

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD1878/2011  
MN1931/2011  
WT759/2011

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. K. T. O'Mahony B.L.

Members: Mr J. Hennessy  
Mr F. Dorgan

heard this claim at Thurles on 13th March 2013

#### **Representation:**

\_\_\_\_\_

Claimant:

Respondent: In Person

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

The claimant was a truck driver with the respondent from January 2009. The claimant was initially employed on a full-time basis but his hours were reduced to a 3-day week from 15 April 2011. Of the 11 drivers with the respondent he was the only employee put on a 3-day week. The claimant's pay was reduced from €12.50 per hour to €11.25 per hour from 05 August 2011.

The claimant had been having difficulties with the respondent as he refused to attend staff meetings on his days off and refused to work unpaid overtime. No disciplinary action had ever been taken against him. The claimant and one of the Directors (SM) did not have a good relationship.

On 12 August 2011 the claimant left the respondent's premises approximately 20 minutes late due to a malfunctioning trailer. The claimant stopped at his house to pick up his lunch on the way to do his deliveries. While there he received a phone call from another director asking why

the truck was stopped; that director spoke to him in an aggressive manner. When the claimant returned to the yard that evening, he was told to park up the truck and to not complete the normal end of day routine (filling the truck with diesel and so on). When the claimant got into his car to leave he was approached by SM, who said to him, 'I'm finishing you up.' The claimant asked was he 'being sacked' and SM replied, 'I wouldn't put it like that but it's not working out'. The claimant understood from this that he had been dismissed. His only contact with the respondent after this was to ask for a letter for Social Welfare indicating that he had been dismissed.

### **Respondent's Case**

The respondent did not offer any evidence at the hearing.

### **Determination**

The Tribunal finds that it was reasonable for the claimant to interpret the words uttered by SM on 12 August 2011 as words of dismissal.

There was a complete absence of any or any fair procedures in effecting the claimant's dismissal.

Under the Unfair Dismissals Acts, 1977 to 2007 the onus of proof is on the respondent to justify the dismissal. In the absence of any evidence from the respondent to do so, the dismissal is unfair under section 6 (i) of the Acts. The Tribunal is satisfied that the dismissal was unfair, both substantially and procedurally. The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant the sum of €24,600 in compensation under the Acts. The claimant had been singled out to work a 3-day week so it is understandable that he did not attend meetings scheduled for days he was not working. The Tribunal is satisfied from the evidence before it that the claimant did not contribute to his dismissal.

The claimant is also awarded the sum of €540.00, being the equivalent of 2 weeks' pay in lieu of notice, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. As no evidence was adduced in respect of the claim under the Organisation of Working Time Act that claim is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)