

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

EMPLOYEE

**CASE NO:**

UD1696/2010

RP2279/2010

MN1648/2010

WT758/2010

- *claimant*

against

EMPLOYER

- *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
MINIMUM NOTICE OF TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. A. O'Mara  
Mr. J. Moore

heard this appeal at Drogheda on 25 January 2012

### **Representation:**

Claimant: Woods Ahern Mullen, Solicitors, 3<sup>rd</sup> Floor, Elgee Building,  
Market Square, Dundalk, Co. Louth

Respondent: Adrian Ledwith, Solicitor, 9, Crowe Street, Dundalk, Co. Louth

The decision of the Tribunal was as follows:

### **Background:**

The claimant was employed as a lorry driver by the respondent travelling across to England to pick up goods to be delivered to a certain shop in Ireland. A colleague (M) picked him up in the company van from his home in Newry and drove to Dublin Port to pick up the company lorry. He travelled by boat to Holyhead and drove to Crewe to pick up his delivery.

He would then return to Dublin and distribute the goods then drive back to the docks and repeat the process.

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

The claimant stated that he worked on a four day on, four day off period with the respondent company. He had no contract of employment, did not receive any payslips and was paid in sterling - £ 175.00 by cheque and £ 540.00 in cash. On Saturday May 8<sup>th</sup> 2010 he received a call from the owner of the respondent company informing him that he had sold the lorry to another haulier (JS) and he, the claimant, was no longer working for the respondent. He was to work for JS. He had been given no previous notice.

On Monday May 10<sup>th</sup> 2010 a colleague (M) picked him up and drove him to Dublin Port to pick up the lorry. He rang JS who informed him that he would pay him € 125.00 per day. The claimant told JS he could not work for that money and was not going to waste his time. He spoke to M informing him what had occurred. M gave him the keys for the respondent's van and he drove back to the respondent's home. He went to his solicitor for advice.

On cross-examination he said they he had worked the odd day for other hauliers on his time off if they were stuck. He refuted he only worked 2 days a week. He told the Tribunal that he knew he had been dismissed on May 8<sup>th</sup> 2010. When asked he said he had not damaged the van. When asked by the Tribunal he stated that he had never received a payslip nor had a contract of employment. When put to him that he had texted the respondent for his P45 he replied that it had been requested through his solicitor.

The claimant gave evidence of loss.

### **Respondent's Case:**

The owner of the respondent gave evidence. The claimant had been employed as a driver on a part-time basis. He was paid £ 175.00 by cheque, he was never paid cash in hand. He told the Tribunal that he never spoke to the claimant on May 8<sup>th</sup> 2010, he was away. His wife contacted him and informed him that the company van was parked outside their home and there was damage to the driver's side.

He spoke to M who told him the claimant had a problem, had taken the van and drove off. He told M of the damage to the van. He tried to contact the claimant but there was no answer. He later received a text from the claimant requesting his P45. He told the Tribunal that he had not dismissed the claimant, he had just walked off the job and had made no contact since.

On cross-examination he agreed the claimant had no contract of employment nor had he received payslips. He agreed the claimant had not been paid for any annual leave taken and explained he had been badly advised by his accountant.

When asked he explained that at the time he had four employees plus himself, he now had two plus himself. When asked he said that the claimant's colleague who took over the run when he was off also left his employment around the same time as the claimant. He told the Tribunal that he felt the reason the claimant had not returned to work was because of the damage to the van.

**Determination:**

The Tribunal have carefully considered the sworn evidence adduced by both parties in this case. The Tribunal finds the claimant was dismissed and that it was unfair. Accordingly, the Tribunal awards the sum of € 12,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Loss having been established the Tribunal also awards the sum of € 1,722.00, this being two weeks gross wages, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005

The Tribunal also awards the sum of € 5,166.00, this being thirty days annual leave owed, under the Organisation of Working Time Act, 1997.

The claim under the Redundancy Payments Acts, 1967 to 2007 was dismissed.

Sealed with the seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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