

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE – **claimant**

CASE CASE NO.
UD23 UD2347/2009

against

EMPLOYER- **respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms K T O'Mahony BL

Members: Mr J Hennessy
Ms S Kelly

heard this claim at Kilkenny on 18th January 2011 and 31st March 2011

Representation:

Claimant(s): Ms Eithne Leahy BL, instructed by:
Mr Peter Kenny
Mulvey Kenny & Co, Solicitors
College Street, Carlow

Respondent(s): XXXXXX

Summary of the Evidence:

The claimant worked as a bus driver on a school route for the respondent for over 32 years, transporting children both to and from school. An issue arose between the parties about transporting a young pupil (the pupil) from school on the afternoons of 1 & 2 September 2009. The pupil was in first class in school and around seven years of age at the relevant time. The claimant was a competent driver and had won safe-driving awards.

The school route had been extended the previous January by 4/5km to facilitate the collection of the pupil but as he was in infants at that time he finished school early and was collected by his parents at the end of class time. It is normal procedure that additional pupils are added to bus routes and any changes in that regard are communicated to the bus drivers by a school bus inspector. On occasions, such as on 4, 5 and 6 March 2009, the claimant failed to collect the pupil in the mornings. In discussions with management about the route in March 2009, the claimant expressed a concern about travelling with a lone child on the bus and she requested the installation of CCTV on

the bus. She agreed to do the route under protest pending a recommendation from the Labour Court on the matter. The Recommendation of the Labour Court on the issues between the parties issued on 23 April 2010, which was subsequent to the dismissal.

The respondent's position was that on 1 September 2009 the claimant indicated to the pupil's father that she would not bring the pupil home from school in the afternoon. The father reported the matter to the respondent. On the instructions of the Services Manager (SM), the school-businspector for the area went to the school around closing time that day to instruct the claimant to take the child home on the bus that afternoon and that the pupil was to be taken to and from school on all school days.

When the bus arrived at the school the claimant initially ignored the inspector. He boarded the bus to speak to the claimant but she did not respond to his greetings, took out a tape recorder and put it beside her. She nodded in agreement when he asked if she had informed the pupil's father that she would not be taking the pupil home that evening. The claimant shook her head when the inspector asked if she would be taking the pupil home from school that afternoon. When the inspector relayed SM's instructions to the claimant she told him he was a liar and that SM had nothing to do with the schools. She stated that the pupil's parents had arrived to collect him and that there was no point in taking him home. The inspector instructed the claimant to take the pupil home the next day and every other day. The family collected the pupil from school that afternoon.

The claimant collected the pupil the following morning, 2 September and took him to school. Later that day, in response to a phone call telling him that the pupil was confused and upset the pupil's father went to the school, where he ascertained that the source of the confusion was that while he had told his son (the pupil) that he was to go home in the school bus that afternoon the claimant had told him he had to go home with his dad. A parent collected the pupil from school that afternoon.

The matter was reported to the respondent and the inspector was again at the school at closing time. The practice at the school was to keep the children together at the building and when the bus arrived to send them to the bus in a group. The inspector observed the group, with the pupil in the middle, go to the bus and saw the claimant gesture at the pupil, sending him off the bus. The pupil ran back to the school where, in the presence of the inspector, he told his teacher that the claimant had told him to contact his father. The inspector did not speak to the claimant on that occasion. He reported the incident to his superiors. The pupil's mother collected him that afternoon.

The school principal confirmed that the pupil was roughly in the middle of the queue on the afternoon of 2 September and that she saw him getting off the bus. He told her that the claimant told him that he was going home with his Dad. The child's parent(s) collected him from school later that afternoon.

The matter was reported to SM. He was very concerned that a child who was entrusted to the respondent's care was not brought home. The respondent's policy is to transport the children even if they seriously misbehave. The claimant had flouted his instruction by not allowing the pupil to board the bus on 2 September 2009. This was a very serious incident and a decision was taken to suspend the claimant on full pay pending an investigation into this incident. On SM's instructions the inspector delivered the letter of suspension to the claimant on the evening of 2 September 2009. The letter stated inter alia:

"Your employment as a part-time school bus driver is for the carriage of pupils to and

from school and as you failed to do this today, and indicated to your District School Inspector yesterday that you would not be doing so in the future you are advised that you will not be allowed to operate the school transport service until the matter has been fully investigated.”

As part of his investigation SM spoke to the school principal and the pupil’s mother and looked at reports. It seemed that the pupil had attempted to board the bus but was refused. The claimant put an unofficial picket on the bus garage the following day. He met the claimant with her trade union representative on 3 September 2009 and had a further meeting on 7 September 2009 with them. The chief inspector was also present at the latter meeting. The claimant contended that she had not sent the child out of the bus on 2 September 2009.

A disciplinary hearing was held on 16 September 2009. In his letter of 10 September 2009 inviting the claimant to the meeting SM informed her that the issues against her were:

- 1 Failure to transport an eligible school transport pupil,*
- 2 Failure to carry out company instructions,*
- 3 Unacceptable and inappropriate behaviour when on duty as a part-time school bus driver,*
- 4 Bringing the operation of the School Transport System into disrepute.*

The claimant was accompanied by a trade union official at the meeting. SM believed, contrary to the claimant’s assertion, that there was overwhelming evidence that the pupil had attempted to board the bus on 2 September but had been sent off by the claimant. The claimant’s duty was to transport children to and from school. She had deliberately failed to follow a lawful and reasonable instruction issued to her on 1 September 2009 by the inspector. SM felt that he could not rely on the claimant to transport children, which duty forms the whole basis of the respondent’s contract with the Department of Education and Science. Her behaviour had caused upset and stress to the family and pupil as well as the reputation of the respondent and jeopardised the respondent’s contract with the Department of Education and Science. He felt that this was a very serious matter. The claimant had not raised any issue at the hearing about not wanting to be on her own with a lone child on the bus. In any event, she had agreed earlier in the year to do the route under protest. The claimant was notified of the decision to dismiss her by letter dated 21 September 2009. On two previous occasions the sanction of dismissal had been imposed on the claimant but on appeal these were reduced to a lesser sanction.

The claimant appealed her dismissal. An independent panel heard the appeal on 10 November 2009. The appeal was unsuccessful.

The claimant’s position was that she had no objection to bringing the pupil home on the bus. She had not refused to bring the pupil home on either 1 or 2 September. On 1 September she told the inspector to put the child on the bus so he could get used to it. She denied sending the pupil off the bus on 2 September. The claimant maintained that it was in 2008 that she had a conversation with the pupil’s father and not in September 2009. The inspector would not allow her to reverse her route so she could avoid having a lone pupil on the bus. The respondent’s position on this was that for the benefit of the children it organises routes so that the child first on the bus in the morning will be dropped home first in the evening to avoid having the same children on the bus for 40 minutes on both legs of the journey.

The claimant's position was that she did not want to bring the pupil home because he would be the only child on the bus for ten minutes. The respondent's position was that it was an inevitable feature of the service that all drivers have a lone child on the bus at some stage. Even if the respondent organised to have a number of children for the first collection or the last drop off it could not guarantee that all pupils would show up every day and consequently that there would never be a lone child on the bus.

Determination

There was a conflict of evidence on the incidents that occurred on 1 & 2 September. Having heard the parties and various witnesses the Tribunal accepts that the claimant was refusing to bring the pupil home on the afternoons of 1 & 2 September 2009. The respondent's evidence that the claimant refused to bring the pupil home was corroborated by both the pupil's father who had been told on the morning of 1 September by the claimant that she would not bring the pupil home that afternoon and by school principal who on 2 September saw the group go to the bus and then saw the pupil get off the bus and return to the school. The Tribunal further accepts that on the afternoon of 1 September 2009 the inspector delivered the instruction from SM (the Services Manager) to the claimant that she was to bring the pupil home that afternoon and that the pupil was to be taken to and from school on all school days. The respondent's ultimate sanction of dismissal in respect of the claimant's failure to obey this reasonable instruction on the very following afternoon comes within the band of reasonable responses of a reasonable employer and particularly so where a child suffered as a consequence of the claimant's behaviour and where the failure by the claimant was to carry out the duty which formed the very basis of the respondent's contract with the Department of Education and Science. Accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)