

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Appellant (Employer)

UD1524/2010

against the recommendation of the Rights Commissioner **R-082898-UD-09/POB**
in the case of

Respondent (Employee)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. Clancy

Members: Mr B. O'Carroll
Ms H. Henry

heard this appeal at Ennis on 11 June 2012

Representation:

Appellant:
In person

Respondent:
Mr Gerard Tobin, Limerick Citizens Information Centre,
54 Catherine Street, Limerick

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by the employer (the appellant) against a recommendation of the Rights Commissioner under the Unfair Dismissals Acts **R-082898-UD-09/POB** in the case of an employee (the respondent).

Determination

The employee, who had been employed as a truck driver from August 2006, was placed on a three-day week from January 2009. In May 2009 the employee was dismissed by reason of redundancy. The employer's position was that the employee, one of only two remaining drivers at the time, was selected for redundancy based on LIFO. The employer, whose evidence was imprecise, inconsistent and given in a reluctant manner, was unable to furnish the

Tribunal with any specific or documentary evidence to support his assertion that the employee had less service than the other driver who was retained. In those circumstances the Tribunal cannot be satisfied that the selection of the employee for redundancy was fair and, accordingly, it must follow that the dismissal was unfair. When assessing loss it was difficult for the Tribunal due to the lack of specificity as to when the other driver, who was the last remaining driver, was let go. In all the circumstances the Tribunal considers that the other driver worked for some ten weeks after the employee was dismissed and awards €2,500-00 under the Unfair Dismissals Acts, 1977 to 2007.

During the hearing of this appeal it became apparent that the rate of pay received by the employee, and agreed by both parties, was not reflected in the payslips and for these reasons the parties were advised that copies of this determination are to be sent to both the Department of Social Protection and the Revenue Commissioners.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)