

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE (*claimant*)

CASE NO.  
UD39/2011  
WT49/2013

Against

EMPLOYER (*respondent*)

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms S. Behan

Members: Mr. P. Casey  
Mr O. Wills

heard this claim at Cork on 25th May 2012 and 15th October 2012

Representation:

Claimant(s) : Padraig J. Sheehan, Solicitors, Village Green House,  
Douglas West, Douglas, Co Cork

Respondent(s) : Mr. Brian Morgan, Morgan McManus Solicitors, The Diamond,  
Clones, Co Monaghan

The determination of the Tribunal was as follows:

#### **Claimant's case**

The claimant commenced employment with the respondent as a Warehouse Manager on the 13 March 2006. He later got a delivery job within the company, with a 7.30am start time and finishing each evening between 5.30pm – 7.30pm. He delivered to various locations, covering 180-230 kilometres per day. The claimant was unassisted in his deliveries.

Towards the end of 2006 onwards, the claimant found that there were constant problems with the vehicles examples included a problem with tail lift and also being told not to switch off the engine on one of the vehicles when delivering, as it was difficult to start. There were problems with one specific vehicle between January to October 2010 in that it was sent at least twice for repair. The shutter kept breaking down and screws kept falling off. The milometer on the claimant's vehicle was dysfunctional between April to October 2010. All defects were reported to the office. It was common knowledge that the vehicle tachometer was not working

and it is a legal requirement to record speed and mileage.

On 10<sup>th</sup> November 2010 when the claimant returned to the yard at 7.15pm, he was asked by the area manager to attend the office. The manager mentioned an incident of “bumping” the claimant had been involved in on the 4 November 2010. The claimant explained he had been tired as he had been working long hours but had not been physically aggressive. He did not receive any prior notification of the meeting. The claimant said he had to deal with insults from other drivers and threatening behaviour towards him. During the period of 2009 and 2010 it was an extremely uncomfortable time for the claimant.

During the meeting with the area manager, the claimant said “I don’t give a flying f\*\*k what the drivers say about me”. The claimant then left the building. The next day on the 11 November, the claimant arrived to work at 7.30am. He was approached by KB, the General Manager of the depot, who asked him to come to the office. The claimant stopped outside the office when he saw JB, the area manager. The claimant felt intimidated and went to walk out and JB tried to stop him.

The claimant went to the vehicle to collect his belongings. The area manager said he just wanted to know what was going on. The claimant said he would speak to the Gardai and decided to walk out.

The claimant was on a flat weekly rate of pay, regardless of hours worked. The claimant stated he was not provided with a contract of employment. He recalls attending a presentation that included the company grievance procedures but he cannot recall the content. He accepted he did not invoke the grievance procedure. It would have been unmanly of him to make a complaint about the behaviour of others. He felt it would have made the situation worse and would fall on deaf ears. He reported faulty vehicles to the office as needed. He did not refuse to drive faulty vehicles as he thought it would jeopardise his job. He denied that being on a flat rate salary meant if he finished at 3pm he could go home, as in reality an early finish never happened. The claimant also denied that his start time was later than others due to the train timetable.

The claimant’s perception of the meeting was that it was disciplinary. He decided to leave as he felt threatened. He did not ring the MD as he thought it best to speak to a solicitor.

### **Respondent’s case**

The area manager, JB, gave evidence and indicated that he would be in the Cork depot usually about once a week or once every two weeks. In relation to the incident of the 4 November 2010 he stated that he received a call from the Depot Manager, KB, on the 4 November saying there had been an alleged incident reported to him by an employee. It was reported that the claimant had “bumped” into a couple of drivers and shouldered one of them.

On the 10 November 2012, JB went to the depot and was informed by employee A that the claimant had knocked a box from his hand. Employee K said the claimant met him with a shoulder. JB went to the claimant and asked for a five minute chat. When JB told the claimant about the report of the incident, the claimant said “it’s none of your f\*\*king business”. When JB told the claimant to calm down he stormed out of the office. JB decided to come to the depot the next morning to see what would happen. He told the Depot Manager, KB, that they would both talk to the claimant.

The next morning when the claimant saw them he said “what the f\*\*k is this about. The claimant walked off and went to the truck to get his belongings. JB asked the claimant to come back as they did not know what the problem was. The claimant said he would be getting the police. The claimant said they all knew what the problem was. He told KB to “f\*\*k off” and kept walking. The claimant did not turn up for work after that.

JB confirmed that he was aware of the company policies and procedures. He wanted to establish the facts and what the problem was and suggested having a chat to establish if there had been an incident. He did not give any notice to the claimant in relation to the chat. He was not aware of any deficiencies in the equipment supplied to the claimant. Each driver enters a daily vehicle check on a hand held scanner. All staff received a contract of employment and a new one was issued to everyone on the 27 August 2010.

### **Determination**

The Tribunal are satisfied that all parties were on notice of both hearing dates and noted that there was no appearance by or on behalf of the respondent at the hearing on the 15 October 2012.

Having carefully considered the evidence adduced the Tribunal could not find any substantial grounds that a dismissal took place in this case. The claimant did not produce sufficient evidence to discharge the onus of proof that he was constructively dismissed.

The claimant did not act reasonably in resigning. Although his working environment was not ideal, it was not such to warrant his resignation. Furthermore he did not exhaust all avenues for dealing with his grievances. Therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The Tribunal also heard a claim under the Organisation of Working Time Act 1997, which said claim while not included on the front page of the application, was referred to in the body of the form. However the Tribunal also disallows this claim on the basis that the individual who replaced the claimant fulfilled the same duties in considerably less time and within appropriate lawful periods. It is noted that the claimant was paid a flat rate of pay and was not penalised if finished in shorter time. Therefore the claimant has not satisfied the Tribunal that a breach of the provisions of the Organisation of Working Time hours occurred.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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