

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

MN34/2011

UD34/2011

against

EMPLOYER

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr. J. Reid
Mr. S. O'Donnell

heard this claim at Dublin on 2nd March 2012

Representation:

Claimant: Mr. Colm Casserly, SIPTU, Manufacturing Division, 5th Floor, Liberty Hall,
Dublin 1

Respondent: Mr. Alastair Purdy, Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street,
Galway

The determination of the Tribunal was as follows:-

Respondents case:

SD, HR manager of the respondent transport company gave evidence that all employees receive a two day induction training course on safe systems. The claimant received all the necessary and correct training. An employee hand book provided to all employees outlines that failure to follow correct procedure while uncoupling trailers is considered as gross misconduct and may lead to dismissal. Dropped trailers can cause serious damage to persons or property.

An incident occurred at the goods inwards area on 10th May 2010 when a trailer was dropped without levering the legs, known as de-coupling of the trailer. An incident report form was filled out and signed by the claimant. Following the report a full investigation was undertaken by the respondent company. An investigation meeting took place on 18th May 2010. Following the meeting a disciplinary hearing occurred on 21st May and a decision was taken to dismiss the

claimant.

Under cross examination SD stated that there had been a transfer of undertakings in 2009. The claimant had not signed his contract, there was a payroll issue which would have been rectified in time. The respondent did recognise the union for drivers who were employees pre. the takeover but drivers after that date had representatives. SD absolutely denied that the claimant's involvement with the trade union had anything to do with his dismissal, and said that a union official was present at the hearings. Other incidents involving dropped trailers had led to dismissal on two or three previous occasions. A right to appeal was not given but should have been, the claimant did not have one year of service.

Claimant's case:

DB stated that his employment as a driver began in August 2009. He had issues with his original contract and did not sign it. The claimant also had an issue with three day's pay which were owed from his training period. He joined SIPTU with a group of seven or eight others to negotiate better conditions/rates of pay.

On 10th May 2010 an incident occurred at a loading bay. He reversed his truck and went through procedures. When he pulled forward he heard the pin drop and realised that he had dropped in the wrong position. The claimant notified the goods inward clerk of the incident, a shunter driver came and a mobile mechanic also checked and confirmed that everything was ok.

DB filled out an incident report form, he felt it was a simple error.

He was suspended on the day and told an investigation would have to take place. The investigation meeting took place on 18th May, a disciplinary hearing on the 21st May and he was dismissed following that hearing.

DB wrote a letter of appeal but received no reply.

Under cross examination DB said that at no time during the meetings was anything said about union involvement but he felt he may have been a thorn in the side for the company. He was not aware of the date he became a trade union member. He did not mention anything in his appeal letter about his trade union membership.

Determination:

The Tribunal has carefully considered the evidence adduced. The claimant was dismissed for gross misconduct following a failure to implement a "correct" de-coupling procedure to one of the trucks and trailers. It is common case that the de-coupling procedure had been made well known to all the employer company employees. Full instruction had been given and a handbook produced to employees quite clearly highlights that a failure to implement a correct de-coupling process was regarded as "gross misconduct" and could well attract a sanction of dismissal.

The respondent company conducted an investigation and a disciplinary process. There can be no doubt that this process was wholly deficient not least because the application to appeal the initial finding was ignored. In evidence the company witness quite freely accepted that the company had failed in its duty of care to the employee on the matter of the appeal and accepted that the company know that the employee had not the requisite years' service such that would preserve his entitlement under the Unfair Dismissals legislation.

The facts as presented demonstrate an Unfair Dismissal on ground of unfair process but the employee can only be afforded the protection of the legislation if he can demonstrate that the dismissal in fact resulted wholly or mainly by reason of his membership of a Trade Union as per

section 2(1)(a) of the Unfair Dismissals Act 1977.

The claimant put up the proposition that the employer herein avoids wherever possible any interaction with the unions as a matter of principle. There is also no doubt that at about the time that the employee made a mistake in the de-coupling process that the employer discovered for a fact that this particular was among a group of seven employees who were using the union to try and open negotiations regarding more favourable rates of pay.

The Tribunal is being asked to assume that the employers knowledge of the fact that the employee had been identified as “one of the group of seven” of itself had an effect on the outcome of this disciplinary process and the Tribunal is also being asked to determine that the knowledge of membership of a trade union was the main reason for the termination.

Unfortunately for the employee the Tribunal cannot make a finding that the employer reached its decision based wholly or mainly on the basis of the employees membership of the union and his claims under the Unfair Dismissals Acts 1977 and the Minimum Notice and Terms of Employment Acts 1973 to 2005 must therefore fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

