

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

**CASE NO.**

EMPLOYEE

UD1785/2010

- *Appellant*

against  
EMPLOYER

- *Respondent*

## UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. P. McGrath B.L.

Members: Mr. W. Power  
Mr. D. Thomas

heard this claim at Dublin on 20 January 2012  
and 23 March 2012

### **Representation:**

Claimant: In Person

Respondent Ms. Cathy Maguire BL instructed by:  
Mr. Hugh Hannon, c/o Colm Costello, Solicitors, Bridgewater House,  
Bridgewater Quay, Islandbridge, Dublin 8

The determination of the Tribunal was as follows:

### **Background:**

The claimant was employed from 9<sup>th</sup> October 2006 to 27<sup>th</sup> January 2010 as a bus driver. In 2008 the claimant was subject to a disciplinary hearing for ticket irregularity but the decision to dismiss the claimant was overruled at an appeals hearing. Other ticket irregularities and alleged rudeness to a customer in 2009 led to the claimant's dismissal which was not overturned.

### **Respondent's Position:**

Two Inspectors (BT) and (RC) and the Services Manager of the Broadstone station (DL) gave

evidence on behalf of the respondent company.

A passenger complained about the rude behaviour she had experienced as driver on the 30<sup>th</sup> April 2009. The customer was alighting the bus with a bag and, she alleged, the claimant was quite rude in telling her to store the oversized bag in the luggage compartment under the bus. She told the claimant that it was not too big and knew the size of hand luggage.

On 30<sup>th</sup> September 2009 the claimant was driving the bus from Dublin to Belfast on the 01.00 a.m. service. BT was standing in a Hi-Vis overcoat at a recessed bus stop area but well lit location. The claimant did not stop to pick up BT even though he had indicated for the bus to stop. BT got into a company vehicle and confirmed with his colleague, RC, that it was 01.21a.m. when the claimant drove past him. The bus was scheduled to depart the Atrium Road at 01.20 a.m. They followed the bus and overtook it on the M1 motorway and parked at the toll plaza.

When the claimant stopped to pay the toll charge BT walked over to the bus. The claimant looked at the witness and opened the entrance of the bus. BT boarded the bus. He printed off an Inspectors ticket and confirmed the time was 01.42 a.m. The Inspectors ticket stated that three tickets had been issued since the last download with a value of € 42.00. BT proceeded with the ticket inspection. A female passenger (Ms. D) produced a single ticket, valued €14.00, from the Dublin Airport to Belfast. Two gentlemen were sitting further down the bus who produced two single tickets from Dublin Airport to Belfast to the value of €14.00 each. There was a four minute gap between the issuing of the second and third tickets. The passenger explained that a ticket was issued by the claimant which he gave to his companion, he assumed it was a combined ticket. When the bus was in motion both the claimant and Ms.D called the male passenger to return to the cab area and get the second ticket. BT retained these tickets when speaking to the claimant.

On arrival to Drogheda Bus Station BT asked the claimant to speak to him privately. He asked the claimant why he had driven past him at the Airport. The claimant replied that he had not seen him. He then showed the claimant the three tickets and asked him why there was a four minute delay between the issuing of the second and third ticket. The claimant replied that the passenger in question had not tendered the correct amount of money at first. He paid the remaining amount a few minutes later and was issued the ticket. The claimant refuted that the passenger in question had originally tendered the correct fare and that he had shouted down the bus for him to collect his ticket. Ms. D confirmed what the male passenger had said. The claimant again disputed it. BT put the claimant's position to the two male passengers who disputed it.

He again spoke to the claimant who disputed it. He asked the claimant would he speak to the male passenger he agreed but remained on the pavement. BT boarded the bus and walked down the aisle to the male passengers. He heard the claimant shout "Mr Checker get off the bus". He approached the claimant in the cab area and asked him not to make a scene. The claimant told him twice to get off the bus. BT left the bus and the claimant proceeded to sit in the drivers seat. He released the handbrake which activated the door to close, he then put the handbrake back on and shouted to BT to give him the tickets. He lurched from the driver's seat towards the witness who put the tickets back in his pocket. The door began to close and caught the claimant's right arm and shoulder. The witness told the Tribunal that he felt threatened. BT rang his colleague RC, he ran to the company car and informed him what had occurred.

The claimant drove the bus but again stopped in the station and walked down the aisle to the two male customers. BT and RC entered the bus by the emergency door. They asked the claimant to calm down. RC spoke to the claimant outside the bus. BT spoke to Ms. D and another passenger Ms. McG who said they felt the claimant had been acting in a threatening manner and felt he was going to strike BT. BT told the Tribunal that he had doubt about the claimant's ability to drive but he said he was okay. He asked the passengers if they continue travelling to their destination with the claimant. They all agreed. He informed the claimant that he would report the matter to the Service Manager (Mr. L). The bus left 20 minutes late.

A hearing was held with claimant and his union representative on November 3<sup>rd</sup> 2009 after the matter had been investigated and a passenger had emailed a complaint regarding the claimant. Three allegations were put to the claimant. Ticket irregularities, intimidating behaviour and customer complaints. The claimant said he had not issued the third bus ticket while the bus was in motion, had not seen BT waiting at the bus stop in the Airport and that he had not shouted at him in Drogheda bus station. When BT's report of the incident was put to the claimant he replied the Inspector was lying.

A customer complaint by Ms. G regarding why he had overcharged her and his behaviour towards her was put to the claimant. He replied that that he had applied the Sterling / Euro exchange rate. He said that he had not been rude to Ms. G, had not shouted at her but had just asked her to put her bag in the boot of the bus. He also said she was lying. The meeting was adjourned to facilitate contact with the passengers involved.

On November 6<sup>th</sup> 2009 he contacted one of the passengers (Ms. McG) in the presence of the claimant's union representative. The union representative asked the Service Manager to contact the PSNI to see if the two male passengers had been removed from the bus. He was informed that they had following intelligences from customs in Dublin Airport.

On November 10<sup>th</sup> the disciplinary hearing was reconvened. The matters were discussed again and the Service Manager (Mr. L) informed them that he would consider all the evidence and notify them of his findings within 7 days. He also informed the claimant and his union representative that *"As this is not the first time Mr. O (claimant) was subject to a disciplinary hearing for ticket irregularity, I outlined that he did not give me confidence that things would improve going forward."*

On November 13<sup>th</sup> a letter was sent to the claimant and his union representative that he was dismissed but could appeal the decision which they did. The decision to dismiss was upheld.

### **Claimant's Position:**

The claimant and his union representative gave evidence. The claimant left Busarus at 01.00 a.m. on September 30<sup>th</sup> 2009 and arrived at Dublin Airport at 01.15 a.m. Two male passengers boarded and he told him the fare was €28.00. He paid the fare and took his ticket. The second male passenger boarded and walked by the claimant. He told him he had not paid for his ticket. The passenger went to his colleague and returned to the front of the bus, paid the balance and was given a ticket.

He had not seen BT signal at the Airport for him to stop. BT approached the bus at the toll plaza on the M1 and checked his ticket sales. The claimant explained that it was against

procedures to let anyone on the bus on the motorway. BT called him aside at the Drogheda bus station and asked about the time delay between the issuing of the two tickets. Regarding the complaint by email by a passenger regarding his tone and manner concerning her luggage he replied that the bag had been too big to be stored inside the bus.

A disciplinary hearing was held over on two occasions and he gave his side of what had occurred. Management decided to dismiss him. His union representative spoke to Mr. L and asked could there not be a mercy appeal due to the claimant's circumstances. He appealed the decision with his union representative. The decision to dismiss was upheld.

The claimant gave evidence of loss.

### **Determination:**

The Tribunal have carefully considered the evidence adduced. The claimant has been dismissed by reason of alleged ticket irregularities together with intimidating behaviour and rudeness to customers.

The respondent bus company relied on the comprehensive evidence provided by two of its Inspectors. They had performed a check on the claimant's ticket takings on the night bus from Dublin to Belfast on 30<sup>th</sup> September 2009.

The Tribunal cannot ever know for sure the sequence of events between Dublin Airport and the Drogheda Toll Station with respect to the providing of two tickets to two men who were travelling together. The company contends the claimant ran the ticket sale through his machine with a view to pocketing the proceeds for the second ticket and a second ticket only issued after the claimant realised that he was at risk of a company Inspector boarding the bus.

The claimant stated there had been a delay in issuing the second ticket as a result of one gentleman not having tendered the correct amount and taking some time to gather together the appropriate funds.

The Inspector who boarded the bus at Drogheda did conduct an on-the-spot interview of the travelling companions which seemed to give verification of the theory that the second ticket only issued after the entire fare had been tendered and only one ticket issued initially.

Of significance to the Tribunal is the uncontroverted evidence why a Ms. McG, who in a telephone conversation conducted in the presence of the claimant's own representative as well as Mr. L responsible for conducting the disciplinary process, described the rude, aggressive and threatening behaviour of the claimant towards the said Inspector.

The Tribunal cannot ignore the independent nature of this evidence and accepts that the respondent was entitled to rely on this evidence as it presented itself. In a secondary way the evidence of Ms. McG backs up the statement of the Inspector who stated that "he felt threatened" to such an extent that he had to phone for his colleague to back him up.

The Tribunal has not been given any reason to believe that the Inspectors reports were intentionally vindictive as the bus driver was not known to the two Inspectors who conducted this impromptu and routine inspection by the Central Revenue Inspection Unit. There were certainly irregularities in terms of the timing of the issuing of the two tickets.

In tandem with the issues that occurred on the 30<sup>th</sup> November 2009 the respondent company also raised a customer complaint which had been made earlier in the year on the 30<sup>th</sup> April 2009.

The claimant recalled the event and stated he had directed that the customer stowed an oversized bag in the luggage compartment. The Tribunal fully accept that the driver had to use his discretion in asking the customer to place a case in the luggage compartment as taking into consideration the health and safety issues had to be of paramount importance. The claimant quite rightly pointed out he would be in greater trouble if he allowed an inappropriate sized bag stay in the passenger compartment if same caused an accident. The customer complaint stemmed from an inconvenience she felt had been visited upon her and her perception of rudeness might quite simply have been the claimant carried out on the obligation required of him in the job.

Returning to the night of the 30<sup>th</sup> November 2009 the Tribunal does not doubt that an unpleasant and heated scene occurred in the bus. Indeed such was the volatility and general demeanour of the claimant that the Inspectors felt obliged to ask the customers if they wished to continue on their journey with the claimant behind the wheel.

In concluding the Tribunal finds that the claimant did engage in intimidating behaviour such how one other member of staff felt threatened and one customer felt he was at the point of hitting the Inspector. The Tribunal further finds that the only reasonable explanation for the claimant's behaviour in Drogheda bus station was the realisation that the Inspectors had found evidence of irregularity in the issuing of tickets.

The claimant's claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)