

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE *-claimant*

CASE NO.  
UD929/2010  
MN879/2010

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. T. Ryan

Members: Ms J. Winters  
Mr J. Flannery

heard this claim at Trim on 29th November 2011

#### **Representation:**

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Claimant: Ms Emma Coffey, Smyth & Son, Solicitors, Rope Walk, Drogheda, Co Louth

Respondent: Ms M.P. Guinness B.L. instructed by,  
B. Vincent Hoey & Co., Law Chambers, Fair Street, Drogheda, Co. Louth

#### **Background**

As dismissal is in dispute it falls to the claimant to go into evidence first.

#### **Claimant's Case**

The claimant was employed as a lorry driver for the respondent, a transport company. The claimant had an agreement with his employer that he would do 5 'runs' a week to England, each trip lasting 1 day. There was no written Terms & Conditions of employment.

There was no formal grievance procedure in place. The claimant requested a contract by letter dated the 2<sup>nd</sup> of November 2009 but did not receive one until March 2010, post dismissal.

In 2008 the claimant's trips were reduced from 5 per week to 4 per week and sometimes 3 per week. The claimant believes the trips were being given to part-time workers. The claimant does

not accept that the respondent was trying to be fair to everyone by spreading the trips out. In June 2008 the claimant spoke to the MD about the situation, informing him that he was not happy that he was not getting the full 5 trips per week. The MD said he had not been aware of the change and would rectify it; the claimant would have the 5 trips re-instated for a few weeks. The claimant spoke to the MD about the situation on a few occasions.

The rota could say you were to do 5 trips but you could get a text to say you were not needed the day before; you would not get paid in these circumstances. On the 8<sup>th</sup> of October 2009 the claimant was taken off a day and asked the MD if he would be paid for it; the MD was not responsive until he approached him again the next day and the MD said he would look into it.

The practice was to follow the roster unless you were taken off a day and then you would wait for notification by text to tell you when you were working again. Normally he would receive a text to instruct him to come into work the following day after being taken off a day's work. As a result of this missed day of work the claimant was not contacted either way about the following day which was a Friday, so did not attend work. For the same reason he did not attend work on the Monday or Tuesday before his holidays on the 14<sup>th</sup> of October.

The claimant was on holidays for 2 weeks starting the 14<sup>th</sup> of October and was not contacted again by the respondent except by letter of the 11<sup>th</sup> of November 2009, outlining the fact that the claimant had missed work on the 9<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> of October. He did not receive any phone messages. He did not attempt to contact the respondent after receiving this letter as he was taking advice. The respondent wrote again on the 30<sup>th</sup> of November 2009 asking the claimant to contact him; he did not respond as he did not see the point. The only contact the claimant had from the respondent since the 8<sup>th</sup> of October was by letter. The claimant felt that he had been dismissed.

The claimant gave evidence of Loss and his attempts to mitigate his Loss.

### **Respondent's Case**

The MD of the respondent (MD) gave evidence that he did have an agreement in place with the claimant that he would get 5 runs a week for the first 2 years. The respondent tried to work the trucks as much as possible so on occasion someone else could have the claimant's truck if he was not available. The MD was informed that the claimant did not turn up for work on Friday the 9<sup>th</sup> of October. He did not attend work on the following 12<sup>th</sup> of 13<sup>th</sup> of October and was due to go on holidays on the 14<sup>th</sup> of October.

The respondent wrote to the claimant on the 11<sup>th</sup> and the 30<sup>th</sup> of November as they had no contact from the claimant. The claimant's representative contacted the respondent just before Christmas; the respondent informed them that the claimant was still employed and instructed that he should contact them.

**Determination**

Having carefully considered the evidence adduced, the Tribunal find that the claimant was not unfairly dismissed therefore the claim under the Unfair Dismissals Acts, 1967 to 2007 fails. Consequently the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 does not arise.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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