

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE –*Claimant*

UD1413/2010

against

EMPLOYER - *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O’Carroll-Kelly BL

Members: Mr D. Moore
Mr A. Butler

heard this claim at Dublin on 29 November 2011 and 6 March 2012

Representation:

Claimant:

Ms Bernie Thornton, SIPTU, Membership Information & Support Centre,
Liberty Hall, Dublin 1

Respondent:

Ms Ger Moriarty, Local Government Management Services Board,
35/39 Ushers Quay, Dublin 8

The determination of the Tribunal was as follows:

The claimant was employed as a truck driver from June 2004. At the time of the incident which led to his dismissal the claimant had been issued with a final written warning, with twelve-month duration, and a two week suspension from the payroll from 6 April 2009.

On 2 July 2009, a day when Dublin experienced extremely high levels of rainfall that led to localised flooding, the claimant was involved in an incident with the gully manager (RO’C) of the respondent’s drainage department. RO’C had come upon localised flooding in the Malahide area on his way to work at around 4-00am and had been organising flood mitigation works in the area from that time. At around 12-30pm RO’C was asked by one of his operatives where they should utilise two pallets of sandbags that were loaded on the Hiab hydraulic hoist/grab equipped truck being driven by the claimant.

RO’C then approached the claimant, who had started work at 8-00am, and asked him to unload the

sandbags putting one onto a grass circle for the residents to use to protect their properties and the second at the entrance to the street in order to provide material to build a wall to prevent further ingress of flood water. The claimant's response was to ask if he had any men to "handball" the bags off the truck. RO'C then asked the claimant to use the grab to unload the sandbags. The claimant insisted that he would need slings and lifting chains for this operation.

The respondent's position is that at around 12-45pm the claimant told RO'C that it was raining and he didn't work in the rain. After being challenged over this statement the claimant climbed into his truck cab and began to prepare to have his lunch. There followed a verbal altercation where RO'C wanted the claimant to alight the vehicle to continue the conversation and the claimant insisted RO'C climb into the passenger seat. The claimant then told RO'C to "fuck off" whereupon RO'C stopped the claimant's time at 12-48pm. The claimant was instructed to leave the work site but continued with his lunch.

RO'C reported the situation to the claimant's inspector and his engineer. The engineer arrived on site at about 1-30pm at which time the claimant asserted that he was too stressed to drive when the engineer suspended him. Alternative arrangements were then made for the claimant's return to depot.

A disciplinary interview was then carried out on 3 September 2009. This was conducted by a senior executive engineer and an area engineer. The claimant was accompanied by his union representative. The interview covered the incident of 2 July 2009. The claimant denied acting in an aggressive manner towards RO'C and stated that he felt intimidated by the gully manager who had been aggressive towards him.

A disciplinary hearing on foot of the senior executive's recommendation was held on 22 September 2009. This was conducted by the administrative officer in the human resource department who was accompanied by a note taker. The claimant was again represented by his union representative. The decision was communicated to the claimant in a letter of 25 September 2009.

The claimant lodged an appeal against his dismissal and this was heard by the Employee Executive Officer on 3 November 2009. On 26 November 2009 the Employee Executive Officer wrote to the claimant confirming the failure of his appeal. He was removed from the payroll on 27 November 2009 and received four weeks' pay in lieu of notice.

Claimants Case

The claimant told the Tribunal that on the 2 July 2009 he was driving a truck carrying sand bags and was instructed to deliver the sand bags to a housing estate where there was severe flooding. He reported to RO'C who he did not know previously but understood he was in charge at the site. After a time waiting to access the site RO'C asked him to unload the bags which were on pallets. As he had no straps or chains to securely unload the bags the claimant suggested that the bags be unloaded by handballing them off the truck. RO'C insisted the bags be unloaded on the pallet however, he told RO'C that the design of the truck did not allow this as it had no crane feature to unload in this manner. The claimant said he was more experienced than RO'C on the functions and capabilities of the truck. RO'C became annoyed, aggressive and was shouting. The claimant said he became afraid and intimidated by the behaviour of RO'C. He got in to the cab in the hope that this would diffuse the situation to have his lunch break as others were also taking lunch breaks at that

time.

The claimant was asked to get out of the cab but he asked RO'C to come in to the cab as he felt this was safer. RO'C waited outside and the claimant denied he opened the window and used foul and abusive language. He also denied refusing to work in the rain and stated he was wearing full rain gear at the time. RO'C and another told the claimant to return to the yard and he did so in a van leaving the loaded truck behind. He was distressed at that stage as nobody would listen to him. On returning to the yard he was informed that he was suspended.

Determination

Having carefully considered the evidence the Tribunal are satisfied that dismissal was warranted in the circumstances. The respondent followed its disciplinary procedures in a fair and thorough manner. The claimant was given every opportunity to state his case and avail of an appeals process.

The Tribunal dismiss the claim under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)