

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD833/2009

- *claimant*

against

EMPLOYER

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. A. O'Mara
Mr J. Maher

heard this claim at Dublin on 1st March 2010

Representation:

Claimant: xxxxxxxx

Respondent: xxxxxx

The determination of the Tribunal was as follows:-

Respondent's Case

The Tribunal heard direct evidence from AM who was the operations manager, in Summerhill Garage, at the time of the claimant's dismissal. The claimant was employed as a bus driver with the company. AM told the Tribunal that he held a disciplinary hearing with the claimant on 19th January 2009. This hearing was in relation to two complaints from passengers, received in the garage, about the claimant.

Prior to the incidents being investigated at the disciplinary hearing the claimant had been dismissed from another garage in early 2008. That dismissal was appealed. The appeal committee rejected the appeal. The claimant then proceeded with a "mercy appeal" to HR and was given his job back but in a different garage. That was the Summerhill garage and it was the first time that AM worked with the claimant. After another incident, AM dismissed the claimant in August 2008. The claimant appealed that dismissal. He was successful in his appeal and subsequently received a two

week suspension and a final written warning.

On receipt of two complaints in September 2008, from members of the public in respect of the claimant, the claimant was asked to meet with the depot administrator. This resulted in AM holding a disciplinary hearing with the claimant on 19th January 2009. The first complaint was from a passenger who was accused by the claimant of picking a ticket from the floor that did not belong to her. The second complaint was from a passenger who said the claimant detained her on the bus for 3 stops past her required stop. The claimant received a letter with a copy of the two complaints referred to. AM also explained to the claimant that one of these customers had received a letter from the claimant's wife in relation to the severity of what could happen to her husband as a result of the complaint. AM told the tribunal that this did not form part of his decision. AM told the claimant that he would base his decision on all of the evidence in front of him.

Claimant's Case

During direct evidence the claimant (MC) told the tribunal that he did not recall the two incidents alleged in the complaints from customers. MC said that he did recall the incident involving the person picking a ticket off the floor. He said he asked the customer was it her ticket and that she asked him if he was accusing her of something. He said that he was not.

MC said that he was challenging people on their fares because he thought it was part of his job.

In relation to the other incident, where a passenger said she was detained on the bus, the claimant said he did not recall this because it would never happen. MC told the Tribunal that he probably did not hear the bell and she may have been unable to get off the bus until the next stop but did not believe that it was three stops later.

Under cross examination, the claimant said that he had a recollection of somebody not indicating their stop. The claimant agreed that when he moved to the Summerhill garage he was aware that this was his last chance with the company. He agreed that he was dismissed in September 2008 but, on appeal, this was reduced to a suspension. Therefore he was aware of the severity of the disciplinary hearing held in January 2009.

Determination:

The claimant had a series of previous disciplinary hearings related to other issues and had been dismissed on two previous occasions and both had, on appeal, been reduced to warnings. It appears that the reason to dismiss on this occasion was fair and reasonable in all the circumstances. Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

