

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD320/2005

against

2 Employers

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Halpin B. L.

Members: Mr J. Walsh
Ms. K. Warnock

heard this claim at Cavan on 9th February 2006
and 26th January 2007

Representation:

Claimant(s) : Mr. Andrew Wiseman, Andrew Wiseman & Co., Solicitors, 60 Anne Street,
Co. Louth

Respondent(s) : Steen O'Reilly, Solicitors, 31/34 Trimgate Street, Navan, Co. Meath

The determination of the Tribunal was as follows:-

Respondent's Case

The General Manager (GM) gave evidence. She explained that her job involved Human Resources, recruitment, sales and the general overseeing of the respondent's business. She explained that the claimant had been given a copy of the company handbook and had signed for it.

On Sunday January 23rd 2005 she was overseeing the cash register area. A staff member (known as R) asked to speak to her and they went into the office. R said that "everyone knew" what was going on. Later that night the witness checked the CCTV footage of the previous day. She saw the claimant go behind the deli counter, take some sirloin steak, bag it and weight it under the title of 'chuck and neck'. He then put more meat into the bag but did not re-weight it. The witness told the Tribunal that the claimant would often come into the shop on his day off, go behind the deli counter and weight some meat on the wrong weighting scales. This was unhygienic. The claimant also never worked on a Sunday. It was company policy that staff did not serve themselves.

The following day she told the claimant she wanted to have a meeting with him, she would have a witness present and asked would he require one also. He declined. She asked about the incident of the sirloin steak. He told her the meat was at home and he would bring it back in. She told him that

she could dismiss him and could seek legal advice. He left. One week later the claimant rang looking for his P45 and any monies owed to him.

On cross-examination the witness explained that R had informed her that the claimant was always carrying out the act of weighing meat for himself under the wrong title. R told her that “you knew by the bag” It was very heavy and double bagged. When asked, she said that she had informed the claimant about one hour before that she wanted to meet with him. She said that she had spent considerable time going through the CCTV footage. When asked, she said that she had told him that she could either dismiss him or that she could go down the legal route if he wanted. She said that she had not wanted to “jump the gun”; it was a very serious issue and had to be dealt with. The witness told the Tribunal that she had been told the claimant had been observed behind the counter on his day off. She had viewed this CCTV footage also. The witness said that she never asked the claimant to return to work.

When asked by the Tribunal the witness said that she felt she had carried out a full investigation before meeting with the claimant. The witness stated that she had never formally dismissed the claimant but that he had breached company policy.

A staff member (known as R) gave evidence. She explained that she was employed as a till operator. On the day in question the claimant came to her till to make a purchase. The bag of meat was priced over €2.00. She asked the claimant was he doing himself some “special offers”. He smiled. She observed the GM close by. When the claimant left she asked to speak to the GM. They went into the office. She told the GM what had happened. When asked by the GM how she knew it was wrong, she replied that she was familiar with the product and the bag had weighed four times what it was priced. She said that she could see through the bag and was 100% satisfied that it was steak.

On cross-examination the witness stated that the meat had been double bagged. When asked she stated that she could not comment on any other incidents that may have occurred in the past with the claimant. When asked by the Tribunal the witness stated that if meat was double bagged she could not tell if it was round steak or sirloin. She said that even if the meat in the bag was mince it was still under priced for the weight it contained.

On the **second** day of the hearing the claimant gave evidence. He explained that he had previous experience as a butcher in other supermarkets before joining the respondent company.

The claimant refuted the evidence given by the GM and the other witness on behalf of the respondent in respect of the two incidents. He again viewed the two incidents on video already viewed by the Tribunal. In respect of the Sunday he was on leave, he agreed that he had gone behind the counter on his day off to serve himself. Another staff had done this also. He stated that he had used the butcher’s scales to weigh his goods because either the other scales were not working or the scales used had an “open item “ button.

In respect of the second incident, he explained that he had taken some meat (for his own consumption), bagged it and weighed it and brought it over to the butcher’s block. He said that he could have brought it over to the butcher’s block because there could have been a spillage. The following Monday he arrived for work at 8 a.m., he was told that the GM wanted to see him in the office at around 12.30 p.m. He was only given minutes notice. He stated that he thought the minutes of the meeting submitted by the respondent to the Tribunal were a fair account but disagreed that he was afforded a representative before the meeting and did not know prior what the

meeting was about. He stated that the GM had told him that he was dismissed at this meeting. He was never given a copy of any handwritten notes of this meeting and only received a typed copy at the first day of this hearing. He explained that a note of other matters discussed were missing from these notes including a discussion of his leave taken in December 2004. At this time there was a problem of him taking leave but this was sorted out with the owner of the respondent company.

The claimant told the Tribunal that he received a call from the Gardaí some time later concerning shoplifting but he was never prosecuted. He explained that he had been offered a sum of money if he withdrew his claim but this offer was later withdrawn when the video footage was viewed.

The claimant gave evidence of loss.

On cross-examination the claimant refuted that he had put more meat in the bag. When asked, he stated that he had not closed the bag, as was normal practice, at the weighting scales. When asked, he stated that he had read the company handbook and had not got any receipts signed by the GM for his own purchases straight away. No one done this. He also stated that the grievance procedure had not been read to him at the meeting of January 24th 2005. When put to him he said that although he told the GM that he could bring the meat back into the premises, he could not as it had been cooked and the majority was eaten over the previous weekend. He explained that the meeting had ended with him and the GM arguing over which solicitor either could engage.

When asked by the Tribunal the claimant said that he did not feel the respondent carried out a proper investigation. The claimant stated, when asked, that the relationship declined with the GM after the incident with his leave in December 2004.

Determination

The Tribunal has carefully considered the two days of evidence presented. The onus is on the respondent to show that the dismissal if effected was fair and reasonable in all the circumstances. However, the Tribunal notes that the respondent lacked in its responsibility in reminding the claimant of the section of the company handbook which referred to disciplinary procedures and the right to appeal. The Tribunal finds that the claimant's account of what happened in respect of the incidents was incomplete and lacked creditability.

Accordingly, having regard to above this dismissal was not unfair.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)