

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD1970/2009

RP2214/2009

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison  
Mr. M. McGarry

heard this claim in Castlebar on 1<sup>st</sup> June 2011

Representation:

Claimant: Mr Cathal Deacy, John J Gordan & Son, Solicitors, John  
Street, Ballina, Co Mayo

Respondent: Noel Corduff, Corduff Gunning & Co, Solicitors, Tone  
Street, Ballina, Co. Mayo

The determination of the Tribunal was as follows:-

**Respondent's Case**

The claimant worked for the respondent from April 2007 until his employment was terminated on the 9<sup>th</sup> May 2009. The claimant was employed as a truck driver in the respondent's lawnmower and tool hire business and carried out the same type of work throughout his employment. He was a

very good employee and worked five days a week, sometimes six. The claimant was one of three drivers and each driver was given a company mobile. The claimant's phone bills were three times more expensive than the other drivers and he asked the claimant to ease off the calls.

The claimant was consistently late. He was due to start work at 8am but would sometimes arrive at 9:30am. Customers might have concrete ordered for an 8:15am delivery, and the respondent would have to make up excuses to his customers when the order was not delivered on time. The respondent could not fulfil his promises and it was causing problems with his business.

In March 2009 the respondent called the claimant to one side, told him the phone bills were outrageous, and to arrive to work on time. The respondent gave the claimant a verbal warning about the abuse of company phones. On the 6<sup>th</sup> April 2009, the respondent put a written warning into the pay envelope of the claimant.

On Saturday 9<sup>th</sup> May 2009, the respondent arrived into work early to load up a truck. The claimant was due to drive the truck to the customer. The claimant did not turn up for work at all that day. At 7pm that evening, the claimant came into the business with a family member and asked for his wages. The respondent handed the claimant his wages and asked for the company phone and fobs and said to the claimant no more, that's it. A few days later the claimant handed in the phone and fobs and was given his P45.

### **Claimant's Case**

The claimant started working for the respondent at weekends and covering holidays for a number of years. In April 2007, he met with the respondent and was given a full time position. He had his own mobile phone and the respondent was giving him phone credit to pay for business calls. Any personal calls he made were to his girlfriend when he was working late.

The claimant was working long hours, from 8am to 8pm or even to 11:30pm. He was only late for work after working late the previous night. This happened once or twice a week at most. When he arrived into work late, the respondent would look at his watch but never spoke to him about it. He had a few discussions with the respondent about the phone bill and the lateness, but he was never given a warning, written or verbal.

On the Friday 8<sup>th</sup> May 2009, he tried to telephone the respondent without success. He sent a text to the respondent to explain he would not be in on Saturday 9<sup>th</sup> May. When he arrived into the business on the evening of Saturday 9<sup>th</sup> May, the respondent told him, that's it, I have to let you go. He was shocked by the respondent's response, as the business was quite busy.

### **Determination**

Having carefully considered the adduced evidence the Tribunal finds that a summary dismissal took place on the 9<sup>th</sup> May 2009. The dismissal was effected without any, or fair procedure. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and in the circumstances the Tribunal awards the claimant €2000.00 as compensation.

Accordingly the claim under the Redundancy Payments Acts, 1967 to 2007, must fail. In determining the amount of compensation payable, the Tribunal had regard to the efforts on the part of the Claimant to adopt, or avail of all reasonable measures to mitigate his financial losses

attributable to his dismissal.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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