

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NOS

EMPLOYEE – *claimant*

UD1896/2010

MN1845/2010

WT846/2010

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden BL

Members: Mr J. Browne
Mr J. Jordan

heard this claim at Carlow on 21st March 2012

Representation:

Claimant: Mr Stephen O’Sullivan BL instructed by Cormac Carty of Kent Carty
Solicitors, 47/48 Parnell Square, Dublin 1

Respondent: Mr William Clarke of Clarke Jeffers & Co. Solicitors,
30 Dublin Street, Carlow

The determination of the Tribunal is as follows:

The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2006 and under the Organisation of Working Time Act 1997 were withdrawn.

Respondent’s Case

The respondent’s business involved the collection and processing of waste from hotels and hospitals and collection of brown bins from local authorities. Also they ran a small skip hire service. The Tribunal heard evidence from the yard manager. The claimant was employed as a truck driver. His role involved taking the truck to Dublin and bringing it back to the yard. The claimant also drove the skip truck. The claimant was expected to refuel and wash the truck he drove on any work day. Trucks are refuelled at a nearby service station and are washed in the yard.

The yard manager stated that the claimant was a good driver but spent too much time talking in the office when he was in the yard and when he delivered skips. The yard manager often spoke to the claimant about using his time more efficiently and often pushed him to go about his work faster. These conversations happened in the yard on an informal basis. The yard manager did not give the claimant a formal warning at any stage. On occasion the claimant washed a truck in the yard at 11.00am. The yard manager felt that it was a waste of time to wash the truck at this time. The truck should be washed and refuelled at 4.00pm at the end of the working day. The yard manager did not make it a rule to wash the truck at 4.00pm because he had no difficulty with a driver washing a truck earlier if there was nothing else to do. However deliveries and collections should take priority over washing trucks.

The yard manager believed that the claimant took too long to collect loads of waste and to deliver skips. However he did not time him or otherwise investigate this issue.

The claimant had a contract of employment that made provision for a probationary period and it included disciplinary procedures. When the claimant's probation was completed and he became a permanent member of staff neither the yard manager nor anyone else spoke to him or told him that they were unhappy with his performance.

The yard manager was not working when the claimant was summarily dismissed. However the yard manager accepted that the claimant had not received any formal warnings about his performance and also accepted that the company's disciplinary procedures were not used.

The claimant was replaced by a driver who is paid the same wages as the claimant was.

Claimant's Case

The claimant gave evidence. He is a driver and while he worked for the respondent he mostly drove a scoop container lorry. He serviced a contract with a county council to collect waste. It was part of the contract that all waste brought to the council depot each day had to be cleared on the day. Usually he did two runs a day one in the morning and one in the afternoon.

On 25th June 2010 there was 65 tons of waste to collect. The claimant started work at 8.00am as usual. When he arrived at the council depot the respondent's other driver, who was a temporary employee while a permanent staff member was on sick leave, had already left with the load he was to collect. There was a delay in delivering waste to the depot, so the claimant had to wait. It was 11.00am when he got back to the yard. The managing director shouted at the claimant and used bad language toward him accusing the claimant of being late. The managing director told him it was late in the day to be returning to the yard and that the other driver was already on his next collection. The claimant asked the managing director what time did the other man start. The managing director told the claimant he was finished on Friday. He said the managing director lost his temper.

The claimant did not want to be dismissed. He had no difficulty in starting work early but he had to be told. The claimant refuted the suggestion that he was slower delivering skips than the yard manager or the other driver. He added that 9 times out of 10 when he delivered a skip there was nobody to talk to at the delivery site. The claimant accepted that the yard manager had to encourage him along at his work but there was no indication that his job was at risk.

When the managing director dismissed him the claimant was bemused. He liked the job but the managing director was not to be argued with.

The claimant established loss for the Tribunal.

Determination

The Tribunal carefully considered the evidence adduced. The claimant was dismissed without recourse to any disciplinary procedure. He was not notified formally of the issue the respondent had with his work and no opportunity was afforded to him to respond to any issue. Furthermore the claimant was not given the right to appeal the decision to dismiss him.

The Tribunal finds that the claimant was unfairly dismissed for reasons that remain unclear because the managing director did not attend the hearing and did not give evidence. The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The claimant is awarded the sum of €25,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)