

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
UD518/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T. Gill
Mr T. Brady

heard this appeal at Tullamore on 5th April 2011

Representation:

Appellant: Donal Farrelly & Co., Solicitors, Tullagh House, High Street, Tullamore, Co. Offaly

Respondent: Ms Eugenie Houston BL instructed by Ms. Mary Morrissey, Morrissey & Co,
Solicitors, Lismard House, Bridge Street, Tullow, Co Carlow

This case came before the Tribunal by way of an employee appealing against the Recommendation of the Rights Commissioner ref:(r-082619-ud-09/GC)

The determination of the Tribunal was as follows:

Respondents Case

The owner of the respondents company gave direct sworn evidence. He established his transport company about 12 years ago. In 2004 he acquired the company that the claimant was working for. They employ 49 drivers and 3 to 4 administrative staff.

The claimant was employed as a driver and their main issue with him was the misuse of the taco graphs. He explained that the EU introduced the taco graphs and they record the drivers workday, e.g. start, finish times, breaks etc. They are mandatory and can be inspected by the Department of Transport; they are obliged to keep these taco graphs for one year for each driver. Also if the drivers do not obey the rules surrounding these taco graphs the company could loose their haulage license and their insurance company could refuse to cover them. He further explained that these

taco graphs are used to prove that the drivers have taken their holidays and they have received the 45-hour break during a seven-day week. The taco graphs operate on a 24-hour clock and records driving hours, stop time for un/loading and rest periods. A driver is due a 45-minute break when he has driven for four and a half hours.

The claimant had been issued with a number of verbal warnings issued on the following dates. On the 7th October 2008 they discovered that the claimant was not taking breaks and that his daily workload was not being done in the right manner.

On the 22nd October 2008 the claimant was continuing to misuse the taco graphs. Also some of his employees had seen the claimant driving another vehicle.

On the 19th November 2008 the taco graph showed speed in excess of the allowable speed and also the freight and pallets he was transporting were not properly strapped in to his vehicle.

On the 12th December 2008 no breaks were being taken and the claimant was racing back to the depot to get finished early.

On the 9th January 2009 a final written warning was issued to the claimant in respect not taking the correct breaks required.

All these verbal warnings were given to the claimant in the presence of the transport manager. Handwritten notes of these verbal warnings were produced in to evidence.

On the 24th February 2009 they issued the claimant with a final warning. They had given so many verbal warnings to the claimant and he was still not adhering to the rules of the taco graphs. The claimant's actions were putting all his employees jobs at risk. He had previously written to the claimant on the 23rd January 2009 outlining to him that he was not applying the company rules in respect of the taco graphs explaining that the taco graphs must be changed each day and handed to the transport manager at the end of each week. He explained he was trying to be fair to the claimant when he wrote this letter to remind him of his obligations.

The company had a "Fleet Safety Driving Handbook" that was issued to all employees including the claimant in 2007. At the time of the issue, he had spoken to all employees on an individual basis ensuring they understood it, and all employees were required to sign that they had received one. They also required all drivers to give them authorisation to copy their licenses to their insurance company to verify their authenticity. This was because in 2009 a number of false licenses were being circulated.

On the 3rd July 2009 it was decided to terminate the claimants employment. They had explained the seriousness of adhering to the taco graph rules to the claimant and when they had issued him with the final warning in February the following two months went fine. However he had began to lapse in to his old ways. In June one of their vehicles was involved in an accident and they were required to forward the taco graphs for this vehicle to their insurance company for two months. He could not continue to allow the claimant to jeopardised their company because of his non-compliance. As a result of this accident he had revisited all the drivers taco graphs and met with all employees again over this issue.

This witness and the transport manager brought the claimant in on the 3rd July 2009 and explained the seriousness of the situation, explained he could not be allowed to continue on. They gave him

his letter of termination. The claimant understood and he collected his belongings and left the depot.

Under cross-examination he explained that they did not get the claimant to sign for the verbal warnings, as this was not their practise. However they had got the claimant to sign for the final warning in February. The claimant had improved in relation to the taco graphs as a result of this. The claimant had received no other warnings since February up to the time of his dismissal, in July they had problems with his taco graphs, speeding issues as customers freight would be bounced around and be damaged. There is a maximum speed limit of 85 km per hour on their trucks. At the dismissal meeting he had informed the claimant he was not adhering to the taco graph regulations and that the delivery of goods were not being done correctly as freight had not been secured properly. He accepted that he had discussed an incident where goods had gone missing at the dismissal meeting with the claimant however he explained that they have an agreement with their customers that they cover the loss in these incidents. The other issues raised at this meeting were trivial in relation to the taco graphs. The year previously to his dismissal the claimant was going to leave he had given the claimant a pay increase. The downturn had not affected his business, as they are a service industry. He did not accept that the claimant had broken down at the dismissal meeting.

In reply to questions from the Tribunal, currently they still have the same level of drivers as they had when the claimant was employed with them.

Claimants Case

The claimant gave direct sworn evidence. The respondent employed him for five years. On the day of his dismissal he was in work when the transport manager telephoned him and told him that the owner wanted to see him in the office. When he arrived at the office he was given a letter and a cheque for €600.00 and was informed he was being let go. He was shown a pallet of goods that he had delivered that were damaged and the owner told him he was not having this. He pleaded with the owner for his job but he had told him it was not his problem with a smirk.

The pallet in question he had delivered to a customer three weeks previously. When he arrived at this customer's premises and opened the truck the pallet was on one side. He did not load this truck. He asked the customer if he wanted the pallet but the customer did not want it so he brought it back to the depot.

He did not sign for the letter of termination or the cheque. He returned to the depot on the following Monday where he found out that other drivers were getting paid more. He had never received the five verbal warnings. The first time he had issues with the taco graphs was in January 2009 and he is aware of the importance of them. The reason the taco graphs were raised with him was when he took a few days off some of his taco graphs went missing out of the truck. The owner had told him that this was because he was not dropping them in to the transport manager's office as required. He was shocked when he was dismissed on the 3rd July 2009.

Under cross-examination he explained it was a great company he had got on well with all his colleagues. He had signed for safety information over the years. He had never received the five verbal warnings and had only signed for the one warning in February 2009. The practise in the company was that you signed for verbal warnings. He did not remember the verbal warning of the 9th January 2009; he only ever had one job while working for the respondent. If he had engaged in other work outside of this job he may have done some carpentry nixers at the weekend but he never

drove at the weekend. He had met with the owner in the first quarter of 2009 where the owner had shown him what way to open/lock lorry, how to lift things and had watched a video instructing them how to use the taco graphs. Every morning he would complete a taco graph and place it in his truck and the end of every week he would place his used taco graphs on the desk of the transport manager.

He was referred to a number of his taco graphs reports, which were printed, after his dismissal. On the 2nd February 2009 an insufficient break of 26 minutes was taken. He explained that there were some days and his truck would be full and he would be getting phone calls asking where he was. He had approached the owner about this explaining to him he wanted the deliveries done but also wanted him back at the depot to pick up. He had to start bringing stuff back to the depot so he would not be penalised on this taco graphs and would have to place these deliveries in to the next day.

On the lead up to his dismissal he was only getting 2/3 days work per week. Things had being getting tight for him and he had told the transport manager he needed full time work.

He gave evidence of loss.

In reply to questions from the Tribunal, he reiterated he had never seen the verbal warnings and could not understand why the transport manger had signed these to say they had been issued.

Determination

The Tribunal carefully considered the conflicting evidence adduced from both sides at the hearing. Fair procedures were followed in the course of the claimant's dismissal and the Tribunal unanimously decide that the claimant was fairly dismissed. Accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)