

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD859/2011  
MN978/2011

Against

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr M. Murphy  
Mr O. Nulty

heard this claim at Mullingar on 18th December 2012

#### **Representation:**

\_\_\_\_\_

Claimant:

Respondent:

#### **Respondent's Case**

The son of the Directors and manager with the respondent (MS) gave evidence. MS was involved in the day to day running of the company and handled any HR issues that arose. The claimant was employed in August 2007 as a bus driver. He was responsible for a particular contract which involved bringing FÁS trainees to their training centre.

A number of issues arose repeatedly with the claimant. He failed to look after his vehicle; he was spoken to at least 2-3 times a week about the need to clean the bus. He damaged a car to the value of €1,600.00. He continued to drive the bus after noticing a vibration which transpired out to be a loose wheel. He was often late. He reversed into a parked jeep. He threw rubbish out the bus window in the yard and was discovered by MS urinating against the bus in the yard. He continually smoked on the bus which resulted in a written warning dated the 5<sup>th</sup> of November 2010 instructing him to improve his standards and overall performance. MS spoke to the claimant about his poor performance on a regular basis. MS felt that nothing he ever said made a difference to the claimant's behaviour. The respondent gave the claimant every opportunity to improve his behaviour.

FÁS contacted the respondent in regard to the claimant's poor time keeping. The students had

been late for their exams as a result of the claimant being late. In order not to lose the contract the respondent had to guarantee that they would sort the problem out. This contract was the respondent's main source of income.

MS did not issue the claimant with a Contract of Employment or keep any notes of the continuous warnings he gave to the claimant. There was a driver's handbook in place but no formal disciplinary procedure.

One of the directors (SS) gave evidence. SS was aware that the claimant had been spoken to about his behaviour on numerous occasions and had been issued with a formal written warning. On the 4<sup>th</sup> of March the claimant came in to the office to collect his wages. SS asked the claimant why he was late again, he did not reply. SS then said 'you didn't turn up a few weeks ago how I know you'll turn up on Monday'; again there was no response from the claimant he just shrugged. SS then said, 'I'm sorry but I have to let you go.' SS had not planned on terminating the claimant's employment and had not discussed it with anyone else; she gave him every opportunity to respond or say sorry but he chose not to. The respondent did not issue a dismissal letter and did not give the claimant notice of the dismissal.

### **Claimant's Case**

The claimant disputes the allegations made by the respondent. He kept the bus clean; he smoked on the bus but never when there were passengers on board. After he was instructed to stop smoking on the bus the claimant stood at the door to smoke. The claimant accepts the accidents occurred. The claimant was late on 3 occasions throughout the duration of his employment.

The claimant never received any warnings from the respondent. The claimant was never given the written warning dated the 5<sup>th</sup> of November 2010. The claimant went into collect his wages as normal when SS said 'very bad news we have to let you go'; the claimant asked 'on what grounds', to which SS replied, 'we've had far too many complaints.' The claimant had never been made aware of any complaints made about him.

The claimant gave evidence of his loss and his attempts to mitigate his loss.

### **Determination**

The claimant was engaged as a bus driver by the respondent involved mainly in transporting the passengers to the FÁS premises. The respondent gave evidence that there were continuous issues with the claimant and that his lateness put the respondent in danger of losing the FÁS contract which was hugely important for the continued survival of the company. The respondent also gave evidence that a written warning was issued on the 5<sup>th</sup> of November 2010 regarding the claimant's failure to meet the standards set out in the driver's handbook. The claimant does not deny some of the issues but disputes ever receiving the written warning of the 5<sup>th</sup> of November 2010.

On the 4<sup>th</sup> of March 2011 the claimant went as normal to collect his wages. The conversation that ensued is a matter of dispute between the parties.

Having carefully considered the evidence the Tribunal determines that the claimant was unfairly dismissed for the following reasons,

- There was a total lack of fair procedures. The claimant was never given a written warning that stated that unless his performance/behaviour improved he risked being dismissed. The claimant was never afforded the benefit of fair procedures in effecting the dismissal.
- The warning which the respondent states was issued on the 5<sup>th</sup> of November 2010 related to failure to meet standards as set out in the driver's handbook but mainly because of smoking on the bus. The claimant denies receiving this warning but even if he did it did not relate to the reason he was dismissed – which was for an alleged refusal to give assurance that he would not be late for work the following Monday.
- The punishment is disproportionate to the crime.

The Tribunal find that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and awards the claimant €15,000.00 as compensation.

The Tribunal award the claimant €684.00 being the equivalent to two weeks' notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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