

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee

CASE NO.  
UD263/2006  
MN148/2006

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. R. Prole  
Ms. R. Bergin

heard this claim at Dublin on 24th July 2006

Representation:

Claimant(s) : Ms. Annette Healy B.L. instructed by Ms Elaine Hickey, Solicitor,  
Eugene Smartt, Solicitor, Newlands Retail Centre,  
Newlands Cross, Clondalkin, Dublin 22

Respondent(s) : Mr. Tom Smyth, Tom Smyth & Associates,  
Human Resource Consultants, 41 Halldene Drive, Bishopstown, Cork

The determination of the Tribunal was as follows:-

#### **Respondent's Case:**

The first witness was the owner of the respondent company. He told the Tribunal that he ran a supermarket/post office and employed approximately thirty-three people. The claimant was employed as the manager of the delicatessen. There was an incident between the claimant and a colleague Ms A on the 29<sup>th</sup> September 2005. Ms A came to the witness and said she was going to leave. The claimant had an argument with Ms A regarding the use of the coffee machine. Ms A said that she was only getting hot water from it and there was no need for the claimant to shout at her. After a few minutes, the argument settled down and the two agreed to work together as a team. Ms A told the witness that the claimant got coffee from the machine herself every day. This allegation prompted the witness to ask the manager (AF) to investigate the claimant.

The witness invited the claimant to a meeting on Monday 10<sup>th</sup> October 2005. He had a list of incidents that he wished to question the claimant about. He asked the claimant to come to his office at 2pm and bring a witness with her. The witness, AF, a lady from the cash office, the claimant and a colleague were present at the meeting. The witness presented the claimant with the list of incidents (such as purchasing items from the delicatessen at discounted prices and helping herself to coffee from the machine which was not permitted)

and asked for an explanation. He took a serious view of the situation and told her that she would be suspended until she gave a reasonable explanation for these incidents. The claimant told him that she couldn't explain them and she was sent home. The witness arranged a follow-up meeting for the following Wednesday at 2.15pm. On that day, the claimant attended with a witness and when asked to explain the incidents said "everyone does it". The witness had never heard of any of this until the day of the incident with Ms A. The claimant was provided with copies of the CCTV footage of the incidents, the subject matter of the investigation, and was told that her behaviour was unacceptable. The explanations given by the claimant were unsatisfactory and the witness told her that she was being dismissed for gross misconduct and breach of trust.

Under cross-examination, the witness told the Tribunal that he had not told the claimant that she could "help herself" once she didn't take advantage. There were tea and coffee facilities provided in the staff canteen at no charge for all the staff. The coffee machine in the delicatessen was for customers and staff could purchase it if they wished. The witness accepted the claimant's explanation for one of the incidents and admitted anyone could make a mistake, but that did not account for the remainder. The claimant was in a position of responsibility and should have known the rules regarding payment and the witness felt that he had given her adequate time to answer the allegations. Her behaviour was totally unacceptable to the witness. The witness had refused a pay rise for the claimant but her request for the pay rise had nothing to do with his decision. He had received complaints from the claimant regarding Ms A's behaviour. He had also received complaints regarding the claimant's behaviour towards Ms A. These had no connection to the dismissal. The claimant had been given the staff handbook containing the disciplinary procedures when she commenced employment with the respondent.

The second witness for the respondent was the store manager (AF). He told the Tribunal that everything must be paid for by all employees including himself. He was the one who searched the CCTV tapes for incidents concerning the claimant. He noted all of the incidents and did not notice any incidents relating to any other employee. The witness brought the Tribunal through an itemised list of incidents. At the first meeting, AF presented a list to the claimant of five incidents. At the second meeting the claimant said that everyone was allowed to do it and it was a perk of the job.

Under cross-examination, AF disputed the fact that employees were permitted to discount purchases or have any item free. The claimant had offered an explanation for her actions at the second meeting by saying that the owner had told her it was allowed once she didn't take advantage. AF had only observed the claimant's behaviour on CCTV. When he recruits new staff, he always emphasizes the fact that everything on the shop floor must be paid for.

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

The claimant gave evidence. She told the Tribunal that she had worked for the respondent as manager of the delicatessen for two years. She had a conversation with the owner shortly after commencing employment about the position regarding food items. He had told her that he didn't mind anyone having lunch once they were not taking advantage. She paid for lunch sometimes because she knew the shop had to cover costs and she didn't want to take advantage. Other colleagues including members of management did the same. She didn't see the behaviour as fraudulent. She never tried to hide the fact and did it quite openly. On the day she didn't pay for her groceries (21<sup>st</sup> September), she had a domestic situation and simply forgot. She had apologised for that and felt quite embarrassed about it.

On some of the occasions where she had discounted her purchases, she told the Tribunal that it was related to the food hygiene regulations. The food was going to be discarded due to failing to meet the strict temperature requirements so she had it for her lunch instead of throwing it out. At the first disciplinary meeting she was presented with a list of allegations and she was shocked and “blown away”. At the second meeting, she was embarrassed and humiliated. Her differences with Ms A related to tea-break times and her refusal to carry out instructions. Ms A was abusive to the claimant in front of other colleagues and the claimant felt undermined. The claimant felt that her dismissal was related to this.

The claimant had asked for a pay rise. She said that it was normal to have one every six months. The hourly rate increased by eighteen cents as a result. The claimant then gave evidence of her loss to the Tribunal.

Under cross-examination, the claimant said that she was responsible for maintaining the stock and hygiene requirements of the coffee machine. The claimant had been trained in all of the food hygiene requirements.

### **Determination:**

The respondent was the owner of a supermarket/post office and employed approximately thirty-three people. The claimant was employed as the manager of the delicatessen.

As a result of an unrelated incident involving another employee and the claimant the respondent commenced investigating allegations that the claimant was purchasing items from the delicatessen at discounted prices and helping herself to coffee from the coffee machine which was not permitted.

The claimant was invited to a meeting on Monday 10<sup>th</sup> October 2005 and asked to explain the incidents in question. The respondent presented the claimant with the list of incidents (such as purchasing items from the delicatessen at discounted prices and helping herself to coffee from the coffee machine). The respondent, rightly in the view of the Tribunal, took a serious view of the situation and told the claimant that she would be suspended until she gave a reasonable explanation for these incidents. The claimant told him that she couldn't explain them and was sent home. The respondent then invited the claimant to a further meeting the following Wednesday 12<sup>th</sup> October 2005. At this meeting the claimant was provided with copies of the CCTV footage of the incidents in question. When asked to explain the incidents the claimant said “everyone does it” as an explanation for her actions. She also said that the owner had told her it was allowed provided “she didn't take advantage”. The respondent was not satisfied with the explanations given by the claimant and dismissed her for gross misconduct and breach of trust.

The claimant, in her evidence to the Tribunal, repeated the explanation she had given to the respondent at the meeting on Wednesday the 12<sup>th</sup> day of October 2005 that “everyone does it” i.e. purchasing items at a much discounted price and taking coffee from the machine. She also gave evidence that she paid for lunch sometimes because she knew “the shop had to cover costs” and “she didn't want to be taking advantage”. She also gave evidence that other colleagues including members of management did the same. She didn't see the behaviour as fraudulent. She never tried to hide the fact and did it quite openly. On the day she didn't pay for her groceries (21<sup>st</sup> September), she had a domestic situation and simply forgot. She had apologised for that and felt quite embarrassed about it.

On some of the occasions where she had discounted her purchases, she told the Tribunal that it was related to the food hygiene regulations. The food was going to be discarded due to failing to meet the strict temperature requirements so she had it for her lunch instead of throwing it out. At the first disciplinary meeting she was presented with a list of allegations and she was shocked and “blown away”. At the second meeting, she was embarrassed and humiliated. She also gave evidence that she believed that her dismissal was related to the dispute which she had with another staff member. In response to a question from the Tribunal the claimant could not say which days, or how many times, she took food at discounted price or without paying for it at all.

The Tribunal has to decide whether or not the dismissal of the claimant was unfair. In doing this it must apply the test of reasonableness in respect of the extent of the enquiry carried out by the respondent prior to his decision to dismiss the claimant. It is the view of the tribunal that the respondents carried out a reasonable enquiry. The claimant was made fully aware of the allegations and complaints, against her, which formed the basis of the proposed dismissal. The claimant was shown CCTV of her taking items from the store either without any payment or at a discount chosen by the claimant but, in any case, without the permission of the respondent. The claimant had an adequate opportunity to deny the allegations and to explain the circumstances surrounding the incidents before the respondent took a decision to dismiss her. She was advised of her entitlement to bring a colleague with her to the meeting on Wednesday the 12<sup>th</sup> October 2005 and in fact did bring a friend to the meeting.

After proper investigation the respondent took the decision to dismiss the claimant for the unauthorised taking of goods belonging to him.

It is not the role of the tribunal to establish an objective standard in relation to a particular dismissal but to ask whether the decision to dismiss came within the reasonable responses that an employer might take having regard to the particular circumstances of the case. The Tribunal believes that the respondent investigated the matter properly and having regard to all the circumstances there were substantial grounds justifying the dismissal within the meaning of Section 6 (1) of the Unfair Dismissals Act 1977 and that the dismissal came within the band of responses which a reasonable employer might take in the circumstances.

Accordingly the Tribunal determines that the dismissal was not unfair and therefore dismisses claims of the claimant under the Unfair Dismissals Act 1977 to 2001.

As no evidence was adduced under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, the claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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