

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
MN233/2007
UD344/2007

against
Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr W. Power
Ms M. Maher

heard this claim at Dublin on 19th July 2007

Representation:

Claimant(s): Mr. Peter Connolly, Peter Connolly, Solicitors, Unit H,
Mary's Lane, (Opposite Fruit Market), Dublin 7

Respondent(s): Ms. Madeleine Delaney, Beauchamps Solicitors, Riverside Two,
Sir John Rogerson's Quay, Dublin 2

The determination of the Tribunal was as follows:-

At the commencement of the hearing, the Chairman sought clarification whether the claimant was dismissed for one incident, rather than as a result of a series of incidents. The Managing Director of the respondent company confirmed that the claimant was dismissed because of a breach of company policy in connection with the staff purchase policy, which the respondent deemed as gross misconduct.

Respondent's case.

In sworn evidence, the only witness for the respondent stated that he was the Managing Director of the company. He explained that the staff purchase policy was a critical component in the work of the respondent, in that it revolved around stock, valued in the region of €360k, and its security, given the nature of the respondent's business. He maintained that the implementation of the staff purchase policy was an absolute, and stated that there were no inconsistencies in its application. He also stated that the company's policy on dismissal, when due to theft, was strictly and consistently applied by the respondent.

With regard to this dismissal, the witness said that the breach in company policy arose as a result of the claimant taking a packet of tablets, and consuming a tablet without paying for it, which he repeated was a breach of the company policy. He considered the claimant's action was a serious breach, given that she was employed as a manager and, as such, she was responsible for implementing the staff purchase policy when on duty. The witness said that he carried out an investigation into the alleged theft of the packet of tablets. The claimant was asked to attend a meeting with the Commercial Director as well as the witness. She attended that meeting, and was accompanied by a colleague. The purpose, he said, of the meeting was to establish the facts surrounding the taking of the packet of tablets, to ascertain if there was a breach of company policy.

He indicated that the claimant accepted that she should not have acted as she had, and she acknowledged that her actions were inconsistent with the staff purchase policy. The witness said that the claimant was suspended on full pay while he considered the situation over the course of the day, to give him time to determine if the breach in company policy warranted her dismissal. Having done so, he said that it was his decision to dismiss the claimant.

The witness made reference to the transcript of a note made by the claimant, relating to a previous telephone call made by him to her, which he alleged amounted to a defamatory statement, and which he refuted in the strongest manner.

In cross-examination, the witness confirmed that the proceedings before the Tribunal were the only proceedings ongoing between the parties. He confirmed that the respondent employed circa two hundred (200) employees. The claimant commenced employment with the company in November 2001, and he confirmed that she was a good employee, reflected in her promotion to the position of manager. He confirmed that the security of both cash and products was very important to the company. He maintained that the respondent was rigorous in its application of the company policy on staff purchase, and considered any breach of it as gross misconduct. He stated that staff members were well aware of that policy, which was implemented by managers. He agreed that managers enjoy a discretionary authority in approving purchases made by other staff. He repeated that the respondent considered theft as a serious event, which warranted dismissal. He again maintained that the taking of a packet of tablets from the shelf without paying for it was, in his view, theft. He confirmed that he had, in the past, referred such instances to the Gardaí.

The witness could not say how busy the particular store was on the morning of the alleged incident involving the claimant. The witness was asked to explain why he failed to take account of a testimonial statement given by the pharmacist to the claimant, which alluded to the claimant's ill-health on the day in question, as well as to her honesty. The witness merely commented that that particular member of staff felt he was 'put on the spot'. When questioned further, the witness admitted that the Area Manager, who had called to the store on the day in question, had removed the opened packet of tablets from the premises, maintaining that the item remained the property of the respondent as it had not been paid for at time of consumption.

With regard to the respondent's investigation, the witness confirmed that he had spoken to both the Commercial Director and the pharmacist and that the allegations were put to the claimant during the meeting held with her to discuss the matter. He explained that the claimant was a loyal employee, and he did not wish to upset or humiliate her. However, she became upset during the course of that meeting and he advised her to compose herself. However, he had to establish whether goods had been taken and consumed without making payment for them. He could not recall if he took the claimant's explanation of her illness as a reason for her lapse in judgement. He accepted that the claimant had paid for the item at the end of the day but again repeated that they were not

paid for at time of consumption. When questioned how he interpreted, as theft, the bone fides of someone who had previously indicated their intention to pay for goods, and had actually done so, the witness explained that the company procedures, which were set out in the staff handbook, were not adhered to. He agreed that he had not involved the Gardaí in the matter.

In re-direct evidence, the witness stated that the company's policy and procedures clearly set out what the respondent considered were instances of minor, major and gross misconduct. He confirmed that all employees must adhere to the staff purchase policy, and any infringement of the procedure was considered as gross misconduct. The minutes of the meeting held with the claimant were not available at the hearing.

In reply to questions from the Tribunal, the witness confirmed that if a member of staff fell ill on duty, they had to wait until an official break before taking remedial action. No leeway was allowed. He agreed that managers had discretionary authority to extend credit to another member of staff, in accordance with the staff purchase policy. However, he did not consider it at variance that managers could not exercise the same discretionary authority on their own behalf. When questioned further, the witness did not accept that the claimant, having previously spoken with the pharmacist, having placed the packet of tablets on the counter top in full open view, which she later discussed with the Area Manager on his arrival circa 12h.00 noon, had acted appropriately. Rather, he maintained the procedures had to be followed.

He said that he had dealt with 'dozens' of instances of gross misconduct, some of which involved theft. He said that the claimant was the first manager he had dismissed for gross misconduct. He accepted that the claimant spoke with the pharmacist before she took the packet of tablets from the shelf. He maintained, however, his own position in stating that theft occurred if goods were taken without making payment for them and that once he had established the position with regard to the claimant the issue was not complex. He said that the claimant had a right of appeal to another company Director, or to an external arbiter.

Claimant's case.

In her sworn evidence the claimant, a former manager of one of the respondent's stores, employed since 2001, explained the events that led up to her dismissal. She explained that in the days immediately prior to her dismissal, she was ill but felt it was incumbent upon her as manager, due to staff shortages, to go to work. On the day in question, that is, 10th January 2007, she was still ill, but went to work as normal. The store opened at approximately 08h.30 a.m., and she was busy dealing with deliveries, stocking of the shelves and general set up for the day's business. By 10h.30a.m., she felt so unwell that she spoke with the pharmacist, who advised her to consult her General Practitioner to obtain antibiotics, and in the meantime she took remedial action in tablet form, from the range of medication generally available "over the counter". She took a packet of tablets from the shelf, showed it to the pharmacist, marked it for personal use, took one tablet and then left the packet, in full open view, on the counter top. She continued working.

While it was not a usual occurrence, the claimant stated that managers had discretionary authority to extend credit to other members of staff, who then paid for their goods within one week of purchase. The Area Manager arrived at 12h.00 noon, the claimant explained, and he proceeded to discuss a range of issues about store business with her. She maintained that the opened packet of tablets was on full view throughout his visit, that she told him about taking the packet and that she had yet to pay for it. The claimant said that he chastised her for her action, pointing out her inconsistency in implementing the staff purchase policy. She stated that she gave a full explanation

to him why she had taken the packet of tablets. She said that she only became aware that there was a problem when, having paid for the item, she went to retrieve the packet of tablets later that evening. They were missing, and although she conducted a search for the packet, she was not unduly concerned, simply asking the pharmacist to hold them for her.

The Managing Director attended the store the next day, on 11th January 2007, and asked the claimant to explain the use of the tablets. The claimant said the discussion took place in a storeroom, and that the Managing Director told her he had to review the issue, and concluded by telling her that he had to consider a more serious issue. The Managing Director told her to wait by the fax machine for his letter. She said that he never raised the issue of dismissal.

She was called to a meeting, which took place on 12th January 2007, in a hotel. She could not recall its timing. A colleague accompanied her, and two Managers (which included the Managing Director) also attended. The claimant said that she was asked if she understood the company policy on theft, and she replied in the affirmative although she said that she explained her personal circumstances on the day in question. She stated that the managers made no comment on that point, instead concentrating on the issue of the staff purchase policy and theft. She repeated that she explained that she had paid for the item at the end of the day, but the respondent's position was that the item was not paid for at time of consumption. The claimant said that both managers took notes. Her colleague supported her during the course of the meeting, citing her good employment record and the letter provided by the pharmacist as proof of the claimant's character. The claimant said that during the meeting the Managing Director referred to a defamatory statement which he alleged was made by her, which he had had investigated. She felt that she could not appeal the decision to dismiss her, explaining that she could not return to work as she believed she was no longer trusted, that the allegation of theft was hurtful and may have been raised again at some future point by the respondent. She stated that she had never been involved in any disciplinary proceedings within the particular store during her employment with the respondent.

In cross-examination, the claimant agreed that she took the packet of tablets without paying for them at 10h.30 a.m. and said that she could not recall if or when she took a break between 10h.30 a.m. and 12h.00 noon on the day in question. She said that she marked the packet to indicate it was no longer available for sale. She agreed, given that she had served as a manager for eighteen months, that she was familiar with the company's policies and procedures. She accepted that she had failed to note her purchase in the relevant in-store staff purchase book, instead maintaining that she told the pharmacist. She again accepted that she had breached the company policy, indicating that the Area Sales Manager raised the issue with her, but he did not say if the matter constituted minor, major or gross misconduct. She agreed that she had failed to adhere to that policy on the day in question.

In reply to questions from the Tribunal, the claimant said that the staff purchase policy was in frequent use, stating that it was possible to purchase items for personal use during a break time. She indicated that purchases were entered into the staff purchase book, and that the company policy also listed the names of those staff eligible to take for the purchases. When asked, she agreed that she paid for the items in question, even though she could not find them.

She stated that she sought other positions, and while two interviews were put on hold pending the resolution of the case before the Tribunal, she had obtained another position in April 2007 at a marginally less salary than that paid to her by the respondent.

Determination.

Based upon the evidence adduced at the hearing, the Tribunal finds that the claimant was unfairly dismissed. However, in accepting that she failed to adhere to the respondent's staff purchase policy, the Tribunal find that the claimant contributed partially to her dismissal.

The Tribunal awards the claimant the sum of €6,000.00, under the Unfair Dismissals Acts, 1977-2001.

The Tribunal also awards the claimant the sum of €2,615.40, being four weeks salary at €653.85 gross per week, under the Minimum Notice and Terms of Employment Acts, 1973-2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

