

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD1129/2009
MN460/2010

against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. P. Casey
Mr. D. McEvoy

heard these claims in Cork on 13 May 2010

Representation:

Claimant(s):
Mr. Charles O'Connor, Charles J. O'Connor & Company, Solicitors,
Scarteen Street, Newmarket, Co. Cork

Respondent(s):
Mr. Neil Corbett, Solicitor,
Davis Building, Lower Main Street, Mallow, Co. Cork

The determination of the Tribunal was as follows:-

Summary of the Evidence

The respondent is a stockist and distributor of PVC plastic, which is the raw material used in the manufacture of window frames. The claimant was a general operative in the stores but mainly drove forklifts, picked orders and loaded the respondent's fleet of around ten articulated lorries. The claimant had some seven years' service with the respondent at the time of his dismissal.

The respondent formerly operated from its premises across the road from where it currently operates

in its new business park. The move to the new premises took place in August 2008. The entire plant was moved to the new premises. While speeding was not a “not a hanging offence” in the original premises the respondent’s chairman had reprimanded the claimant several times for driving at excessive and reckless speed in a confined space which put life and property at risk. A bad manoeuvre could cause damage. Verbal warnings had been issued to the claimant for speeding and recklessness.

Although the chairman usually spends much of his time overseas, in the respondent’s other businesses, he was a fairly regular presence on the premises for a few months around the time of the move to the new premises. When the trucks came in from the ferry the drivers parked and went to talk to the workers in the warehouse. The chairman saw the claimant driving articulated trucks on a number of occasions. The claimant did not have a licence or insurance to drive articulated trucks. He also saw the claimant driving on the public roadway and feared that the respondent “would be held to ransom”. The claimant told him that drivers allowed him to drive the trucks. The chairman reprimanded him on numerous occasions about driving the trucks and the claimant agreed to stop. He also reprimanded the claimant for reckless driving of the forklift; whenever he heard the claimant excessively revving the forklift he reprimand him there and then. The claimant informed the chairman that he kept crashing and writing off cars and that that he was down to the last two points on his driving licence. the chairman told him to “cop himself on”. The claimant’s evidence was that he had four points on his licence and that his records could be made available, if necessary.

At a meeting on 14 October 2008 the chairman warned the claimant about his manner of driving the forklift and his unauthorised driving of third-party vehicles on the premises or on the main road. The claimant was contrite. The chairman confirmed this warning in a letter of even date to the claimant. This letter was headed “Written Warning following Verbal Warnings” and referred to numerous occasions and conversations wherein the chairman had verbally warned the claimant about these matters, that it appeared that he had not acted on them and that over the previous few days the chairman had again noticed the claimant driving a company forklift in a reckless and dangerous manner as well as driving a third-party artic across the main road. The claimant was informed that he was neither insured nor authorised drive these third party vehicles either on the premises or on a public road and was instructed to desist from so doing. The claimant was informed that this letter constituted a final warning on this matter and that any further reckless driving of the forklift or unauthorised driving of third-party vehicles on his part would lead to disciplinary procedures which could result in his dismissal. The chairman could not give the dates on which he had issued these numerous verbal warnings but it had been an ongoing process. He did not have a file because he was not engaged in a witch hunt against the claimant. He had given so many warning because he was hoping the claimant would calm down.

It was the chairman’s position that on 6 January 2009 the claimant drove a forklift round a parked van in the archway and collided with a wall. It was the respondent’s position that the claimant had crossed to his incorrect lane of travel and tried to get through but the forklift prongs, which were out about three or four inches, became impaled in the wall. The claimant kept revving the machine against the mass concrete trying to free it from the concrete. The correct procedure would have been to retract the prongs of the forklift. The chairman felt that the claimant’s ego had been damaged because he thought that he could drive out of the situation. TP and the chairman shouted at the claimant to stop and leave the machine. The claimant jumped down, approached the chairman, stuck out his chest, looked for a fight and told the chairman “I’m sick and f**king tired of you, you f**king, baldy f**ker!” The chairman did not retreat. TP calmed the situation and told the claimant to walk away. The claimant calmed down and went home, without permission, for the remainder of the day.

The claimant's position was that he did not notice that the prongs were protruding a little bit and they scraped the wall; they were not embedded in the wall. He said that "nine times out of ten" he would check the prongs (of his forklift). He apologised to the chairman on the day. He had neither been aggressive nor looked for fight. He accepted that he had made one small mark on the wall. The prongs were not impaled in the wall and he had not tried to force his way through. He continued picking orders after the incident and went home at finishing time on the day. The chairman handed the situation over to the operations manager (OM), who was the claimant's direct manager and told him to sort the problem before someone was killed.

The chairman applies the "normal give and take" policy at work and had no issues with the claimant's punctuality or attendance at work; he was not a cheeky lad in the workplace and this was the first occasion on which he had been aggressive. The claimant's brother and others in his circle still work for the respondent. The claimant's position was that he had never been aggressive to the chairman either on 6 January or at anytime during his seven years of employment with him.

Shortly after commencing work on 7 January 2009 OM called the claimant to the office. According to hearsay evidence of the chairman OM went through the incident with the claimant and dismissed him for reckless and dangerous driving over a protracted period. The chairman could not say whether the claimant had got prior notification that it was to be a disciplinary meeting. It was the claimant's evidence that he was not given any notice of the purpose of the meeting. In the office OM told him that he was not needed any longer and dismissed him there and then.

Determination

OM summarily dismissed the claimant on 7 January 2009. While the Tribunal accepts the claimant's uncontroverted evidence as to what occurred at the meeting with OM it is nonetheless satisfied that the real reason for his dismissal was the incident that occurred the previous day, 6 January 2009. In not having being informed of the real reason for his dismissal the claimant was not afforded the opportunity to answer the case against him, to put up a defence or make a plea in mitigation. Accordingly, the Tribunal unanimously finds that the dismissal is unfair and the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The Tribunal accepts that the claimant had received warnings about the manner of his driving. In all the circumstances of the case, taking the claimant's contribution into account the Tribunal awards the claimant the sum of €6,000.00 as just and equitable compensation under the Unfair Dismissal Acts 1977 to 2007.

The Tribunal awards the claimant the sum of €1,940.00 (which is equivalent to four weeks' pay at €485.00 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
CHAIRMAN