

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD2172/2009  
MN2016/2009

Against

EMPLOYER

EMPLOYER  
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 M. McAveety

Members: Mr M. Carr  
Mr O. Nulty

heard this claim at Cavan on 25th January 2011

**Representation:**

Claimant: Mr Damien Glancy, George V. Maloney & Company, Solicitors,  
6 Farnham Street, Cavan

Respondent: Mr Dan O'Connell, O'Connell & Associates, 36 Castle Park,  
Ashbourne, Co Meath

**Preliminary Application**

The respondent contends that, as the claimant does not have the required 12 months service to make a claim under the Unfair Dismissals Acts 1977 to 2007 the Tribunal does not have jurisdiction to hear this case as per Section 2. —(1) of the Unfair Dismissal Act 1977 which states;

‘This Act shall not apply in relation to any of the following persons:

(a)an employee (other than a person referred to in section 4 of this Act) who is dismissed, who, at the date of his dismissal, had less than one year's continuous service with the employer who dismissed him and whose dismissal does not result wholly or mainly from the matters referred to in section 6 (2) (f) of this Act’

The claimant contends that he was dismissed for Trade Union involvement and is therefore entitled to make a claim under the act. Section 6 (2) of the Act states;

‘Without prejudice to the generality of subsection (1) of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal if it results wholly or mainly from one or more of the following:

(a) the employee's membership, or proposal that he or another person become a member, of, or his engaging in activities on behalf of, a trade union or excepted body under the Trade Union Acts, 1941 and 1971, where the times at which he engages in such activities are outside his hours of work or are times during his hours of work in which he is permitted pursuant to the contract of employment between him and his employer so to engage.’

### **Claimant's Case**

The claimant commenced employment on the 30<sup>th</sup> of March 2009 as truck driver. The claimant did not receive any terms and conditions of employment or a contract of employment. The claimant was never given any payslips. The claimant informed the respondent that he wanted to work ‘legally’ at all times. As a truck driver the claimant is entitled to rest breaks, which are monitored by a tachograph; the respondent instructed him to take his breaks ‘while driving.’ As a result of these breaches the claimant joined SIPTU. The claimant was asked to wait the required 2 months for a contract of employment and terms & conditions of employment and if he was not in receipt of same SIPTU would contact the respondent. SIPTU wrote to the respondent on the 3<sup>rd</sup> of June 2009 requesting the respondent to issue the claimant with a contract of employment, payslips and to pay him an hourly rate.

The respondent requested the claimant take an extra delivery on the 8<sup>th</sup> of June 2009. The claimant did not have time to make this extra delivery so it was necessary to bring it back to the respondent. That evening the respondent instructed the claimant not to fuel his vehicle until the following morning. The following morning the claimant was asked to wait until all the other vehicles had left before fuelling his truck. The claimant asked the respondent which delivery he should start with; the respondent replied ‘you’re not doing any deliveries today.’ The respondent used abusive language towards the claimant and asked the claimant to leave the premises.

The claimant contacted SIPTU who contacted the respondent on his behalf. SIPTU informed the claimant that he could return to work the following day. The claimant presented himself for work the following day but was asked by the respondent, ‘what are you doing here...there is no work I’ll call you.’ The respondent informed SIPTU that they did not want to take the claimant back.

### **Respondent's Case**

The respondent is a large courier service who employed the claimant as a truck driver. The respondent received the letter from SIPTU of the 3<sup>rd</sup> of June requesting terms & conditions of employment for the claimant and was in the process of getting the claimant's documentation in order.

On the 9<sup>th</sup> of June the respondent informed the claimant that the truck he normally used would be getting the brakes fixed and that he would possibly be driving an alternative truck. The claimant replied, ‘you’re firing me,’ the respondent said that he was not firing him and the truck was full of deliveries and ready to go. The claimant used abusive language and stormed off the

premises, there was no 'fight.'

The respondent did not have an issue with the claimant's union membership; it would not have been raised with the claimant. The respondent has a long serving member of staff that is a member of a Union. The respondent met with SIPTU to discuss the situation but decided not to take the claimant back as they could not risk a repeat of his behaviour. The respondent never agreed with SIPTU that the claimant could return to work. The respondent engaged at all times with SIPTU.

### **Determination**

Having heard all the evidence the Tribunal is satisfied that whether a dismissal took place or not, it was not by reason of Union involvement. The Tribunal is not satisfied that if a dismissal took place it was effected by the respondent. It must follow that section 6(2)(a) of the Act does not apply therefore the Tribunal has no jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal finds that the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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