

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO:
UD1108/2010
MN1073/2010

- claimant

against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE OF TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. J. O'Leary BL

Members: Mr. A. O'Mara
Mr. O. Nulty

heard this appeal at Drogheda on 4 November 2011

Representation:

Claimant: Ms. Michelle Murphy, James H. Murphy & Son, Solicitors, 17, Francis Street,
Dundalk, Co. Louth

Respondent: In Person

The decision of the Tribunal was as follows:

Respondent's Case:

The owner of the respondent company and employer of the claimant gave evidence. The business of the respondent was haulage and the claimant was employed as a driver of an 18 tonne truck since September 2005. His working hours started at 7.30a.m. until his deliveries were complete, this could be by early afternoon or late evening. The claimant was a great worker and there had been no problems until 2009.

In 2009 business started to decline. In July 2009 the claimant, and other employees, were placed on a 3-day week. The witness told the Tribunal that he had given the claimant a number of verbal warnings. The first was on January 25th 2009. All drivers were given a warning concerning the loading and unloading of trucks, docket and pods returns.

On May 15th 2009 the claimant was given a second verbal warning relating to an outburst from the claimant regarding the amount of deliveries he had to complete compared to some of his colleagues. He was informed that if he was not prepared to carry out the work he could go home and this could jeopardise his position and refusal to carry out work could result in immediate dismissal.

On November 4th 2009 the claimant received another verbal warning concerning an outburst in the office. He said he was not receiving the correct amount of payment for bank holidays. The witness told the Tribunal that he, the claimant, used threatening and abusive language. The following day the claimant again roared and shouted about the matter in the office and threatened to go to a solicitor. He was informed the matter would be looked into, it was and he was paid any monies due.

On December 4th 2009 the claimant and another colleague were asked to a meeting regarding the misuse of company mobile phones. The witness told that the Tribunal that the claimant's phone had been used for long periods of time during the day and after work hours. They were given a verbal warning and told to concentrate on their driving as they "were driving a dangerous weapon" as it was a very heavy vehicle. Despite the warning the practice continued.

Around January 21st 2010 the witness asked where the claimant was as he had been driving 2 hours to get from Dublin. He was informed the satellite navigation (sat. nav.) had been sending him in the wrong direction. He again used abusive language towards the witness. The claimant was issued a final written warning on that day and told that if there were any further issues which were not satisfactory work was carried out or any part of his contract it would result in dismissal without notice.

The claimant wrote to the witness dated the same day. He requested written answers to his 3 questions, which were:

- “1. Where and what are the previous warnings as this is the final one?
2. How is my unsatisfactory work practice expressed?
3. How would you describe the misuse of company property?”

On January 25th 2010 he sent a detailed reply to the claimant. On January 27th 2010 the claimant was invited to a meeting. All issues and warnings were discussed. The claimant told him that if the witness gave him a redundancy payment of € 5,000 he would walk away. The claimant was suspended without pay on that same day. A letter dated January 29th 2010 was sent to the claimant informing him that due to the conversations and warnings he had received concerning his behaviour and with no change in his performance they (the respondent) could no longer continue his employment with the company.

On cross-examination he explained the business had taken a considerable downturn in 2009. He had taken the decision to suspend the claimant. He had then spoken to other staff concerning the claimant and reviewed his behaviour and warnings given to him. When asked he explained the contract submitted to the Tribunal for their perusal was a list of company work practices and had been signed by the claimant. He agreed that the claimant, and other

drivers, could work till after 7.00p.m. having commenced at 7.30a.m.

When put to him the claimant was on sick leave on the occasion in January 2009 when all drivers were given a warning regarding the upkeep of the trucks and documentation, he replied the claimant had been present. When asked by a member of the Tribunal the witness stated there was no grievance or disciplinary procedure in place or any appeals process.

Claimant's Case:

Through the assistance of an interpreter the claimant gave evidence. He stated he had no contract of employment. He agreed he had been put on a 3-day week in July 2009 and had signed on with the Department of Social and Family Affairs for the remaining 2 days per week. In respect of the payment of bank holidays, he sought advice and was informed that his employer should pay him for bank holidays. He approached his employer and gave a printout of the information concerning the bank holiday monies owed. His employer threw the information back at him. However having the information checked by his employer he was later paid monies owed.

When asked about his alleged outburst on May 15th 2009 he replied that he remembered a conversation concerning his workload. Some staff carried out 25 deliveries and some only 5 deliveries. Although he aired his complaints, nothing changed. He did not recall receiving a verbal warning on November 4th 2009. He had received a warning in early December 2009 regarding the overuse of his company mobile phone, this was also given to another colleague, in his presence, after a general meeting with staff over the same issue. The claimant told the Tribunal that he did not use his company mobile phone for personal use. He did contact other colleagues during the day for directions to clients but switched his phone off when he finished work for the day.

He told the Tribunal that he was never abusive to the owner of the respondent company. Other alleged irregular work practices had not been discussed with him. He had never been informed he was suspended and never received a letter of dismissal dated January 29th 2010. He had not been offered the assistance of an interpreter at any meetings. He had never refused to carry out any duties and his paperwork and other duties were also in compliance.

On January 21st 2010 he received a final written warning and he wrote to his employer requesting information concerning any issues concerning him. At a meeting on January 27th 2010 he received a detailed letter concerning the issues. He never received any further correspondence from the respondent and only discovered that he had been dismissed a month later. He received his P45 in March 2010. The claimant gave evidence of loss.

On cross-examination he agreed he had been allowed company diesel for personal use but had paid for it. He agreed he had delivered to 95% of clients in the past but on occasions had to require directions from other colleagues. When asked he said that on occasion he had not unloaded his truck after a late shift but had informed other colleagues of the items that had to be unloaded.

In response to a question by a member of the Tribunal he said that he had been informed he was suspended from work on January 27th 2010, the same day he was given the letter dated January 25th 2010 containing his final written warning.

Determination:

The Tribunal have carefully considered the sworn evidence adduced by both parties in this case. The Tribunal finds the procedures used by the respondent to dismiss the claimant in this case were unfair. The Tribunal awards the sum of € 20,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

The respondent conceded that he had not given the claimant prior notice of his dismissal. Accordingly the Tribunal awards the sum of € 1,200.00, this being two weeks gross pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)