

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE – *claimant*

CASE NO.  
UD603/2011  
MN641/2011

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: Ms J. McGovern BL

Members: Mr T. O'Sullivan  
Mr J. Moore

heard this claim at Drogheda on 25th March 2013 and 26th March 2013

Representation:

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Claimant(s): Mr Christian Douglas BL, instructed by:  
Mr Julian Grant  
Grant & Company, Solicitors, 26 Fair Street, Drogheda, Co Louth

Respondent(s): REP

The determination of the Tribunal was as follows:-

The respondent company operates a coach hire company. The claimant was employed as a coach driver on a scheduled bus route. He was dismissed for gross misconduct for not adhering to the timetable and refusing to carry out an order to return to the coach to the depot.

**Respondent's Case:**

On the evening of Saturday 16<sup>th</sup> October 2010 the family who operate the respondent company were at a function in a hotel. The claimant was scheduled to operate the Bettystown, Co Meath to Dublin route. His first service was 4pm from Bettystown. At 5pm the claimant phoned the Operations Manager from Dublin and informed him that he was taking a 15 minute break. The bus was due to leave Dublin at 5pm. He departed 15 minutes late. When the claimant arrived at Bettystown, at 6.20pm, he phoned the Operations Manager and informed him that he was

going to take a break of 1 hour 15 minutes, which would make him 30 minutes late for the 7pm service. The Operations Director ordered the claimant to return to the yard, but the claimant insisted that he would complete his duties. The Operations Director arranged for a different driver to cover the route, though the next two services would be missed. The claimant was insisting on taking rest breaks listed on the back of the duty roster, but the company's licence for the route was for the service to leave on the hour

The claimant phoned the Operations Manager at 8.40pm and stated that he was in Dublin and would be taking a 15 minute break. He had been due to operate the 8pm service from Dublin. The Operations Director asked his father the Managing Director to phone the claimant. The Managing Director phoned the claimant and ordered him to return to the yard. He also told the claimant to come to a meeting on Monday morning and told him that he could bring someone with him. The claimant said he would finish his break and then return the coach to the yard, which he did. In the intervening period the family were very worried about the claimant and the whereabouts of the bus. They did not have access to the GPS system while at the hotel. The Fleet Manager phoned the Gardaí in Dublin to relate their concerns. The Operations Director phoned an employee who lived near the yard and asked him to check if the bus had been returned. The second time the employee checked the bus was there.

The claimant had worked on the route since February 2010 without any issue. He started with the company in 2008 and there were no issues with him as a driver. According to EU rest times drivers are entitled to a 45 minute break after driving for 4 ½ hours. The route the claimant was on was a roundtrip of less than 100km which meant that a tachograph card (or *digicard*) was not required to be inserted. Breaks were according to timetable. The duty roster estimated the route travel time at 45 minutes and a rest of 15 minutes before departing again. The last pick up on the route was from City North 25 minutes after departing Bettystown. The Operations Director contended that this was an estimate and if the driver got in early he could take a break, but the important time was the departure time. After two hours the driver had a one hour break on arrival in Bettystown around 6pm until the next scheduled service at 7pm.

The claimant went to the Fleet Manager on Thursday 14<sup>th</sup> October to complain about the schedule and said that it was not possible to do it within the time allowed by the duty roster. The Fleet Manager said he would look into it. He checked the *Fleetmatic* system to get the GPS report on the bus. He did not see any problems with the bus route times, but he did discover that the claimant had been speeding on two occasions while returning the bus to the yard. No passengers were onboard. On Friday 15<sup>th</sup> October 2010, the HR officer rang the claimant to invite him to meet at 12.30pm on Monday to discuss his difficulties with the roster. On Saturday 16<sup>th</sup> October 2010, before his shift began, the claimant was issued with a written warning for the speeding incidents.

An emergency meeting was held on Sunday 17 October 2010. There are no notes of this meeting. The claimant was due to work the following afternoon. The Managing Director was due to go abroad on Monday morning. The Managing Director, the Operations Director and the Fleet manager were present. All the respondent's witnesses gave evidence that no decision was

made at this meeting except that the Operations Director and the HR Officer should meet with the claimant the next day.

At the meeting on Monday morning the Operations Director and the HR Officer met the claimant. The notes were supplied at the hearing. The claimant did not receive a copy of the notes at the time. The Operations Director expected the claimant to apologise, but the claimant maintained that he was correct in what he did. The Operations Director decided to suspend the claimant without pay pending an investigation. The company's disciplinary process is the Labour Relations Commission Grievance Disciplinary Procedures. Suspension without pay is considered a disciplinary sanction under this code. It further provides that an employee may be suspended with pay pending an investigation into an alleged breach of discipline. He suspended the claimant without pay due to the seriousness of the situation and the claimant's lack of remorse or understanding for the worry he had caused. The next meeting could not take place until the Managing Director returned from abroad two weeks later. The Operations Director agreed that he suspended the claimant without pay prior to any investigation. The HR Officer informed the claimant of the suspension at the meeting. It was denied that the sanction had been agreed in advance of the meeting.

The HR Officer investigated. She processed the voicemails and emails from passengers. Two passengers came to the Tribunal to verify their emails. The claimant was invited to the disciplinary meeting by letter of 21<sup>st</sup> October 2010 which was written by the Fleet Manager. The letter outlined 10 points to be discussed at the meeting which related to the events of 16<sup>th</sup> October 2010. The first point which related to the morning of 16<sup>th</sup> October 2010 was not pursued due to the absence of the person involved.

The claimant brought his solicitor to the disciplinary meeting on 28<sup>th</sup> October 2010. The Fleet Manager led the questions. The Managing Director made the decision to dismiss at the end of the meeting and informed the claimant. The claimant insisted that he had operated according to the duty roster. The claimant was convinced that the schedule was illegal. The Managing Director considered that he could not let a driver out if he believed that he would not operate to the schedule.

The claimant was dismissed by letter of 29<sup>th</sup> October 2010. The letter from the Managing Director stated that the claimant was being dismissed for:

- 1. The factual position surrounding the events of the 16<sup>th</sup> October.*
- 2. The evidence available to the company of your conduct on 16<sup>th</sup> October.*
- 3. The breakdown and undermining of the relationship of trust as between you in your capacity as an employee and the company as your employer arising from the above considerations which are due to your actions alone.*

There was no appeal available as there was no one more senior to appeal to.

### **Claimant's Case:**

The claimant had been a bus/coach driver for almost 40 years. His employment with the

respondent began in 2008. He operated the coach with a *digicard* inserted which recorded the time spent driving. In February 2010 the company advised him not to insert card anymore. He complained to the Fleet Director that it was not possible to do the route in 45 minutes. He asked a number of times about the roster. He notified the Fleet Director in July 2010 that he had been stopped by a Garda who asked to see the *digicard*. The Garda did not understand why the card was not being used. The Fleet Manager said he would look into it, but the claimant did not consider that it had been dealt with. The claimant considered the duty roster to be illegal but provided no evidence or law to support this assertion.

He wanted to revert to using the *digicard* like the drivers on the Dundalk route and not be bound to the 45 minutes set out on the duty roster. He had a heated discussion with the Fleet Manager about it on Thursday 14<sup>th</sup> October 2010. The Fleet Manager would not change it. He got a phone call from the Operations Director on the morning of Saturday 16<sup>th</sup> October 2010. He told the claimant to collect a written warning from the office for speeding. The claimant received this before starting his shift. He believed he received it because of the heated meeting between him and the Fleet Manager two days previously.

The claimant started his route and picked up passengers at 4pm in Bettystown. He arrived in Dublin at 5.01pm. He phoned the Operations Manager and said he was taking a 15 minute break and said that he was operating to the roster. He left Dublin with passengers at 5.17pm and arrived in Bettystown at 6.25pm. He phoned the Operations Manager and said he was taking a 1 hour 15 minute break. The Operations Manager said he did not understand and that he was not on time. He arrived in Dublin at 8.36pm and phoned the Operations Manager but he did not answer. He received a call from the Managing Director who asked him to return the bus to the yard and to come to a meeting on Monday morning at 9am. He was told he could bring a representative. He finished his break and returned the bus to the yard at 10.35pm. He contended that the Managing Director was the first person to instruct him to return the bus to the yard. He had a missed call from a Garda station on his phone.

At the meeting on Monday morning the Operations Manager took his phone and asked what had happened on Saturday. The claimant stated that he had worked to the roster and that there was an on-going dispute. He was suspended without pay. He was not given an opportunity to put forward his side at the meeting. He contended that the Operations Manager said the decision to suspend him had been made the day before. The claimant was not given an opportunity to respond to any subsequent investigation.

He received a letter inviting him to a disciplinary meeting. The letter contained 10 points to be covered. He was not provided with documentary evidence prior to the meeting or given a copy at the meeting. Emails shown to him at the disciplinary meeting had been copied and pasted and had the senders' names' omitted. He believed that the decision had already been made to dismiss him prior to the meeting. He was informed of the decision at the end of the meeting. His legal representative requested an appeal but none was offered. The claimant gave evidence of his loss and mitigation of loss.

**Determination:**

The Tribunal finds that the claimant was unfairly dismissed. A disciplinary sanction was imposed without any investigation that involved the employee. A lesser sanction of suspension without pay was available. While it is accepted that the company has a flat management structure it is not ideal that the same management were involved at every stage. Furthermore, that there was no option to appeal from this management structure is not acceptable.

In the circumstances the dismissal was unfair. However, the Tribunal is satisfied from the evidence that the claimant contributed significantly to his own predicament. His conduct on 16<sup>th</sup> October 2010 was unreasonable and the Tribunal was not satisfied with any explanation proffered. Accordingly, the Tribunal awards the claimant €3,200.00 (three thousand two hundred euro) as a result of the unfair dismissal.

The Tribunal also awards the claimant €985.50 (nine hundred and eighty-five euro, fifty cent) in respect of two weeks' pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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