

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE - *claimant*

CASE NO.  
UD545/2011

against  
EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley  
Members: Mr G. Andrews  
Mr O. Wills

heard this claim at Limerick on 29th November 2012

Representation:

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Claimant(s) : Mr. Laurence Gouchier BL instructed by Ms Julie Anne Devane, Solicitor, 7  
Quinlan Street, The Crescent, Limerick

Respondent(s) : In Person (not legally represented)

### Summary of Evidence

(J) for the respondent company gave evidence that the company was involved in specialized drainage works and the claimant was employed from 2006 until February 2011 as a general operative and a van driver. The company was involved in emergency work and it was essential that employees reported for work. (J) told the Tribunal that the claimant was a good worker for the first three years of his employment. However for the remainder of his employment the claimant's time-keeping was very poor and he regularly failed to report for work on Mondays. The Tribunal also heard evidence that the claimant was involved in a traffic accident while driving a car belonging to the respondent company. (J) gave further evidence that he issued the claimant with verbal and written warnings during the course of his employment. (J) retained the claimant in employment as he was a good worker and he liked the claimant and wanted to look after him. He constantly gave him chances as he was a good worker. (J) accepted that he may not have followed the correct official procedures in dismissing the claimant in February 2011. He told the Tribunal that it was the cumulative effect of the claimant's constant poor time-keeping and absences that ultimately led to his decision to dismiss the claimant.

The claimant gave direct evidence that following his dismissal in February 2011 he did not receive a P45. He gave evidence that he did not receive any verbal or written warnings during

the course of his employment. He did not accept that he had a poor time keeping record. He accepted that he was involved in a traffic accident while driving the company car. He paid back €150 per week to the respondent for the damage to the car. He gave evidence that he notified a person in authority in the respondent company known as (N) that he was taking one week's holiday in January 2011. He gave evidence that during this absence (J) telephoned him and told him that he was sacked for missing two days from work. He believed that he was sacked for no reason. He is not working at present and is currently in receipt of job seekers allowance.

### **Determination**

The Tribunal considered the evidence adduced at the hearing. The Tribunal heard conflicting evidence from the parties in relation to the claimant's time-keeping and alleged constant absences from work. The Tribunal also heard conflicting evidence in relation to the issuing of verbal and written warnings to the claimant. The Tribunal after careful consideration of the evidence prefers the evidence of the respondent but notes that the procedures adopted by the respondent in dismissing the claimant were defective and in that regard finds that the claimant was unfairly dismissed from his employment. However the Tribunal finds that in all the circumstances the claimant contributed substantially to his dismissal and awards the claimant the sum of €500 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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