

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

UD1519/2010

EMPLOYEE

- claimant

against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison
Mr T. Gill

heard this claim at Sligo on 28th February 2012

Representation:

Claimant(s) : Mr Peter Collins, Collins, Solicitors, Breifne House, Main Street,
Carrick-On-Shannon, Co Leitrim

Respondent(s) : McGovern Walsh & Co, Solicitors, Pearse Plaza, Pearse Road, Sligo

The determination of the Tribunal was as follows:-

Background:

The respondent company was involved in the transport of pallets by truck between Dublin and England. The claimant was employed as a truck driver from 11th June 2007. There were no problems until 21st May 2009.

On the day in question the claimant picked up his truck in Dublin at around 11.30 a.m. and travelled to Birmingham. He arrived around 3.45 p.m. and off loaded the truck. He walked to a nearby social club of which he was a member to watch sport and have a beer with another driver. His friend left to get some lunch and he remained to get some food in the club. He returned to his truck and set up his bed and went online to check his wages had been lodged. They had not. He rang the Managing Director of the respondent company who accused him of being drunk.

On 26th June 2009 he was accused of hitting the door of the hub in Rugby and causing £ 2,100.00 worth of damage. On 26th August 2009 he was accused of hitting a car on Holyhead docks which lost the no claims bonus on the car. On 19th November 2009 he was accused of reversing his trailer into another trailer in Holyhead port. On 29th March 2009 he was accused of hitting the door of the Dublin hub causing damage and expense to the company.

The claimant was asked to meet the Managing Director and his friend in Carrick-on-Shannon and advised he might bring some one with him. He arrived with 2 friends. The claimant and the Managing Director sat in the car and he was informed he was dismissed. They shook hands and left. He was given all monies owed to him.

Respondent's Position:

The Managing Director gave evidence. He explained that after all the incidents that had on the evening in Birmingham that he said the claimant had been drunk. He explained that this was the first time the claimant's wages had not been lodged on time. His wife who looked after this matter had some personal difficulties that day.

The Managing Director's friend who had been present in Carrick-on-Shannon gave evidence. He had been present in the Managing Director's home on the evening the claimant had rang concerning his wages. He had heard the conversation as the call had been on loudspeaker. The claimant had been very irate.

Claimant's Position:

The claimant gave evidence. He explained that he had been a professional driver for years. He explained that on 21st May 2009 he had consumed 2 pints of lager and lemonade, 2 ham and cheese rolls and a steak and kidney pie. He told the Tribunal that he had been very tired that day as he had only 3 hours sleep the previous evening because of the heat in the truck. He had another beer and returning back to his truck at around 7.30 p.m. He spoke to some forklift drivers at a nearby chip van and returned to his truck at 8.00 p.m.

He explained that he had been very stressed when speaking to the Managing Director. The reason he rang the Managing Director was because he had no cash and he needed to put some fuel in the truck for the return trip home. He explained that he was not drunk but was tired. He had no dentures in when speaking to him. He told the Managing Director that he would call the British Police to give him a breath test.

A friend of the claimant gave evidence. He had been present at the dismissal meeting in Carrick-on-Shannon but had not heard the contents of the conversation.

Determination:

The Tribunal have carefully considered the evidence adduced in this case. A dismissal took place and the Tribunal finds that this was procedurally unfair. However, the Tribunal the claimant did not fully mitigate his loss.

Accordingly the Tribunal awards the sum of € 3,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)