

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
Employee

CASE NO.  
UD54/2006  
MN29/2006

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. J. O'Connor

Members: Mr. G. Phelan  
Mr. K. O'Connor

heard this appeal at Killarney on 8 April 2008

#### **Representation:**

Claimant:

Mr. Patrick Sheehan, Sheehan Ryan & Co. Solicitors,  
61/62 New Street, Killarney, Co. Kerry

Respondent:

Ms. Norene Browne, Pdraig J. O'Connell Solicitors,  
Glebe Lane, Killarney, Co. Kerry

The determination of the Tribunal was as follows:

The claimant was employed as a veterinary nurse from June 2002. This was her first job after completing a two-year training course. The claimant's work mainly involved working on the clipping and grooming of dogs. The claimant was regarded as being highly competent and the employment was uneventful until early 2005 when the respondent and his wife became concerned that there was a discrepancy between the income which was being generated according to the job and customer cards and the monies received by the respondent as revealed by the two tills the respondent operates. The till in the shop part of the practice incorporates a cash register, that in the clinic part of the practice does not. All staff, there were six at the time, all involved in taking payment for goods and services. All clients have cards on which services, goods supplied and monies received are recorded. Staff members, who are entitled to discount on goods purchased, also have client cards on which purchases are to be recorded. When payment is not made at the time of sale client cards are put into the payment outstanding or "sin bin" file. Additionally payments are to

be recorded in a daybook; there is one for each till.

It is common case that on 9 May 2005 the respondent gave a verbal warning to all staff in the tearoom to the effect that they all needed to be diligent in their processing of transactions. In the short term matters improved until after the business moved to new premises in June 2005. On 29 August 2005 the respondent put a notice on the wall in the practice manager's (PM) office by the telephones. This notice stated "**We are being robbed** all transactions must be recorded down to the purchase of biscuits in the shop". It is the respondent's position that PM spoke to all staff about this notice and its significance. The claimant's position was that she had not been aware of this notice and had not been spoken to about it by PM. The respondent's wife (RW) became suspicious of the claimant who was leaving the tearoom early at the end of morning break time. It is the respondent's position that on 5 September 2005 when a ten euro note was taken from the clinic till the claimant was the only person in the vicinity of this till at the time. The respondent, whose position was that she thought the claimant deserved to be dismissed over this incident, sought legal advice and, as a result, installed a CCTV system. His suspicions about the missing note were never put to the claimant.

On 8 September 2005, after RW noticed that the grooming of a dog which she had presented to the claimant for grooming the previous day had not been recorded on either the client card or the day book, the respondent spoke to the claimant about the importance of following procedure and making sure that all transactions were properly recorded. While the specifics of this complaint were never put to the claimant, after the respondent spoke to her the paperwork was put in order and the fee for the service was processed.

On 8 December 2005 shortly after the practice closed for the day the respondent heard someone in the loft storage area. This aroused his suspicions and he checked the CCTV footage. This revealed the claimant leaving the premises, in view of two other staff members, with two bags of pet food. These goods had not been entered onto the claimant's client card. The respondent telephoned the claimant and asked her if she had taken anything. The respondent's position is that the claimant initially denied taking anything and then on being told of the CCTV footage accepted she had taken both bags. The respondent requested her to return to the practice. She returned in the company of her father (CF) but when she arrived at the practice CF was distracted by a phone call. The claimant went in to the practice where she met the respondent who was accompanied by a former employee. The claimant was accused of stealing the two bags of pet food. One of the bags had been ordered specifically for the claimant. The claimant, who had become upset, told the respondent that she had intended to pay for the pet food the next week. The claimant was then summarily dismissed on the grounds of gross misconduct. It is the claimant's position that, as evidenced by a series of cheques submitted to the respondent by CF over the preceding fifteen months, the claimant had adopted a practice of taking goods and paying for them at a later date. She maintained that she had never been told that this practice was frowned upon but did accept that she now knew that her actions in this regard had been stupid.

**Determination:**

The claimant had no written contract of employment, terms and conditions or disciplinary and grievance procedure. None of the allegations that the respondent had against the claimant prior to 8 December 2005 were ever explicitly put to the claimant. The claimant was given no realistic opportunity on 8 December 2005 to explain her position and the Tribunal is not satisfied that the respondent carried out a full and fair investigation of the events of that day. The Tribunal is not satisfied that the claimant's actions of 8 December 2005 amounted to gross misconduct. For all these reasons the Tribunal finds that the dismissal was unfair. However the Tribunal is satisfied that in her continued breaching of accepted policies in the business for the recording of transactions the claimant's actions amounted to serious misconduct and in so doing contributed to her own dismissal to such an extent as to make no award under the Unfair Dismissals Acts, 1977 to 2001. The Tribunal awards €732-72, being two weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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