

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD582/2010

RP780/2010

MN520/2010
WT242/2010

against
EMPLOYER
under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Revington S.C.

Members: Mr F. Cunneen
Mr A. Butler

heard this claim at Dublin on 9th September 2011

Representation:

Claimant: Mr Joseph Burke, McCartan & Burke, Solicitors, Iceland
House, Arran Court, Smithfield, Dublin 7

Respondent:

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn.

Background:

The claimant was employed by the respondent company as a bus driver in March of 1995. In July of 2008 he was stopped by a Garda while driving a private vehicle and was convicted for failing to display road tax.

In court he was fined €150 and presumed the matter was finished with.

On seeking a new drivers licence some months later he was advised that he was not entitled to one as the previous licence had been suspended.

He made contact with the Guard in question and was advised that there was never an issue with the licence, an error had been made with the District Court but that he would have to appeal the decision in order to have it amended.

He did not inform his employer of the situation and was dismissed for not being in possession of a current driving licence He lost an appeal to the company and was dismissed in April 2009.

Respondents Case:

PL depot administrator for the respondent company stated in his sworn evidence that he was made aware that the claimant had no driving licence on 18th March 2009. He asked the claimant JD about it and was told by JD that he had left the licence at home. JD later admitted that he had lost the licence through the courts but said it was all a big mistake and that he had employed a solicitor and spoken to the garda in question about the situation.

They had advised him to appeal the court decision, he had done so but had heard nothing back.

PL when asked how he knew that JD had lost his licence said that he had been advised by the Operation Manger CR but was unaware of how CR had got the information. Spot checks were done in January and February so maybe it was picked up then.

CR in his sworn evidence stated that he looked after disciplinary issues for the respondent company. His first meeting was with the claimant on 20th March 2009. Another disciplinary meeting was held with JD and his union representative on 24th March 2009. The claimant was given every opportunity to back up what he was saying but any documents he provided showed that he was banned from driving.

At an interview on Thursday 26th March the claimant asked for more time, nothing was forthcoming and at a final meeting of 7th April 2009 a seven day notice of dismissal was given.

Under cross examination CR stated that he was aware the claimant was protesting his innocence, he was aware that claimant had made contact with the garda in question and was aware that the claimant had engaged a solicitor but the details regarding the solicitor were vague.

He did not consider ringing the garda and was not aware that an appeal was pending.

The company contract of employment states that you must hold a current licence and maintain it all times. You are also obliged to advise your employer on any change in circumstances.

PD H.R. manager stated that the board heard an appeal on 21st April 2009. The findings were upheld in the appeal. The board consisted of an independent chairperson, a representative from the trade union and a company representative. PD said that the respondents were very aware of the implications for the company. If an accident occurred and the driver did not have a licence their reputation would be severely damaged. The claimant did not lodge his appeal to have his licence re-issued until December 2008 even though the original incident took place in May of that year.

Claimants Case:

The claimant JD stated under oath that he was stopped in his private vehicle and was brought to court in June 2008. He had all his documents in court, including his driving licence and was fined €150 for not displaying motor tax. Later in the year (possibly November) he realised that he had mislaid his driving licence and applied for a three month licence to tide him over.

JD only became aware that he was disqualified when the application for the new licence was revoked. He also received a fine for €1500. At that time he realised something was wrong and went to the motor tax office in Smithfield. He was advised that he had received a one year driving ban which ran from 5th May 2008 to 5th May 2009.

JD immediately went to the courts, employed a solicitor and made contact with the garda who had stopped him. The garda assured him that his fine on the day was for not displaying motor tax only. In March 2009 he was approached by CR. JD explained the situation. CR told him to bring the documents into him. The claimant did so the next day.

When asked for proof of insurance he showed CR his insurance certificate. He could not have held same without a driving licence. At the appeal meeting he was asked to explain "what was going on"?

The appeal's board said "courts don't make mistakes".

Under cross examination the claimant stated that he knew it was all a mistake but thought it would have been sorted out sooner. He had been assured by the garda that he had not lost his licence at the time of the court hearing but realised he should have told the respondent company at time of the incident.

Determination:

The Tribunal having heard the evidence is of the opinion that the claimant had in fact never lost his entitlement to a valid driving licence. Under the circumstance the Tribunal find that the respondent failed to adequately or properly investigate the claimant's explanation, consequently the claimant was unfairly dismissed.

The Tribunal further finds and accepts that the claimant did not pursue the matter of his driving licence expeditiously and for this omission the claimant must share some responsibility for the confusion which arose.

It is the Tribunal's unanimous decision is that the appellant be re-engaged as and from 1st March 2010.

As the claimant is being re-engaged the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 does not arise

No evidence was adduced in respect of the claim under the Organisation Of Working Time Act, 1997 and therefore this claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

