

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**Claimant**

UD437/2010

against

EMPLOYER - **Respondent**

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly BL

Members: Mr. D. Peakin  
Mr. J. Dorney

heard this claim at Dublin on 3 June 2011

#### **Representation:**

Claimant:

Mr. Tim O'Hanrahan, O'Hanrahan & Co. Solicitors,  
Lexington House, 71 Ballybough Road,  
Fairview, Dublin 3

Respondent:

Mr. John Kelleher, John F. Kelleher & Co. Solicitors,  
4/5 St. Mary's Terrace, Dunboyne, Co. Meath

The determination of the Tribunal was as follows:

The claimant was employed as a van driver in the respondent's transport business from August 2006. At this time the respondent operated a fleet of 26 or 27 vehicles the majority of which were articulated trucks with some rigid trucks and two vans. The claimant had a B licence when recruited and was therefore not licensed to drive any of the respondent's vehicles apart from the vans.

The employment was uneventful with the claimant being a well-regarded employee until January 2009 when the claimant along with all other staff members accepted a ten per cent pay cut. By this time the driver of the second van, who had been employed since September 2006 when in possession of the same class of licence as the claimant, had obtained a C licence which entitled him to drive the rigid trucks in the respondent's fleet.

In September 2009 the respondent took the decision to discontinue the small item delivery service they were operating by using the vans. This resulted in the sale of one of the vans with the second

van being kept as a run about. One week before this decision was taken the claimant had failed in her attempt to obtain a C licence. The respondent's position is that the claimant was selected as the candidate for redundancy as she was the only driver in the respondent's employ who did not possess a C licence and was therefore unable to drive any of the remaining productive vehicles in the fleet. Had the claimant obtained the C licence before this decision was taken there would have been a different result. The managing director (MD) wrote to the claimant on 10 September 2009 to confirm this decision and gave her four weeks' pay in lieu of notice. During the notice period the claimant successfully obtained a C licence.

**Determination:**

The Tribunal cannot accept the submission on behalf of the claimant. She alleged that her selection for redundancy was personal. It is common case that the respondent decided to discontinue providing a service, which required the operation of the vans. The only driver in the respondent's employ who did not have at least a C licence was the claimant. The claimant's lack of the C licence was the objective and only criterion used in her selection as the candidate for redundancy. The dismissal was not unfair and the claim under the Unfair Dismissals Acts, 1977 to 2007 fails

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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