

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD642/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L
Members: Mr P. Pierce
Ms M. Maher

heard this claim at Dublin on 9th February 2007
and 12th April 2007

Representation:

Claimant: Ms Karen Smullen, SIPTU, Liberty Hall, Dublin 1

Respondent: XXXX

The determination of the Tribunal was as follows:

Background:

The Respondent in this case is an Insurance company.

The Tribunal heard evidence from a witness of the Respondent. He worked for the Respondent for twenty-four years. He was a district inspector and then a sales manager. At a later time he was responsible for managing the Home Service Representatives or Home Service Agent (HSR's). The role of a HSR was to call in person to the policyholders. The HSR's core duty was to collect monies from the policyholders. The HSR's then input the amount of cash that they collect from each policyholder into a premium receipt book (PRB), which the policyholder kept. They then enter it into their own collecting book a "round book". Both books should tally. The cash that the HSR has "in their pocket" should tally with the round book. The cash is later put into a bank. The witness outlined the definition of the HSR in the contract that was opened to the Tribunal.

After 2002 the company introduced electronic round books (ERB's) into the system. This was because of computerisation, administration and progress in general. It calculated arrears for the HSR and therefore reduced the workload for them.

The witness explained that if a HSR omitted to enter the monies taken from a policyholder into the ERB then “he would have excess money in his pocket, excepting if he was using a float in the beginning”. The HSR would be aware that the excess money was a policyholders money and would have to try and “think back” to ascertain which policyholder and if he could not he should bring it to the attention of the managers.

The witness explained that he had only experienced four or five situations like this in twenty-four years. The people involved were brought through the disciplinary process and “no two cases were the same”. The witness told the Tribunal, “if found in similar circumstances to this then they would be dismissed”. He also explained that the Claimant should have brought to the attention of his field supervisor (FS) that discrepancies were occurring and the FS would help to sort out the situation and let management know of the situation. They advised the HSR’s not to mix their own monies with that which they collected and if they had other money it was to be a float. They audited the Claimant’s books for a forty-three week period and found discrepancies for twenty-eight of those weeks and fifteen weeks had no discrepancies. This witness said told him that the Claimant knew how to remit monies, as he was successful for fifteen weeks.

The Claimant appealed his dismissal to him and he upheld the dismissal, “because there was discrepancies in excess of €3,000.00 and the core responsibility of the HSR is to collect money and give a receipt and to remit the money”.

The Tribunal heard evidence from a witness for the Respondent (Mr.O’R) who was a trainer for the ERB devices and part of the implementation group for the ERB. He explained how the employees were trained in the usage of ERB’s and assessed at the end of training.

The Tribunal heard evidence from a field supervisor (JW). He told the Tribunal that he was the Claimant’s field supervisor for a year about four years previously. His evidence was that the Claimant’s main problem was lodgement of monies and his collection routine. The Claimant worked late on Fridays and he would have to lodge monies on Saturdays therefore they made an, An Post lodgement book available for the Claimant.

The witness wrote to the Claimant in November 2003 after a formal disciplinary hearing that took place on Wednesday 5th November 2003. The letter was to confirm in writing to the Claimant that he was being given a formal verbal warning.

On the second day of hearing the Respondent’s Representative told the tribunal that it was no part of their case against the Claimant that he had taken money from the respondent for his own use. The Tribunal heard evidence from the Claimant. He told the Tribunal that circa 1992 a friend of his informed him of work available as a temporary insurance agent for the Respondent company. He worked for six months as an agent/temporary collector. After that he worked for a further month. And for the next five years or more he worked as an agent. He was paid every two weeks on a commission basis; he did not get paid a wage.

In 2000 he and others were told that their work as agents was finished. They were told that if vacancies arose they would be interviewed. He was interviewed and successful in obtaining a permanent role as a collector/agent. He opted to work in the Blanchardstown area. At this time they manually recorded information into handbooks. The first year went quickly and his supervisor at the time was based in Drogheda. He met that supervisor only a few times.

In 2003 he was due to go on a training course for the new electronic recording system ERB’s. He

told his supervisor that he could not attend the training, as his mother was terminally ill. His mother passed away after this.

On his return to work he had to go to Cork for the training course, as there were no more courses in Dublin. Also around this time the Euro currency was being implemented. He explained that the ERB's were linked to the Liverpool base. He had difficulty re-charging his first ERB. During this time his field supervisor was (JW). He explained the difficulties he had to JW: that he had problems trying to charge the ERB and that the electronic line would not connect properly. At one time he was without an ERB for four days. His supervisor obtained new batteries for him. Eventually he got a second new ERB machine.

He told the Tribunal that he thought he was managing well with the system. There was a time when he approached JW and told him that he must have inputted wrong information. He explained to JW of his arthritis or about the onset of arthritis. Around this time he and others were asked or directed to call to many more houses; "One hundred extra calls and I said it to Jimmy and he got it down to forty to forty two". He told the Tribunal that he felt he did his job honestly, that he had difficulty with his machine and that he would always "sit down"(to work or check work) after work in the evening.

In or around June 2005, a friend of his passed away. His sister died in June 2005. He returned to work in August and he had a new supervisor, (MP). The company were aware of his bereavement, as he had to travel to Cork for the training course. He was trained in the new system in October and the implementation of the new system was not until the New Year.

In August 2005 his supervisor, MP, phoned him to tell him that the auditor wished to see him. The auditor called to house with him to do a "quick audit". He then said that he would do a full audit. MP told him to collect a number of customer books to bring to the office. He did not know that disciplinary procedures were to be taken against him; Contrarily, he spoke to MP on 30th November 2005 and she told him that if he collected another weeks collection then he would be in the "topthree" and in a draw.

On Thursday 01st December MP phoned him to ask him to call to the office. He told her that it was raining very heavily and he had to collect the next days collections. He also told her that the traffic from Blanchardstown to Clondalkin would be bad at that time. She told him that it would be ok if he came in the following morning of Friday 2nd December.

He called to the office and MP told him they had to meet with her immediate superior, (NmcC). The Claimant and MP met with NmcC. NmcC asked him how the ERB machine was. He asked him if he thought that he needed re-training. The Claimant told him that maybe he might and asked why. NmcC and MP left the room. MP returned and asked him how much he had collected and he told her €1,300.00, and that he had still to lodge the money. She asked if he would do so and he went to the bank and lodged / gyroed the money.

He returned and gave the giro to MP. NmcC returned and told him that he was formally suspending him for two weeks. He did not say if it was with or without pay. NmcC told him that he would have to take the keys to the company car. It was raining heavily and MP asked him if he wanted her to make a phone call. After a few minutes he left to go to the toilets where he washed his face.

It was the first he heard that he was being disciplined. He was not informed in advance of it nor

was he told to get a representative, “just to bring my machine in”. If he had been made aware it was a disciplinary situation he would have brought his union shop steward with him. He had previously received a document in August 2005 from the company regarding an inspection report of his work and recommendations.

When asked the Claimant told the Tribunal that he had difficulty trying to concentrate with the ERB machine and a “fear of it”. He did not intentionally make a mistake. He was suspended for two weeks and this “dragged on into the new year, to 20th January”. On 20th January 2006 the disciplinary meeting took place.

Determination:

The Tribunal have carefully considered the evidence in this case. The Tribunal are unanimous in deciding that the Claimant was unfairly dismissed. The manner in which this dismissal took place was in total disregard for the procedures that could be considered reasonable in all the circumstances. The Claimant was not told that he was to attend a disciplinary meeting and indeed was suspended without pay although this was corrected later. The actual dismissal and the procedure of dismissal were unfair.

The claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds. The Tribunal note that the Claimant’s preferred remedy is re-instatement, however, the Tribunal determines compensation to be the most appropriate remedy in all the circumstances. Accordingly, the Tribunal awards the Claimant the sum of €40,000.00, as compensation as being just and equitable having regard to all the circumstances

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)