

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD638/2010  
MN584/2010

against

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: Mr. E. Murray

Members: Mr. P. Casey  
Mr. J. Flavin

heard this case in Cork on 14 July 2011

Representation:  
\_\_\_\_\_

Claimant(s):  
Mr. Henry McCourt, McCourt Mullane & Company, Solicitors,  
St. Mary's Road, Midleton, Co. Cork

Respondent(s):  
No legal representation

The determination of the Tribunal was as follows:-

Evidence in this case was given by the Managing Director of the Defendant Company. He said that Gardai came to his business premises one day and took away the Claimant. When he enquired of the Claimant why the Gardai he was told that he had been wrongly accused of theft in Cork. The Managing Director made his own enquires and discovered that in fact the Claimant had been before the District Court for driving offences and had been disqualified from driving. He said that at least 50% of the Claimant's work required him to deliver goods in the company van to customers. When he realised that the Claimant had no driving licence he told him that he no longer had work for him and he dismissed him paying him two weeks wages. He felt that this was fair treatment in the circumstances. He acknowledged in cross-examination that the Claimant was replaced by a part-timer who worked three days a week and who did not have a driving licence. He also said that he realised that the Claimant had in fact been driving the van while disqualified and he was very

concerned about this and advised his insurers in case that his actions in some way affected his cover.

He described also that the Claimant had used a credit facility for the provision of petrol for the company's vehicles for his own personal use without his consent.

The next witness was a member of An Garda Siochana from Midleton Garda Station. He told the Tribunal that the Claimant had been convicted on the 10/5/08 at Midleton District Court of offences that gave rise to a disqualification of four years which dated from the 30/5/08 in respect of an offence committed on the 24/2/08. This conviction was not appealed. He further told the Tribunal that on the 4/12/08 at Midleton District Court the Claimant was disqualified from driving for three years for a further offence and that this disqualification took effect from the 19/12/08 for the offences committed on the 8/2/08.

The Claimant gave evidence that when he first joined the Respondent Company that his work was all in doors. It wasn't until about two and a half years later that he started driving the van delivering parts to nearby companies. He acknowledged that he had driven the company van while disqualified from driving but indicated that he understood that the Respondents had been aware that he was at that time disqualified. He said that he had taken petrol for his own motor vehicle and that this was something that was ordinarily approved of but on a couple of occasions he had inadvertently neglected to tell his employer that he had in fact put petrol on the company account in his personal vehicle.

### **Determination.**

The Tribunal having heard the evidence of the parties unanimously takes the view that the Claimant's job required him to be available to drive the company vehicle. By virtue of his two convictions which gave rise to disqualifications from driving for four years and three years respectively the Claimant was unable to carry out the work that he was employed to do.

In the circumstances the Tribunal finds that the Claimant was unable to fulfil his obligations to his employers and indeed misled his employer in relation to the convictions and continued to drive the company vehicle at a time when he was disqualified from driving. In the circumstances, the Tribunal finds that the dismissal of the Claimant was justified and disallows the claim under the Unfair Dismissals Acts, 1977 to 2007.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, also fails because the Tribunal did not find the respondent to have been in breach of the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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