

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

EMPLOYEE – *appellant*

CASE NO.

UD1959/2010

Appeal of the Rights Commissioner recommendation in the case of

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr Charles Corcoran BL

Members: Mr M Carr
Mr J Flannery

heard this claim at Trim on 15th October 2012

Representation:

Claimant: Mr Cathal McGreal BL instructed by Hennessy & Perrozzi Solicitors,
Burgundy House, Forster Way, Swords, Co. Dublin

Respondent: Mr Chris Horrigan of Blake Horrigan Solicitors, McKeever House,
4/5 Ushers Court, Ushers Quay, Dublin 8

The determination of the Tribunal was as follows: -

This case came before the Tribunal by way of an appeal by the employee of the recommendation of the Rights Commissioner, reference number r-077075-ud-09/JT.

Respondent's Case

The general manager gave evidence. He has worked for the respondent since 2005. It started as a small family business and has grown to the point where there are now 440 employees. The appellant started in mid-2006 and did not receive a contract of employment. The appellant was employed as a driver at a time when it was not easy to get a driver. Some issues arose with his driving. He was sent home on two occasions because there was a smell of alcohol on his breath. Then there was an incident when a truck he was driving overturned. No disciplinary action was taken regarding these events. When he drove a skip truck his driving was much slower than other

drivers. His final job was to drive a truck collecting domestic waste.

A number of the appellant's colleagues complained that he was not safe to drive the truck. The general manager hoped to rectify the matter informally. He called the appellant to a meeting. A now former employee was also present at the meeting on 5th December 2008. The appellant was not given written notice of the meeting or the agenda and neither was he given a note of the complaints against him. The general manager told the appellant about the complaints. The general manager did not tell the appellant he could bring someone to the meeting with him.

The appellant became irate and walked out before the meeting concluded. He ran out the door and it was clear to the general manager that he did not want to continue. The general manager did not make a note of what the appellant said. The appellant did not contact the general manager again.

The general manager wrote to the appellant on 10th December 2008 enclosing pay, holiday pay and pay in lieu of notice together with the appellant's p.45. Later the appellant contacted the general manager asking for redundancy. The general manager informed him that it was not entitled to redundancy. The general manager did not meet the appellant and could not recall offering him money.

Appellant's Case

The appellant gave evidence. He has driven trucks for 40 years. He never came to work smelling of drink and he would never drink and drive. The truck that overturned had overturned before. He had no discussion of these incidents with the respondent. He was given a verbal warning and fined €15 by the respondent for not having a net over a skip.

When he went driving trucks collecting domestic waste he was paid €1 an hour less. But he had to do it because the general manager told him work was scarce.

The day before his meeting with the general manager, the appellant hit a jeep. He immediately phoned the depot manager and told him. Later he received a text message from the general manager to meet him the next day. He met with the general manager a now former employee and the weigh bridge operator. The general manager said that the appellant hit a wing mirror on a car. The general manager told the appellant that if he told lies they would part company in the near future. No notes were taken at the meeting and the appellant was not advised to take notes. The appellant was not given a copy of the staff handbook. The appellant was told to go home.

Later the appellant phoned the general manager and was told to come to the office. At that meeting the general manager told the appellant that he did not trust him to drive on housing estates. The general manager then left the room and came back giving him a week's notice. The appellant then asked for redundancy but the general manager said he was not entitled. The general manager then shook his hand. The general wrote to the appellant on 10 December 2008 enclosing his p.45. There was no explanation for the appellant's dismissal.

Sometime later the general manager phoned the appellant and asked for a meeting. They met at a truck stop and the general manager offered the appellant €500. The appellant walked out. Later during a phone conversation the general manager offered the appellant €5000.

A friend of the appellant gave evidence that he had never known the appellant to come to work drunk.

Determination

The Tribunal carefully considered the evidence adduced. The appellant was invited by text message to attend the meeting at which his employment was terminated. He was not told in advance that his position was in jeopardy and neither was he given details of the complaint against him. The appellant was dismissed without recourse to any procedures. The Tribunal finds that the respondent did not establish that the dismissal of the appellant was fair.

The appeal against the recommendation of the Rights Commissioner succeeds. The recommendation of the Rights Commissioner is upset and the appellant is awarded the sum of €22,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)