

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.  
UD1368/2010  
MN1322/2010

EMPLOYEE

*-claimant*

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 M. Levey B.L.  
Members: Mr J. Horan  
Ms E. Brezina

heard this claim at Dublin on 25th November 2011  
and 16th February 2012

#### Representation:

Claimant: On 25th November 2012, Ms Caroline Lindsay Poulsen BL instructed by Mr. John Woods Solicitor, D'Arcy Horan & Co. Solicitors, Kingsbridge House, 17-22 Parkgate Street, Dublin 8

On 16th February 2012 Ms Caroline Lindsay Poulsen BL instructed by Ms Sinead Fitzpatrick Solicitor of D'Arcy Horan Solicitors.

Respondent: In person

#### Background:

The respondent is a medical hygiene service provider. The claimant was a truck driver for the respondent. The claimant contends that after a road traffic accident on 17<sup>th</sup> September 2009 his employer found out that he was going to take a personal injury claim against his employer. He was dismissed on 20<sup>th</sup> November 2009. Dismissal is not in dispute in this case.

In opening the case the respondent contended that the claimant was travelling along the M50 and he drove into the rear of a stationary truck. The claimant failed to correctly insert the tachograph when he began his journey so there was no record of his speed. This was a serious breach of company rules. The Gardaí took the truck away.

The claimant was brought to hospital on the day of the accident (and was hospitalised for a few nights subsequently) and was out of work for a period of time. He returned to work on 16<sup>th</sup> or 17<sup>th</sup> November. They had an investigation on 19<sup>th</sup> November. The claimant said he was driving at 60 or 70 kph. The MD then travelled to the M50 and saw that there was road works at the location and the speed limit was 60 kph. There was a skid mark of 37 meters. The company felt that he was not driving with due care and attention and it was a serious breach of company rules. The warning light was on to show that the tachograph was not inserted correctly. Based on the claimant's previous driving history and his disciplinary record the respondent had no choice but to dismiss him.

### **Respondent's case:**

The Tribunal heard evidence from the Respondent's managing director. The witness explained that at a meeting with the claimant the claimant told him that the brakes did not work. He asked the claimant if he had a problem with the brakes earlier in the day and he said that he had not. He told the claimant that there was a 37 meter skid mark on the road and the claimant told him that he was travelling at the same speed as the other traffic. He then went to the M50 and noted that in the area there was a 60kph speed limit.

The witness then said that the claimant was issued with a notice of termination. The dismissal letter of 20<sup>th</sup> November 2009 was opened to the Tribunal. The letter contained details of other incidents:

- “1. The vehicle driven by you tore overhead cables in Cork
2. You seriously damaged the bumper of the vehicle driven by you on a bollard in Cork.
3. You were involved in an incident in which the lorry being driven by you was damaged in an accident involving a car in Drogheda.
4. The vehicle being driven by you was written off in the recent accident in which the vehicle left a 37 meter skid mark in (sic) the road before seriously damaging another vehicle.”

The witness was asked if the claimant had been warned about the incidents and he replied that “he had been spoken to yes”

The claimant appealed the dismissal. The witness was not involved in the appeal, a Mr. G the accountant and Mr. C the transport manager were involved in the appeal.

### **Cross-examination:**

Questions were put to the witness about the accident. The witness explained that it was natural to slam on the brakes however you should keep a safe distance. He also explained that the failure to put the tachograph in correctly and the fact of the serious accident was a serious infringement of Health and Safety alone.

The witness was asked about the incidents outlined in the letter of 20<sup>th</sup> November 2009, and about the final written warning. The witness explained that the respondent received a complaint from a Mrs GL, a female employee of a customer, that she was leaving work and bins were pushed towards her. They viewed the cctv footage and saw the bins and that the female employee was waiting (for someone to move bins). The claimant was seen to push the bins in her direction and she had to take evasive action and she was heavily pregnant. Also there had been an on-going feud between the claimant and Mr. GL, the woman's husband.

## **Claimant's case:**

The Tribunal heard evidence from the claimant. He told the Tribunal that on the day of the road accident (17<sup>th</sup> September 2009) the road was dry. The cars in front of him were 500 meters away and they started braking rapidly. When he started braking he felt that the vehicle was skidding, he felt that the brakes were blocked. He was driving at 60 or 70 kph. Counsel for the claimant put it that the ABS was not working.

After the accident he went to hospital where he remained for five or six hours. He had initially been told that he would have to stay overnight but this changed. His son had visited him and had left to get his father's pyjamas. When he returned he realised that his father was being discharged.

The following evening the claimant felt dizzy and went to his GP. He was sent to hospital and remained for one or two nights.

A few days later the transport Manager, (MC) visited him and asked him about the accident. He asked MC if he wished to take the diesel card and work phone (as the claimant would be out for a period on sick leave). MC declined the offer. After this he had reason to visit a solicitor. The solicitor wrote to the respondent regarding making a claim against the employer for personal injuries. MC visited him again and requested the diesel card and work phone.

The claimant called in to the respondent on 17<sup>th</sup> November. He was on sick leave and he went to find out about his return to work. He was handed a letter dated 17<sup>th</sup> November 2009 advising of a meeting:

“Further to your road traffic accident while driving the company vehicle reg. no. xxxxxx on Thursday 17<sup>th</sup> September, 2009 the company is holding an investigatory hearing on Thursday, 19<sup>th</sup> November, 2009 in accordance with its disciplinary procedures.

The company will be questioning you in relation to the cause of the accident. As a result of this hearing the company may take further action under its disciplinary procedures

You have the right to have a solicitor, trade union official, work colleague or family friend in attendance with you at this investigatory hearing.

In the meantime you are suspended with pay until the hearing.”

The claimant told the Tribunal that he took a friend to the meeting. He did not know what the meeting would be about as if he did he would have brought a solicitor. At the meeting he was told that the tachograph was installed incorrectly. In his opinion he had installed the tachograph correctly.

Regarding the overhead cable incident there was no sign to say that overhead cables were low.

Regarding the bollard incident in Cork: He had taken a photo of the lorry before he drove it as the lorry was damaged before he drove it.

Regarding the Drogheda incident: He was reversing and the incident occurred because the other driver did not heed the directions of the person who was directing him out of the street.

Regarding the incident with the bin, the woman was not wearing a high visibility vest. He did not have any intention of pushing the bin at her. He did view the CCTV footage of the incident.

Cross-examination:

He was asked if he saw the warning light that indicated that the tachograph was not inserted correctly. The claimant, when asked, agreed that he was aware that there was road works on the motorway and that there was a speed limit.

The claimant was asked by the Tribunal if he viewed himself as pushing bins towards the woman or if he had a different interpretation. He replied “this happened at 8.00 pm, the place was just a special ramp for unloading”.

**Determination:**

Having considered all the evidence the Tribunal finds that the claimant was not unfairly dismissed. Notwithstanding the fact that the claimant believed that he was not responsible for the various incidents that had previously occurred, the Tribunal is of the view that the respondent acted reasonably in all the circumstances of the case. The claim under the Unfair Dismissals Acts, 1977 To 2007, fails.

The claim under the Minimum Notice And Terms Of Employment Acts, 1973 To 2005, succeeds and the Tribunal awards the claimant the sum of €478.40, as compensation in lieu of notice.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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



