

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

CASE NO.

UD16/2007

MN8/2007

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. L. Ó Catháin

Members: Ms. M. Sweeney
Mr J. McDonnell

heard this claim at Cork on 13th June 2007

Representation:

Claimant: Lisa Lingwood BL instructed by Brian Baily of Lavelle Coleman Solicitors,
51/52 Fitzwilliam Square, Dublin 2.

Respondents: Fergus Long of Ronan Daly Jermyn Solicitors, 12 South Mall , Cork.

The determination of the Tribunal was as follows:-

The fact of dismissal was accepted.

Respondent's Case

A director of the respondent company gave evidence. He employed the claimant. The claimant had relevant experience and he had been in business with a partner.

The witness and the claimant managed the business day to day. There was a system in place for dealing with money. The till was cleared out regularly. Money was put into an envelope and the envelope was put into the safe. At the end of each day's four shifts the information on mobile phone top ups, credit card sales and cash sales was entered onto a spreadsheet. Filling in the spreadsheet was the only part of the procedure not automated. Two people, other than the witness and the claimant, did the reconciliations for a time.

In 2006, the witness had personal difficulties and relied on the claimant more than usual to run the business. The witness went on holidays in mid July 06. He brought the books with him, to bring them up to date. He discovered a shortfall of about €14k. He arranged a meeting with his accountant to seek an explanation of the shortfall. The possibility of a software problem was considered. In August 06, he found a cash shortfall for July. There was no cash shortfall for August 06. Following the meeting with the accountant, the witness was satisfied that there was no problem with the computer. The problem was with the spreadsheets. In October a shortfall was discovered for September, at that time only himself and the claimant had access to the system.

The witness arranged a meeting with the accountant and the claimant. He came to the meeting with a letter of suspension already drafted. The claimant could offer no explanation for the shortfall. A further meeting was arranged for 23rd November 2006. The claimant did not attend but he did submit a medical certificate. At that stage the witness had lost trust in the claimant and terminated his employment by a letter dated 27th November 2006.

The claimant did not have a contract of employment. There was no grievance procedure in place. The claimant received no notice of the first meeting.

The company accountant gave evidence. When he was consulted about the shortfall, his advice was to go back to the daily records, check out the documents.

He was present at the meeting with the claimant. He was surprised that the claimant did not ask to see the spreadsheets or ask any questions about the problem. The claimant was not accused of anything.

Claimant's Case

The claimant gave evidence that he commenced working for the respondent in August 2004. He assisted with the day to day running of the business, ordering stock, balancing the books, looking after staff. He usually worked from 8.00am to 5.30 or 6.00pm.

In July 06, the director sent him a text saying €14k was missing. The claimant did not know anything about it. He thought there might have been a problem with the computer.

He said in evidence that he was called to the office and asked to explain a discrepancy of €10,080 for August 06. He could not explain the discrepancy. He was given a letter of suspension and asked to reply within a week.

He sent a text message to the director that he could not attend the meeting on 23rd November 2006. He got a cert from his doctor. His solicitor wrote asking for documents but never received any.

The claimant did have financial pressure; he borrowed money from the director and from another staff member.

The claimant agreed that it was reasonable of the director to suspect him and to question. The claimant could not explain the discrepancy and he did not know what happened to the money. He had requested that a forensic accountant look at the books.

The claimant lives with his parents. His attempts to find other employment have been

unsuccessful.

On recall, the accountant said the computer system could not have developed a problem. It is a standard system in use all over Ireland. Despite the losses, the business was profitable. The bank account did not go into overdraft.

Determination

The procedure followed in dealing with the claimant was flawed in the view of the Tribunal. Therefore the Tribunal finds that the dismissal was unfair. An award of €6,520 is made under the Unfair Dismissals Acts, 1977 to 2001. An award of €960 is made under Minimum Notice and Terms of Employment Acts, 1973 to 2001. The total award is €7,480.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

