

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

*-Claimant*

CASE NO.

UD1760/2010

against

EMPLOYER *-Respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal

(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne

Mr F. Dorgan

heard this claim at Kilkenny on 25th January 2012

#### **Representation:**

Claimant: Mr. Eoghan O'Sullivan B.L. instructed by Mr. Laurence Grace,  
Grace, Solicitors, Old Courthouse, Green Street, Callan, Co Kilkenny

Respondent: A director of the company.

#### **The determination of the Tribunal was as follows:**

##### Summary of evidence:

The respondent is a company which operates a horse pound. It provides its services to a number of local authorities. The company has approximately ten employees but the claimant was one of the two employees based within the pound itself.

The claimant was employed by the respondent company from May 2000. The employment was largely uneventful until the time of Tuesday, 22 June 2010. On this date the director of the company attended at the premises and informed the claimant that a number of complaints and allegations had been made against him. It was the director's evidence that he informed the claimant that he was suspended pending an investigation into the serious allegations. However, the claimant refused to leave the site unless he was dismissed. The director stated that this left him with no option but to dismiss the claimant.

It was the claimant's evidence that the director did not inform him about the nature of the allegations or who had made them. The claimant said he was dismissed without any offer of a suspension pending an investigation. The claimant stated that he would have welcomed an investigation had one been held.

One of the claimant's main duties was checking horses for microchips as they entered the pound. If a horse did not have a microchip a vet would attend at the site to microchip the horses depending on the requirements of the particular local authority. Under the legislation once a period of time has elapsed and a horse has not been claimed, that horse can be sold, destroyed or re-housed. The claimant often re-housed horses through contacts he had. It was the director's evidence that the allegation against the claimant was that he was selling the horses for a fee. The director believed the claimant was probably honest most of the time but he felt that there were other times when the claimant could have contacted the owner of a horse and carried out a deal to sell that horse back to the owner for a fee once a disposal notice had been received for the horse. An allegation to this effect had been made by the claimant's colleague to the director.

Employee D gave evidence that he had made the allegation to the director about the claimant. This arose after he and the claimant had collected some horses and brought them to the pound. After the required number of days had elapsed the horses could be disposed off. It was Employee D's belief that the claimant had sold these horses over the weekend as they were no longer in the pound when he returned to work on Monday and there was no record of what had happened to them in the office diary.

The director stated that he carried out an investigation with the other employees after the claimant's employment terminated. His finding was that the claimant had taken a fee in cases where horses were to be re-housed. There was one occasion of this that he "absolutely knew of" but also a member of the travelling community informed him he had paid a fee to the claimant on one such occasion. In reply to questions from the Tribunal, the director stated that he experienced difficulty in carrying out the investigation as some employees were unwilling to come forward as they felt intimidated by the claimant.

In his evidence the claimant denied that he had accepted fees for re-housing horses and stated that he gave the director any monies generated by the company.

The claimant gave evidence pertaining to loss and his efforts to mitigate that loss.

**Determination:**

Having considered the evidence adduced at the hearing the Tribunal is not satisfied that the respondent offered to suspend the claimant pending an investigation into the allegations made. The Tribunal finds that there was insufficient evidence before the respondent such as would entitle the respondent to dismiss the claimant. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds. The Tribunal awards the claimant compensation in the sum of €7,280.00

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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