck cost the respondent company over € 20.000.

On cross-examination the MD said he had given the claimant “enough chances” and had no alternative but to dismiss him. When put to him he said that he had not told the claimant he could appeal his decision.

The Operations Manger stated that the claimant, although Polish, had a good understanding of English. He had successfully passed his Safe Pass course with FÁS. He could also understand the verbal and written instructions in English given to him daily of the deliveries and pick-ups he had to carry out. The claimant never said he did not understand him.

Claimant's Case:

The claimant gave evidence with the assistance of a Polish interpreter. He stated that he had not got a good command of English. Some months after he had commenced employment with the respondent he had been given his contract of employment, without it being explained. He had no knowledge of company procedures.

In respect of the possession of a knife at Dublin Airport he stated that he did not have an 8-inch dagger but a small fold over knife he used to cut cucumber for his lunch. He agreed he was arrested but was released before the MD arrived to the Garda station. He said the MD told him that he could not have it in his possession and did not receive a warning, verbal or written.

He could not recall the incident in February 2008 concerning the damaged tyre. On May 1st 2008 he remembered the panels being loaded 4 ½ metres high and the crane was on top of them. He had to drive the truck very slow, as he had no straps to tie the load down. The MD sent a colleague to him to strap the panels down tightly. He said that he had not been aware that he had pulled the electrical cable down until he noticed oncoming cars flashing their lights at him. His

colleague was driving in front of him and he contacted the MD to inform him what had occurred. He stopped to see what had happened but then had to leave as his truck was stopping traffic.

He gave evidence of loss.

On July 10th 2008 he said it was a rainy day and the road he was travelling was narrow. A car was approaching him and he pulled over. The ground was soft and the truck fell into the ditch. A passer-by, when he asked them, contacted the respondent company to inform them he had had an accident. The MD arrived and told him to remain on the road to direct traffic. He later drove the company car back to the quarry to clean it and requested by the MD. The MD arrived and started to scream at him calling him a “f*****g b*****x” and told him he was fired.

When put to him on cross-examination if he had been rude to customers, he replied that he had always done his best. He again stated it was a small knife in his possession in Dublin Airport, which he used, for cutting items of food. When put to him that his representative had said in his opening statement that the knife was for cutting straps he replied no. When asked he said the Gardaí had returned the knife to him. He again stated that he had not received any verbal or written warnings but had not made any more deliveries to the Airport for 2 months. When asked he said that he had not been given an induction course.

Determination:

The Tribunal have carefully considered the sworn evidence and submissions given by both parties and their representatives in this case. The Tribunal finds that the claimant’s evidence was unsatisfactory, and cannot accept it. We are of the opinion that his continued bad record amounted to a substantial ground justifying dismissal under Section 6 of the Act of 1977. The claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)