

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**Claimant**

UD1505/2012

against

RP1083/2012

EMPLOYER - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms E. Daly BL

Members: Mr D. Morrison
Ms A. Moore

heard these claims at Letterkenny on 8 February 2013

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:

The fact of dismissal being in dispute it fell to the claimant to show that he had been dismissed.

The claimant had been employed as a truck driver from April 2005. His work involved him in runs to continental Europe and in particular Spain, Poland and the Netherlands. During the course of his work the claimant was involved in seven minor collisions, the last of which occurred on 23 April 2012 in Warsaw. The claimant reported this incident to a director (AD) the same day. On his return to the respondent's depot on 27 April 2012 the claimant presented AD with a written report of this latest collision.

On 17 April the respondent's insurer wrote to the respondent's insurance broker to confirm settlement of a third party claim arising from an incident in the Netherlands in October 2011. This letter states inter alia "we are obliged to inform you that the information relating to the settlement of the claim has been passed to our underwriting department and may affect the client's next renewal terms".

It was the claimant's position that, on 27 April 2012, AD told him that because of the collision of 23 April the respondent's insurers would not allow him to drive the respondent's trucks any more. It was the respondent's position that the claimant flared up and asked if AD was sacking him after being shown the letter from their insurers.

After AD had left the premises the other director (OD) gave the claimant a letter from AD To Whom It May Concern and which states "This is to confirm that due to loss of contract we no longer have any work for the claimant".

It was the respondent's position that this letter was given to the claimant and his colleagues at the same time each year and that their work was seasonal on account of their association with the fishing industry.

It was further the claimant's position that AD's decision to dismiss him was influenced by his refusal to circumvent the truck's tachograph with a magnet and thereby operate illegally.

Determination:

It was contended on behalf of the respondent that the claimant flared up when shown the letter from the insurer. This is not consistent with the claimant waiting to be given the letter stating that there was no work for him. It follows that the Tribunal prefers the claimant's version of events on 27 April and, accordingly, is satisfied that he was dismissed by AD that day. Having carefully considered the evidence adduced as to loss, including the work that the claimant has done since the dismissal and noting that the claimant appears to have worked for only 40 weeks per year during the employment the Tribunal awards €8,500-00 under the Unfair Dismissals Acts, 1977 to 2007 as being just and equitable in all the circumstances.

Claims under the Unfair Dismissals Acts and the Redundancy Payments Acts being mutually exclusive a claim under the Redundancy Payments Acts, 1967 to 2007 does not arise.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)