

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

-Claimant

CASE NO.
UD227/2010
MN215/2010

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: Ms N. O'Carroll-Kelly B.L,

Members: Mr. T. O'Sullivan
Mr O. Nulty

heard this claim at Mullingar on 15th September 2011

Representation:

Claimant: Mr. Krystian Boino, J.C. Hoban & Co., Solicitors,
Suite 114 The Capel Building, Mary's Abbey, Dublin 7

Respondent: Ms. Lynne Fitzsimons B.L. instructed by James Mannion & Co., Solicitors,
Milestone House, Irishtown, Athlone, Co. Westmeath

The determination of the Tribunal was as follows:

Background:

The respondent is a transport company with over 35 vehicles, all of which are 40 tonne articulated lorries. The respondent company operates both in Ireland and Europe. The claimant commenced his employment with the company as a lorry driver in 2006.

Evidence:

The Managing Director gave evidence that the company has a book in which all accidents are recorded. On the 29th August 2007, the claimant caused damage to the grille, lights and front of the lorry. The claimant gave evidence with the assistance of a Tribunal appointed translator that he was driving the lorry when he approached a bridge without a height information sign. The claimant discovered that there was not enough height space for the lorry and that it would become damaged. He asked residents of the road if he could turn the lorry on their property but they refused. As a result he had no other option but to reverse the lorry for one kilometre to the nearest junction. The claimant turned the lorry at the junction but in the process the lorry hit stones along the verge. The claimant informed the company of the incident but he was not issued with a warning in relation to this incident.

During cross-examination the Managing Director was asked what investigation the company conducted in relation to the incident in August 2007. He replied that there was a note in the record book that substantial damage had been caused to the front of the lorry. The claimant was given a verbal warning but the company did not have a written record of the warning. He confirmed that a disciplinary procedure was not invoked at that time nor was the claimant issued with a copy of disciplinary procedures.

The Managing Director stated that another incident occurred on the 3rd December 2007 when the claimant was leaving a depot in Athlone. The lorry the claimant was driving hit another car in the side causing personal injuries to the occupant and damage to the car. It was the claimant's evidence that it was raining heavily as he left the depot and he checked both left and right as he drove out of the entrance. However, in his opinion a car approached quickly from the right and the two vehicles hit off each other. The claimant stated that there was no extensive damage to the lorry but there was a scratch on the bumper. He stated that he was not given a warning in relation to the incident. During cross-examination the claimant accepted that he should have exerted more caution on 3rd December 2007 but the Transport Manager reassured him about the matter.

The Managing Director stated that a further incident occurred on the 15th September 2008 when damage was caused to another car at a junction. The claimant informed the company that he was driving on a green light at the time of the incident. However, a witness subsequently came forward and reported observing the claimant driving through a red light at the junction.

It was the claimant's evidence in relation to this incident that he approached the junction on a green light, the light turned orange as he reached the junction. Another vehicle started to come through the junction and the claimant hit the side of the person's car, he noted that the driver was holding a mobile phone at the time. The claimant stated that he did not receive a warning in relation to this incident. During cross-examination it was put to the claimant that the witness came forward following an advertisement and stated that the claimant had driven through the junction on a red light but the claimant refuted this.

During cross-examination the Managing Director stated that the claimant was again provided with a verbal warning but there was not a written record of the warning. He confirmed that a disciplinary procedure was not invoked at that time.

It was the Managing Director's evidence that as a result of these last two incidents the respondent company was involved in legal proceedings. The claimant was given verbal warnings in relation to both his speed and the responsibility involved in driving such a vehicle.

It was the claimant's evidence that he was driving a lorry in Limerick on 22nd June 2009. He saw that there was a column of five cars travelling very slowly in front of him, so he drove in the bus lane and overtook the cars. He was subsequently signalled by a Garda car to stop at the side of the road. The claimant was asked to produce his driving license and the documentation relating to the lorry. The Detective who stopped him found that the full insurance documentation was not with the lorry. The claimant thought it was for this reason that the Detective telephoned the respondent company.

The Managing Director stated that the Detective telephoned to inform the company that he had stopped the claimant for dangerous driving as he had overtaken traffic at speed in a bus lane. The claimant was suspended for a week to allow the Managing Director time to speak directly

with the Detective. The claimant was issued with a letter informing him of his suspension. It was the claimant's evidence that during the suspension he telephoned the office a number of times enquiring about when he would be returning to work. The Transport Manager told him it was pending an investigation.

The Managing Director stated that he and the Transport Manager held a meeting with the claimant on the 30th June 2009. The claimant was offered the opportunity to have a representative present. The claimant agreed at the meeting with what the Detective had said. Due to a combination of the incident on the 22nd June and the previous incidents, he and the Transport Manager decided that decisive action would have to be taken. The Managing Director feared that the claimant would have a fatal accident and that there was no other option but to dismiss the claimant. The respondent company is safety conscious and the claimant was dismissed for the health and safety of the general public. These reasons were explained to the claimant and he was given a letter of dismissal dated 30th June 2009.

It was the claimant's evidence that the meeting of the 30th June 2009 was about him providing a statement to the insurance company, which he did. He subsequently received a P45 in July 2009 but he did not get an explanation for his dismissal from the company. He refuted that he received a letter from the company setting out the reason for his dismissal. He wrote letter dated 16th July 2009 seeking information as to why he had been dismissed. The claimant believes that he was dismissed because the company did not have enough work for all of its drivers at that time as in the weeks prior to this incident; the drivers had been asked by the company to take some time off due to a reduction in work levels

During cross-examination the Managing Director acknowledged that the claimant was not given an opportunity to appeal the decision of the company. It was also put to the Managing Director that the claimant was provided with a document completed by the company accountant stating that the claimant had been made unemployed due to a reduction in the fleet of lorries. The Managing Director was unaware of this document prior to the hearing.

In reply to questions from the Tribunal, the Managing Director confirmed that the company did not have a disciplinary procedure in place at the time.

The solicitor for the respondent company gave evidence that he wrote to the Detective who had stopped the claimant in Limerick. He received a response on the 9th August 2011. The Detective recalled the incident as the lorry had overtaken traffic while driving at speed in a bus lane.

Determination:

After due consideration of the evidence in this case, the Tribunal must find that an unfair dismissal occurred due to the complete absence of procedures in the dismissal of the claimant from his position. Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds.

However, the Tribunal is satisfied from the evidence adduced that the company's decision to dismiss the claimant was justified. The claimant contributed fully to the dismissal and the Tribunal therefore finds that nil compensation be appropriate in these circumstances.

There was no evidence adduced in relation to the claim for notice. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails therefore for want of prosecution.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)