EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:		**CASE NO.**
EMPLOYEE	*-claimant*	UD484/2011
		MN522/2011

against

EMPLOYER *-respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Browne
Ms S. Kelly

heard this claim at Wexford on 5th September 2012

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:

Dismissal as a fact was in dispute in this case.

The respondent is a national and international haulage company. The claimant was employed as a lorry driver and his role entailed collecting loads from a meat factory and delivering to various depots. The Managing Director of the company gave evidence that some verbal warnings were issued to the claimant in relation to damage incurred on both the lorry and the trailer. This was addressed casually a couple of times with the claimant.

However, a final incident occurred in mid-November 2010 when damage was caused to the bumper of the claimant's lorry. It was the respondent's case that this occurred on either 16 or 17 November and that the claimant was then asked to attend a meeting on 19 November 2010. However, it was the claimant's case the accident took place on Friday, 19 November 2010 and that he was subsequently sent a text message that day not to attend for his usual shift over the weekend but that he should attend for a meeting in the office on Monday, 22 November 2010.

It was the Managing Director's evidence that at the meeting he relayed his concerns to the claimant that the incidents were escalating and the fear he had that a serious incident would occur. He informed the claimant that they needed "to take stock," as matters could not continue

and "something needed to be sorted out." When asked to clarify what he meant by this, the Managing Director stated that he meant for the claimant "to take a break" such as maybe taking a few days off work. The meeting ended and the Managing Director subsequently travelled abroad for almost six weeks, departing on 12 December 2010. The claimant sought a P45 in the days following the meeting.

The next correspondence from the claimant was a letter seeking reasons for his dismissal. The Managing Director replied on his return to work in January 2011 stating that the claimant had not in fact been dismissed and that his job was available to him. Attempts were made to contact the claimant a number of times during January 2011 but it was acknowledged that no attempts were made during December 2010. In the industry it is not uncommon for drivers to be absent without reason for periods of time. However, the Managing Director confirmed to the Tribunal that the claimant had no such previous periods of absence during the three years of his employment.

During cross-examination the Managing Director accepted that the company did not have a written record of the verbal warnings provided to the claimant.

When asked if the claimant was to treat the time off as annual leave or as a period of suspension the Managing Director replied "whatever way he wanted" but stated that he had not informed the claimant that his employment was being terminated.

It was put to the Managing Director that the claimant had sent a registered letter dated 29 November 2010 seeking a detailed explanation of the dismissal. The Managing Director was uncertain if this letter was received by the company and in any event the claimant did not receive a response to this letter. However, the Managing Director did respond to a subsequent letter from the claimant's solicitor.

The claimant gave evidence with the assistance of a Tribunal appointed interpreter that the accident occurred on Friday, 19 November 2010 but that he was not responsible for it. Later that day, he received a text message from his employer telling him that his usual weekend shift was cancelled and that he should not attend for work. He was also asked to attend the office for a meeting the following Monday.

At the meeting the Managing Director expressed his unhappiness with the claimant and the number of incidents with the lorry. The claimant stated that while there had been five separate incidents he was responsible for just two of them. The claimant told the Tribunal that he refuted that he was provided with verbal warnings during the course of his employment.

At the meeting the Managing Director said to the claimant that he was no longer working for the company but that maybe in six months' time he could return to work for the respondent when he was more proficient in English. The claimant requested to be retained in his employment for a further six months after which time he was hoping to relocate to Canada. The Managing Director refused this request and said that the claimant's employment was terminated as of that day.

The claimant gave evidence of loss. He has been without work since his employment terminated. He requested a reference from the respondent company but was not provided with it.

During cross-examination the claimant accepted that the company had informed him that his

job was available to him by letter dated 31 January 2011. However, by that time he had started proceedings against the employer and did not want to return to work with the respondent. He enquired about work elsewhere but has only applied for five jobs since the termination of his employment. The five applications were made approximately one year ago.

Determination:

Having considered the evidence adduced at the hearing the Tribunal finds that the claimant was dismissed by the respondent following the accident the previous week. The Tribunal finds that the company took this action not in bad faith but probably in the heat of the moment. The Tribunal is satisfied that the company sought to correct its hand albeit some months later and whereas the Tribunal accepts it was reasonable for the claimant not to want to return to work for the respondent nonetheless the Tribunal determines that the respondent has to be commended for seeking to resolve the dispute.

The claimant failed to convince the Tribunal of any meaningful efforts to mitigate his losses. The Tribunal accepts that the lack of a reference from the respondent would have made it more difficult for the claimant to obtain alternative employment but notwithstanding the Tribunal finds that the claimant made only token efforts to seek employment during the first two or three months after his dismissal.

For the reasons set out above, the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds and the Tribunal awards the claimant compensation in the amount of €5,085.00. As the Tribunal has found that a dismissal occurred the claimant is also awarded the sum of €1,130.00 (being the equivalent of two weeks' pay) under the Minimum Notice and Terms ofEmployment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)