EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:		CASE NO
EMPLOYEE	*(appellant)*	UD2190/2010
		MN2160/2010
		RP2988/2010

Against

EMPLOYER (*respondent)*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr M. Noone
Mr G Whyte

heard this claim at Dublin on 22nd March 2012, 18th June 2012 and 29th August 2012

Representation:

_____

Claimant(s): Mr Frank Crean BL, instructed by:
O'Hanrahan & Co, Solicitors
Lexington House, 71 Ballybough Road, Fairview, Dublin 3

Respondent(s): Ms Muireann McEnery
Peninsula Business Services (Ireland) Limited
Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

Preliminary Issue:

The respondent's representative contended that the claimant was dismissed on February 23rd 2010 and that the application to the Tribunal was not made until October 11th 2010, which made the claim under the Unfair Dismissals Acts, 1977 to 2007, out of time.

The claimant gave evidence that he received a letter which stated that he was dismissed as of February 23rd 2010. He initiated an appeal through his SIPTU representative. An appeal meeting was scheduled for April 7th 2010, but neither this meeting nor the next scheduled meeting for May 24th took place. The claimant believed that the company had cancelled the meetings. The appeal meeting took place on July 14th 2010. He did not receive any correspondence from the company informing him of the outcome of the appeal. He found out

that the dismissal was upheld after phoning his trade union representative at the end of September 2010.

The claimant went to a solicitor in March 2010 shortly after his dismissal and asked them to make a claim for him. The solicitor wrote to the company in March 2010 seeking the details of the claimant's dismissal. The claimant signed the Tribunal application form on September 4th 2010. He later disengaged the solicitor's firm.

During cross-examination he agreed that he had a trade union representative from the beginning of the process. His trade union representation changed during the process. He disagreed that his side had cancelled the first appeal meeting. His representative told him that there was a problem with the company's Managing Director. He stated that the second meeting may have been cancelled as he wanted an interpreter present at the meeting. The claimant did not get a written result of the appeal. The company could not produce a copy of the letter. The claimant gave evidence on the mitigation of loss.

The then Managing Director of the respondent company gave evidence that he heard the claimant's appeal. He made himself available for all of the meetings but the first two were cancelled by the claimant's side shortly before they were due to take place. He did not cancel any meeting. A different trade union representative was with the claimant at the appeal meeting when it happened.

The Managing Director upheld the dismissal and instructed the HR Manager to write to the claimant. He could not confirm that this occurred as the HR Manager left and many files went missing. He phoned the claimant's new trade union representative and informed her of the outcome within a few days of the appeal meeting.

During cross-examination the Managing Director confirmed that he had not spoken directly to the person who cancelled the meetings. The Operations Director had conveyed the message to him. He did not dispute the claimant's contention that an interpreter's unavailability was the reason for the second meeting being cancelled. He agreed that the internal procedures included the appeal. The last meeting to confirm the dismissal was 14 July 2010.

Background:

The claimant was employed as a mechanic for a cash-in-transit security company. He maintained the security vans and took them on test drives. On one occasion while testing a vehicle after maintenance he left the vehicle unattended with the door ajar in a housing estate while he visited a relative's house. The claimant was dismissed for breach of security procedures.

Respondent's Case:

Giving sworn testimony, PB said that he had been head of security for the respondent for more than three years and that he assessed risks and took corrective action. He was in the role at the time of the claimant's dismissal. He had previously been in the Gárda Síochána for many years.

CCTV footage photos of the vehicle the claimant had used were available to PB. The individual concerned admitted having taken the vehicle home. However, PB wanted all staff to comply with procedure. The Tribunal was then referred to a Polish translation of the claimant's letter of dismissal and, in particular, the last paragraph which stated that the claimant had the

right to appeal the dismissal decision within one week of the said decision.

PB pointed out that there could be access to the claimant's vehicle if the door was open and that the claimant had been dismissed for taking the vehicle home. PB said that a code had to be got from the respondent's control room to shut the van. The door had been left open albeit that there were no valuables in the van. PB said that it was "highly risky" if a vehicle was taken, that "it would be a godsend to any criminal" and that "the environment is too hostile". Asked if an appeal could overturn dismissal, PB replied that the dismissal had been upheld.

At the start of cross-examination of PB the Tribunal was referred to a memorandum of agreement between the respondent and a trade union which included among non-exhaustive grave breaches of discipline warranting dismissal leaving a vehicle unattended when valuables are on board.

When it was put to PB that the claimant had received no training with regard to security, PB simply replied that he did not know about this and that he did not think that there had been valuables on board the claimant's vehicle. Told that the claimant would deny having received certain documentation from the respondent, PB replied that he did not know about this.

It was put to PB that the claimant had received no cash-in-transit training. PB replied that he and LT (the respondent's operations manager) had investigated and that LT had made the decision to dismiss. PB added that "it would be highly unusual to give permission to bring a truck to an employee's home". He admitted that he did not know how long the claimant had spent there but said that permission would have to be sought to go to the toilet. Asked if that was written down, PB replied that it was just a practice but that an employee "could not just go off-road" and that the respondent had to have "strict procedures".

Giving sworn testimony, MJ (the respondent's HR director) said that he had not been employed by the respondent at the time of the claimant's dismissal but that there was documentation on file for all employees. MJ accepted that cash-in-transit instruction was not applicable to the claimant who was a mechanic. Asked what training the claimant did get, MJ replied that the claimant would have received a one-day induction and tiger-kidnapping training. MJ opinedthat no security company would allow a vehicle to be brought home.

Under cross-examination, MJ said that he had seen the personnel file but could not say if the claimant had signed for training. When it was put to MJ that the claimant had received nothing in writing about leaving a vehicle unattended MJ accepted that a driver and a mechanic would get different training. He stated that mechanics would now get training appropriate to a driver but could not speak about the previous practice.

The Operations Director gave evidence that she was notified by the control room supervisor that he had viewed CCTV footage and had seen a security van had been parked in a housing estate with no one inside and the door ajar. This was a breach of security procedure. She instructed that the van return to base. The van was being test driven and should not have been in a housing estate. She notified the Head of Security who carried out an investigation.

When she received the report she called a disciplinary meeting on 23 February 2010 with the claimant and his trade union representative. The HR Manager was also present. She spoke slowly so the claimant, who is Polish, could understand. She discussed with him what he had done wrong. The claimant did not deny that he had left the van with the door ajar while he went into a house. She dismissed the claimant and advised him of his right of appeal. The

witness was not involved in the appeal.

During cross-examination the witness agreed that the claimant had not been notified in advance of which sections of the security procedure had been breached. Sections 17(a) and 17(k) were the points in question and read as follows:

17(a): Deliberate breach of safety regulations likely to cause damage to oneself or other employees.
17(k): Deliberate breach of any security regulations or direction.

No control room staff members attended the meeting. She could not say what security training documents the claimant might have received. All new staff members spend two weeks following a colleague for on the job training.

The control room Relief Supervisor gave evidence. He disputed that the claimant made any phone call to him requesting permission to leave the test route and park in a housing estate. The claimant never told him he was leaving the test route. The witness was present while the control room supervisor observed the van's CCTV and made the call to the Operations Director. Photos from the van's CCTV cameras were provided to the Tribunal.

During cross-examination the witness confirmed that as he was also Polish the claimant often spoke to him on the phone if he had the choice. He was not asked to provide a statement at the time of the incident. There was no phone call from the claimant that day. There was no specific document relating to road test protocol, but basic security procedure was to not leave the van.

The respondent's representative contended at the time of the disciplinary process the claimant did not say that he had made a phone call to the Relief Supervisor and therefore the Relief Supervisor had not been interviewed at that time.

Claimant's Case:

Giving sworn testimony through an interpreter, the claimant confirmed that he had commenced employment with the respondent in early 2008. He worked as a mechanic and he had signed a detailed job description for a national fleet technician. He cleaned and repaired vehicles as well as making decisions as to whether or not a vehicle should be taken out of use. However, he alleged that he had got no training.

The claimant said that the respondent's security policy was for drivers but not for mechanics. He was not told that it was serious to leave a vehicle unattended. After being asked to test-drive a vehicle, the claimant rang a compatriot (GU) and obtained permission to take the van out. For instance, he checked the brakes for fast and slow driving.

The Tribunal was now furnished with a letter dated 18 February2010 from a GP stating that the claimant had been treated for "indigestion (nausea)". The claimant stated to the Tribunal that he had been having medical problems with his stomach. Using his work phone, he spoke to GU who let him stop whereupon he duly did so at his friend's place. He stopped, closed the doors and took the keys. The doors were closed but not locked. He had one key for the ignition and three keys for doors. The master key was only for the ignition. He went to the toilet for ten minutes. He drove back home whereupon TW asked his location and he answered that he was back at home.

The Tribunal was now referred to a letter of suspension dated 16 February 2010 from OH (the respondent's then HR manager) to the claimant regarding the claimant's meeting that morning with LT (the abovementioned operations manager of the respondent) accompanied by AG (the claimant's union representative). The letter stated:

"This meeting was held regarding CCTV pictures of a (respondent) vehicle being brought to an unidentified location on Wednesday 10th February 2010, without authorized permission, and leaving the vehicle ajar (sic) in a public domain".

The claimant told the Tribunal that his problem had not been bladder-related (as suggested in the above letter) but stomach-related. However, he was ultimately dismissed.

The Tribunal was now referred to a 17 February 2010 e-mail from PB (the respondent's abovementioned head of security) to LT stating that PB was satisfied that there had been a serious breach of procedure and security that was blatant and reckless in that a respondent vehicle had been parked in a cul de sac "with its door ajar".

The claimant stated that the key meeting lasted about thirty minutes but that LT had made a decision in about two minutes after leaving the room and returning.

A twice-rearranged appeal meeting finally took place on 14 July 2010. AG represented the claimant who told the claimant that he had never got a letter of result of the appeal.

In cross-examination of the claimant, it was not claimed that the claimant had been issued with a contract in Polish but it was alleged that, according to LT, the claimant could understand English if spoken to slowly.

The claimant stated that all of his vehicle's doors had been closed such that no-one could have had access to the vehicle. It had not been in his mind that anyone could tamper with the van. Unlike the drivers who had separate access he had no access to money.

The claimant denied that he had received health-and-safety training saying that he had just received quick information from a superior. However, it was contended on behalf of the respondent that on 4 February 2008 the claimant had signed documentation which included three paragraphs on health and safety.

The claimant said that he had consulted superiors within the respondent company on all decisions and got permission but was asked to keep it quiet for GU to whom he had been obedient. The claimant stated that he had thought that he would be suspended and that GU would be dismissed.

The claimant stated that PD of the respondent had been his boss and had told him to do the test drive. Asked if PD had given permission for the detour, the claimant replied that he had not been given a route. The claimant denied that he had to say where he was taking the van and said that he could go a number of routes. He stated that he could take the van and that the respondent had known that he had been going on a test drive. The claimant stated that his sister was living with his friends at the home in question.

Asked if he had told the respondent that he had had a toilet problem, the claimant replied that he had had to take three days off.

After the question was asked why meetings did not take place, the Tribunal was told that the respondent had had a problem and that there had been a trade union problem and that there had been a dispute as to whether a solicitor or trade union would represent the claimant. The claimant said that he had solicitors for the 14 July 2010 meeting.

Asked if he recalled the appeal arguments made, the claimant said that he had had no security training and, therefore, should not have been charged with breaching security.

At this point, the respondent's representative submitted that, as the claimant had been working for the respondent for years, it was a breach of procedure to take the vehicle to a private place. It was contended that it was the duty of a mechanic to take responsibility for a Department of the Environment test. The claimant said that he had just had to use the toilet and that he used to do about three road tests every week.

Determination:

The Tribunal finds that the claimant was dismissed on 14 July 2010 and therefore the claim to the Tribunal was made in time.

In regard to the substantive matter the Tribunal finds the dismissal unfair in the circumstances. The person who made the initial complaint to the Operations Manager was not present to give evidence and no statement was sought from this person. The incident with the claimant warranted a warning and there should be a training manual for mechanical staff members on non-operational duties. Having regard to the type of business involved there should be a training manual. Having regard to all the circumstances the Tribunal awards the claimant €30,000 (thirty thousand euro) under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal awards the claimant €1,672.00 (one thousand, six hundred and seventy-two euro) in respect of two weeks' pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Redundancy Payments Acts, 1967 to 2007, was withdrawn during the hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)