

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

CASE NO.

EMPLOYEE *appellant*

UD1833/2011

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

EMPLOYEE *appellant*

and

EMPLOYER *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. D. Winston  
Mr F. Barry

heard this appeal at Dublin on 8th February 2013

Representation:

\_\_\_\_\_

Appellant(s): Mr. Richard Grogan, Richard Grogan & Associates,  
Solicitors, 16 & 17 College Green, Dublin 2

Respondent(s): No attendance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

This appeal came before the Tribunal by way of an appeal by an employee against the determination of a rights commissioner reference r-089730-ud-09/MMG

**Appellant's Case**

The appellant told the Tribunal that he commenced employment with the respondent in 2006 as a truck driver. He relayed an occasion in September 2009 when he did not arrive at a site on

time as he got lost on the way. This was the first time he got lost and he had not travelled this route previously. He had a mobile phone but not a hands free kit. He received SMS messages but he was not able to read English so he ignored the messages. He had received a previous warning as he damaged a truck when reversing.

He was given a final written warning on the 25<sup>th</sup> September 2009 and he was invited to a disciplinary meeting on the 30<sup>th</sup> September 2009. As a result of the disciplinary he received a letter dated 1<sup>st</sup> October 2009 informing him that he was dismissed. An appeal hearing took place on the 23<sup>rd</sup> November 2009 and he did not receive an outcome from this.

He furnished details to the Tribunal of his efforts to obtain alternative employment. He has been unemployed since he was dismissed.

### **Determination**

On the uncontested evidence of the appellant the Tribunal finds that he was unfairly dismissed. However the Tribunal is not satisfied that all efforts were made by the appellant to mitigate his loss. In the circumstances the Tribunal awards the appellant compensation of €2320.00 which is equivalent to five weeks gross pay. The Tribunal varies the determination of the Rights Commissioner and the appeal under the Unfair Dismissals Acts, 1977 to 2007 succeeds.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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