

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE –**Appellant**

RP1695/2010

against

EMPLOYER –**Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. J. Horan
Mr. J. Maher

heard this appeal at Dublin on 22 March 2011

Representation:

Appellant:

In person

Respondent:

In person

The determination of the Tribunal was as follows:

Determination:

The appellant was a delivery van driver for the respondent, who operates a courier business and is effectively a sub-contractor to a large international freight forwarder, from May 2007. The employment was uneventful until January 2009 from which time, due to a downturn in business, the appellant was on a three or four day week.

The respondent's position is that in January 2009 it was necessary to take the appellant's company fuel card from him because of the appellant's inappropriate use of the card to purchase fuel for the appellant's personal use and in particular travel between his place of employment and his home. It is further the respondent's position that on occasion during the remainder of the employment the appellant was using other fuel cards held by the respondent for the same inappropriate purpose to the point that on 15 September 2009 the appellant was dismissed on foot of this conduct with one week's notice and the payment of the week in hand which he was owed.

The appellant's position, whilst accepting the fuel card was taken from him in January 2009, is to deny any inappropriate use of the card and to insist that his employment was terminated on 28 September 2009 by reason of redundancy.

There was considerable antipathy between the parties and this made it difficult for the Tribunal to assess the evidence adduced. The Tribunal is satisfied that when the appellant's employment was terminated there was no reduction in payroll cost thus supporting the respondent's argument that this was not a redundancy situation. Further the appellant when asked by the Tribunal about why he had not sought a reference from the respondent stated that this was because he was "taking them to court". The problem with that explanation is that, according to the appellant, initially the parting of the ways was amicable. The Tribunal notes that the within proceedings were instituted some seven months after the end of the employment. This represents a lengthy period in which the reference could have been sought. For all these reasons the Tribunal prefers the evidence of the respondent and is not satisfied that a redundancy situation existed but rather the appellant was dismissed for cause on 15 September 2009. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)