

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.
UD1310/2011

EMPLOYER

appellant

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE

respondent

and

EMPLOYER

appellant

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr. M. Flood
Mr J. Maher

heard this appeal at Dublin on 8th October 2012

Representation:

Appellant(s): The appellant in person

Respondent(s): The respondent in person

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal of the Rights Commissioner Recommendation reference r-097544-ud-10-/TB

Appellant's Case

The appellant told the Tribunal that the respondent commenced employment on the 1st June 2008. His earnings were €26,000.00 per annum and he was in receipt of a meal allowance of €10.00 per day. On Thursday 8th September 2010 the respondent arrived at the warehouse at 4.30p.m. and an employee in the warehouse asked the respondent if he had any returns. The respondent had high value goods for high profile companies in the van which he refused to bring to the warehouse. He refused to offload the vehicle in the warehouse for

safekeeping. A warehouse employee asked the respondent to park his van outside the warehouse and he refused to do so. The next morning at 9a.m. the respondent reported for work and dropped off paperwork. The appellant approached the respondent and asked him why he did not offload the van and he told him it was after 4p.m. He told him the respondent that he had finished work the previous day at 2p.m. The appellant did not ask drivers to attend the warehouse.

If goods were left in a van outside the warehouse the appellant could have lost a major contract and the respondent's actions could have affected three drivers. He asked the respondent to give him a guarantee that he would offload the van. At that point he dismissed the respondent for failure to complete his duties. The appellant did not have a contract of employment or any disciplinary procedures in place. The vehicles were fitted with tachographs and it had CCTV footage in the warehouse. Prior to the 8th September 2010 an issue did not arise regarding off-loading the van.

Respondent's Case

The respondent told the Tribunal that he had a discussion prior to the 8th September 2010 with the appellant about his hours of work. He delivered goods nationwide. One night he received a call from the appellant and he asked him if he would undertake a delivery from Dublin to both Limerick and Cork. The appellant wanted him to start the next day and he felt that he did not have an option. The next time he was asked to do this route he was told to go to Cork first and then go to Limerick. He was then informed that the appellant was getting more work and one driver was assigned to Cork and one to Limerick. He told the appellant he would do the Cork run.

He was given a list of cinemas in Cork to deliver goods to. He was then on two weeks holidays. He was due back in work on Tuesday. He reported for work and was given a delivery for the cinema in Cork on Thursday. The employees were given more and more deliveries to undertake. He left the van in the yard every night in August of 2010 and he returned in the mornings to collect the van. On the 8th September 2010 he returned to the appellant's premises after 4p.m. An employee in the warehouse asked him to bring the van into the warehouse. He put the keys on the table and told the employee that he could bring the van in. The employee told him that he could not drive.

The next morning he reported for work. The appellant asked him why he did not park the van in the yard. The respondent told him that the employee in the warehouse could not drive; he told the respondent that anyone over 25 could drive the van. The appellant told him that the employee was not insured to drive the van. He asked him if he would bring the vehicle in to the warehouse that day. He told him that he would if he was back early and that it would depend on what time he returned. The appellant told him that you might as well go home and that this was not satisfactory. At that point he asked the appellant if he was sacking him.

After this he undertook an eight week FAS course on coach driving. He then undertook the driving test for coaches. He applied for numerous jobs. He obtained employment as a bus driver two days a week on the 25th September 2012 for which he receives €180.00.

Determination

The Tribunal carefully considered all of the evidence adduced.

It is satisfied that there was a considerable procedural deficit present in the manner in which the appellant addressed the dispute that arose with the respondent. It is further satisfied that this was of sufficient significance so as to render the respondent's dismissal unfair and it therefore satisfied and determines that the respondent was unfairly dismissed.

The Tribunal finally considered whether the respondent contributed to his dismissal and is satisfied and determines that he did so significantly. The Tribunal awards the respondent compensation of €5,000.00 under the Unfair Dismissals Acts, 1977 to 2007 and therefore upholds the decision of the Rights Commissioner and the appeal fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)