

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - **Claimant**

UD15/2011

against

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell BL

Members: Ms J. Winters
Mr S. O'Donnell

heard this claim at Dublin on 25 April 2012

Representation:

Claimant:

Mr Brendan Archbold, 12 Alden Drive,
Sutton, Dublin 13

Respondents:

Mr Tom Mallon BL, instructed by Mr Hugh Hannon, CIE Group Solicitors,
Bridgewater House, Islandbridge, Dublin 8

The determination of the Tribunal was as follows:

The claimant was employed as a bus driver from May 2000. The employment was uneventful until 14 June 2010 when the claimant was operating the 53B bus route between the North Wall Ferryport and Bus Aras. As this route operates only at times to meet ferries it is an irregular service such that it is operated by drivers on a voluntary overtime basis, in this case from 5-00pm until 9-00pm. Another unusual feature of this route is that the cash fare is not put directly by passengers into a cash box but the money is tendered to the driver who will, if it is available, give change to customers who do not tender the exact fare. It is the policy of the respondent for passengers to be given their ticket by the driver as they board the bus.

On 14 June 2010 two inspectors boarded the 53B at the Ferryport at around 7-50pm. This was some 45 minutes after its scheduled departure time on account of the ferry the bus was serving being similarly late. Just as the inspectors boarded the bus a passenger was observed paying her

fare in sterling and receiving a ticket. When the chief inspector checked the waybill of the ticket machine on the bus it revealed the issue of 19 tickets. A check of the 35 passengers confirmed that sixteen of them did not have tickets. All of those passengers without tickets told the inspectors that they had paid the bus fare and received change. The claimant told the chief inspector that he had not given tickets to all the passengers as they were owed change and he intended to give them tickets when in a position to issue change as they alighted from the bus. Six of the sixteen then approached the claimant who issued them with tickets without any money changing hands.

When the bus stopped at an intermediate stop the chief inspector asked the passengers if anybody required change and nobody came forward. The claimant then again told the chief inspector that he would issue tickets to those without tickets as they alighted and received change. When the bus arrived at Bus Aras none of the passengers sought change and no tickets were issued.

Once the passengers had alighted from the bus the chief inspector informed the claimant that he was suspended with pay with immediate effect for taking cash and not issuing tickets. The claimant was instructed to report to his depot manager the following morning. The claimant declined to count the money he had collected, in the presence of the inspectors, unless a member of the Gardai was present. The claimant then took the money and handed it in at the depot in the normal way. When the money was counted it revealed a total of €135-50 which when the €68-25 from the previous journey meant there was a balance of €67-00 taken from the 35 passengers at the time of the inspection. This represented a shortfall of some €20-00 from the revenue that should have been generated from the passengers.

Following this investigation by the inspectors the disciplinary hearing was conducted by the area operations manager (OM), who had been on holiday at the time of the incident. OM was contacted by the claimant's union representative (UR) and at UR's request the disciplinary hearing was held on 23 June 2010. The claimant's position both at the disciplinary hearing and at the Tribunal was that he had received insufficient training in the handling of cash, especially in regard to the handling of foreign currency, essentially sterling but also some \$US. At the end of the disciplinary hearing OM told the claimant that he would not want the claimant to leave without understanding that OM had not heard any logic to support the claimant's explanation of the events of 14 June 2010. On checking OM ascertained that the claimant had done the ferry overtime on some sixteen occasions over the preceding ten months.

On 25 June 2010 OM issued his decision in the matter whereby he found that the claimant had deliberately defrauded the respondent and that it was a blatant case of gross misconduct. The claimant was given seven days' notice of dismissal and advised of his right to appeal the decision. The appeal, heard by the appeals board, was held on 8 July 2010 and it confirmed the decision to dismiss.

Determination:

There was a conflict in the evidence given to the Tribunal by the parties in this case. In support of the decision to dismiss the Claimant, two witnesses on behalf of the Respondent stated that an examination they carried out on 14 June, 2010 on board Bus 53B showed that 16 passengers had each paid the due fare of €2.50 without getting tickets as they boarded at Dublin Ferry. The Claimant, whose evidence was imprecise, inconsistent and implausible, denied he had behaved improperly.

The Tribunal is critical of the practice whereby the Respondent's drivers are required to handle cash in this manner. But this is of secondary importance in this case.

The Tribunal is also unhappy with the failure by the Respondent to interview its two inspectors before reaching a decision to dismiss the Claimant. However in light of the fact that the Claimant did not take issue with the contents of the inspectors' reports, this shortcoming is not significant.

In all of the circumstances, the Tribunal is satisfied that the Claimant acted in a grossly improper manner and that his behaviour gave rise to a breach of trust and confidence which gave the Respondent no option but to dismiss him. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)