

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD1278/2011

MN1389/2011

WT524/2011

Against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr R. Murphy
Mr. J. Dorney

heard this claim at Dublin on the 26 November 2012

Representation:

Claimant(s) : Mr Hugh Hegarty, SIPTU, Liberty Hall, Dublin 1
Ms. Karen O'Loughlin, SIPTU, Liberty Hall, Dublin 1

Respondent(s) : Mr. Alastair Purdy, Purdy Fitzgerald, Solicitors, Kiltartan House,
Forster Street, Galway

Respondent's Case

Former Operations Manager (PO'D) gave evidence of the disciplinary meeting held with the claimant. He reviewed the accident report taken immediately after the incident which stated human error was the reason for the accident. The claimant later at an investigation meeting stated that the accident was caused by a tyre blowout at the junction. At the disciplinary meeting he gave the claimant an opportunity to review both and give the correct reason for the accident. PO'D believed the statement taken immediately after the accident was the correct version of events. He took the decision to dismiss the claimant for gross misconduct in that he as driver with responsibility for a vehicle took a turn in a restricted area which could have been serious or fatal. If the claimant failed to notice the sign of the restricted turn he was guilty of gross negligence in driving without due care. Misleading the

company initially or later his actions amounted to gross misconduct.

PO'D was unaware of any other incidents the claimant was involved in and did not consider any other sanction.

Claimant's Case

The claimant started work at 12pm on the date of the accident. The usual route to the Port via the tunnel was closed forcing him to take an alternative route. The accident occurred at around 12 midnight. He took the turn as he did not see the sign due to another truck obscuring his view, it was dark and he was unfamiliar with the route. He also believed that when the tunnel is closed restrictions are lifted in the area. He also noticed other truck drivers taking the turn on the night. Having arranged for the truck to be towed to the depot he gave a statement to MG at approximately 3am. He was stressed and tired and was not fully sure what caused the accident initially believing it was human error. The following day having spoken to a witness he realised the accident occurred because a tyre blew out.

Determination

The claimant's first version of events indicated that human error was the cause of the accident. The Tribunal concludes that the claimant, by altering this explanation the following day, combined with the breach of the rules of the road contributed significantly to the outcome.

Having said that, the Tribunal feels that the penalty is nonetheless disproportionate to the offence bearing in mind his heretofore clean driving record, the fact that no Garda prosecution ensued, and in particular, the accidental nature of the transgression.

Having considered all the evidence adduced at the hearing the Tribunal finds that the claimant was unfairly dismissed. In the circumstances the Tribunal finds under the Unfair Dismissals Acts, 1977 to 2007 that the claimant be re-engaged from the date of receipt of this determination.

The Tribunal therefore dismiss the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. No evidence was heard regarding the claim under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)