

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**  
EMPLOYEE

*- claimant*

**CASE NO:**  
UD7/0210  
MN5/2010

Against  
EMPLOYER

*- respondent*

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. J. Lucey

Members: Mr. W. O'Carroll  
Ms. S. Kelly

heard this appeal in Limerick on 22 September 2011

**Representation:**

Claimant: Daniel J. O'Gorman, O'Gorman, Solicitors, Munster House,  
75A O'Connell Street, Limerick

Respondent: Peninsula Business Services Ireland Limited, Unit 3, Ground Floor,  
Block S, East Point Business Park, Dublin 3

The decision of the Tribunal was as follows:

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

**Claimant's Case:**

The claimant gave evidence. He commenced employment as a driver with the respondent company in 2005. He had previously worked for the company in 2000. The respondent company dealt in logistics, with a mixture of house / office removals and furniture deliveries for two furniture companies (R & LA).

He explained to the Tribunal that work had been fine until six to eight months before he left his employment. He would drive daily to the head office in Parteen and pick up his schedule and truck at 6.00 a.m. He explained the long daily trips he had to make four times a week to

Belfast, which included deliveries. His day could consist of 16-17 hours work. On Fridays he did other deliveries and removals. He would drive alone to Belfast and would pick up a helper there but he did all the driving. He complained constantly to the Transport Manager (PC).

During his employment he sustained two injuries. On one occasion he was working with an inexperienced helper and injured his back. He took a successful personal injuries claim against the respondent. His grievances were not taken on board and the job got worse. He was called to a meeting with the General Manager (AG), who was not available to give evidence on the day of the hearing. He complained about the expenses he was paid while carrying out the Belfast run and wanted to be paid in sterling instead. AG told him that if he did not want to do the run some one else would. He was taken off the Belfast run.

The job got even worse. He was put on an earlier shift – 5.30 a.m. He was to pick up the truck with furniture for delivery for LA. He would drive to Cork and deliver all around the area. On one occasion he did not return home until 11p.m. He was then to begin again at 5.30 a.m. He again complained constantly to PC about his working hours. He was asked to work weekends, which he did on some occasions, but he preferred not to as this was the time he had time to spend with his children. His Manager was aware of this.

The claimant produced a number of tacographs he had acquired from his truck before he left his employment. Four of these tacographs were dated after the claimant's termination but he stated that he had written the wrong date on them. The claimant told the Tribunal that he did not want to leave his employment but found that his grievances where not being dealt with and he was being given longer and longer working days.

On June 26<sup>th</sup> 2009 he submitted a letter of resignation setting out the reasons why. He stated that he was giving two weeks notice. He could not and would not continue to work the hours expected of him as it was a danger to his health and the also for health and safety reasons. He also informed them that he no longer wished to work weekends as he had family commitments.

On June 30<sup>th</sup> 2009 AG wrote to him asking him to a meeting to discuss the issues raised in his letter and to inform him his P45 would issue in due course. He wanted to attend the meeting with his, then, partner who was also an ex-employee but was told he could only bring a fellow colleague. AG again wrote to him on July 3<sup>rd</sup> 2009 to meet to discuss his issues. The claimant told the Tribunal that he did not attend the meetings as he felt nothing would change and his already had been informed that his P45 was in the post. He had also sought advice from his solicitor who in turn wrote to the respondent.

The claimant gave evidence of loss. He was unfit for work from July 2009 to December 2009 and had since applied for numerous positions and had registered with FÁS.

On cross-examination he stated he had been absent on two occasions due to back pain. He again stated that he had complained at least twice a week to PC about the excess hours. He told the Tribunal that three of his other colleagues also complained about their hours and had tried to set up a union. He agreed that he had not put his grievances in writing until his letter of resignation. He refuted that he did not take the Belfast run on a two-day basis.

When questioned on the tacographs submitted he stated that he had put the wrong date on

them. When questioned of the location he had started his run from – commencing from a street as opposed to the head office in Parteen he replied that there were times he forgot to start the tacograph and had started it from a regular spot where drivers stopped to get coffee. This was only minutes from head office.

When put to him that the registration on the four tacographs submitted to the Tribunal had a registration of a vehicle not belonged to the respondent company, he replied that the respondent often rented trucks from another company.

When asked why he had not put his grievances in writing he replied that he had told PC verbally. He explained that he had been advised by his former partner to put his resignation in writing.

### **Respondent's Case:**

The Transport Manager (PC) gave evidence. He had thirty years experience with the respondent, twenty-one of those as a driver.

He refuted the claimant had come to him weekly to complain about excess working hours. He stated that the claimant's former partner had asked for more working hours travelling into the United Kingdom and the continent. He later met with the claimant and his former partner who requested extra hours travelling as they were trying to save to get a deposit for an apartment.

He explained that the trip to Belfast was a long run but was carried out over two days. It could not be done on a daily basis. He did agree that some trips could take long hours but this could be because of householders having personal difficulties which could hold up a move but staff would just have to wait until all items were ready to be loaded and relocated. He also explained that continental trips could take longer as Sunday travel was not allowed in France.

When asked he said that he had no part in the legal end of the business and was neither a director nor a shareholder of the company. The witness stated that the vehicle and time commenced on the tacographs submitted by the claimant where neither vehicles belonged to the respondent and the dates on the tacographs cited were after the claimant had left.

He conceded that working hours could be longer during the June to August period but staff had finished earlier in other months. He conceded the claimant was not given a contract of employment / terms or conditions of employment, grievance or disciplinary procedure.

### **Determination:**

The Tribunal have carefully considered the sworn evidence and submissions adduced in this case. The respondent company conceded that the claimant had not been given a written contract or terms and conditions of employment. There was also no formal grievance or disciplinary procedure in place. There was complete conflict in evidence as to whether the claimant had contacted PC and aired his grievances concerning the long working hours or whether he had asked PC for extra hours work.

The Tribunal finds the claimant was dismissed and it was procedurally unfair. The Tribunal also finds that the claimant did not fully mitigate his loss. The Tribunal awards the sum of € 7,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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