

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

UD412/2007
MN280/2007

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. B. Garvey B.L.

Members: Mr. R. Prole
Mr. C. Ryan

heard this appeal at Dublin on 9 November 2007
and 31 March & 1 April 2008

Representation:

Claimant:

Ms. Mary Paula Guinness B.L. instructed by Ms. Aine Curran
on the first day, Mr. David McCarroll on the subsequent days,
both of O'Mara Geraghty McCourt Solicitors,
51 Northumberland Road, Dublin 4

Respondent:

Mr. Peter Ward B.L. instructed by Ms. Margaret Pilkington,
BCM Hanby Wallace, 88 Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant was employed as a general operative in the respondent's paper recycling plant from 1980. She later became a forklift truck (FLT) driver and in 1993 was promoted to the position of supervisor. The respondent takes in paper for recycling, much of which comes in on pallets. The pallets represent a liability to the respondent, as a condition of their operating licence is that pallets must be disposed of to an organisation licensed to recycle them. To that end it was the claimant's responsibility to arrange for thirty cubic yard bins to be positioned to accept pallets for such disposal. Many of the pallets that come on to the plant are re-used; indeed many are the property of organisations whose business is in the provision and rental of pallets. The respondent charges a fee for each pallet brought on to the plant and then issues a credit for each pallet later removed by its

owner or supplier. The employment was uneventful until 18 December 2006 when the general manager (GM) of the plant noticed a truck belonging to an independent contractor (IC) and being driven by IC's nephew (CN) leaving the plant without being weighed out and carrying pallets, most of which were in good condition. GM went to the office of the production manager (PM) to ask him why pallets were being removed in contravention of their licence condition. The transport manager (TM) and the claimant were also in PM's office at this time. PM asked GM if he was being accused of taking money for pallets. GM then went to the back of the plant where he found CN loading more pallets. It is the respondent's contention that CN told GM that he "was giving a few bob to all the lads". GM then threw CN off site and barred him from returning. A system was later put in place where the excess pallets involved were collected free of charge by a sister company of the respondent for that company's use.

GM instructed PM to check into the matter, find out who was getting what and report back to him. PM, who did not give evidence to the Tribunal, never reported back to GM on this matter other than to say, in an email of 12 January 2007, that it had been an accepted practice since the plant opened. On 19 December 2006 GM approached the then shop steward (TS) to tell him that there was going to be an investigation. It is the respondent's position that TS told GM that both the company and the guys on the ground were being screwed. That someone in the middle was doing better. On 20 December 2006 the deputy shop steward told GM that every now and then they would get €50-00 for pallets.

An investigation was then carried out by the vice president of group internal audit (VP) who was also involved in an investigation into another unrelated matter at the respondent. VP, who did not give evidence to the Tribunal, visited the plant on 13 February 2007. He attached a report on his findings in an email to GM and the managing director (MD) on 19 February 2007. This report, which was opened to the Tribunal, states that eleven members of staff were interviewed and concluded that pallets to the value of some €50,000-00 per annum were leaving the plant on IC's truck. The report referred to "pallet money" and a "pallet club" and that the claimant was paying small amounts of money to most of the employees, the last payment having been on 14 February 2006. The payments were restricted to floor staff including FLT drivers, truck drivers were excluded from these payments. In a paragraph entitled work climate he said "Most interviewees were quite nervous but took the opportunity of a confidential individual interview to speak out. I was left with a strong impression that there is a lot of stress in the work place with people being bullied. Remarks were made along the line of *"things don't work around here like that"*."

As a result of this report PM was suspended and disciplinary proceedings, culminating in his dismissal, were instituted. On 19 February 2007 the group human resource manager (HR) and the group operations manager (OM) from the UK came to the plant to interview employees pursuant to VP's report. OM was GM's predecessor. Notes of eight interviews, including the claimant's, from that day were opened to the Tribunal. The claimant denied having received any money or any knowledge of anyone receiving money for pallets. Of the other seven only one other made such denials. Five stated that they had received money from the claimant; the sixth stated that money had been received from CN. Apart from the claimant, four of these interviewees gave evidence to the Tribunal, two who alleged that the claimant had paid them, one who alleged that CN had paid and the one who had denied knowledge of such payments. A former employee (FE), who gave a signed statement to GM before VP's visit, gave evidence to the Tribunal of receiving money for pallets from the claimant.

Following these interviews OM wrote to the claimant on 19 February 2007 alleging her

involvement in the sale of pallets and the distribution of the proceeds amongst the staff. She was requested to attend a disciplinary hearing the next day. In the event, initially due to the unavailability of her union representative (UR), this hearing did not take place until 2 March 2007. On 20 February 2007 OM suspended the claimant with pay pending the outcome of the disciplinary proceedings. The claimant, UR, HR and OM, attended the disciplinary hearing. At this hearing it emerged that PM had produced a memo from OM's predecessor as general manager, dated 13 February 2003, in which the removal of pallets by IC was mentioned. The memo indicated that the practice had continued until 2 January 2003 from which time the unauthorised removal of any material had been prohibited. It was put to the claimant at the disciplinary hearing that PM had told staff at that time that no pallets were to be sold. The claimant could not remember this and denied ever receiving money from PM. It was put to the claimant that investigations had revealed that seven out of eight interviewees had said that they had received money from the claimant for pallets. Apart from being told of FE's allegation against her the claimant was at no stage ever shown the notes of the interviews nor was she told the identity of those who had implicated her in the sale of pallets. When it was put to the claimant that she paid money to FE for sorting pallets she mentioned distributing "Christmas money" to the employees from one of the respondent's haulage contractors. She had received this money from TM and did not know if PM was aware of it. She again denied ever receiving or distributing money from the sale of pallets, either before or since 2003. When UR asked for the opportunity to interview the witnesses OM stated that VP had referred to an extremely poor working environment and had described a climate of fear of intimidation and bullying, this had also been found in their own investigations and he asked UR to be careful about putting employees under further pressure, they had been very brave in coming forward in the first place.

After a thirty minute adjournment OM told the claimant "after reviewing the notes of the meeting with PM, and also the minutes of the meeting in January 2003 which outlawed the sale of pallets, we have no reason to doubt PM informed his staff that the practice was to stop, that included you. Seven employees have put their jobs on the line to admit they took money from you, FE states that he saw the one employee who has denied taking the money, receiving money from you. You have given us no explanation whatsoever as to what this money could be other than a Xmas Box, but stated you wouldn't have given the money out in February as the seven witnesses state you did. Under the circumstances we have no option but to summarily dismiss you for Gross Misconduct for your role in the unauthorised distribution of money which we believe was for the sale of company property". The claimant was told she had the right to appeal the decision to the managing director (MD).

The dismissal was confirmed in a letter from OM dated 5 March 2007 in part OM stated "It is clear from our investigation and following the interview with PM, the practice of sorting pallets and arranging their transportation to be sold with the proceeds being split between the Production Staff, was accepted prior to January 2003. Following the evidence we have of a meeting of senior Managers of the respondent on 28 January 2003, the practice was outlawed, PM was present at this meeting and we have been assured that following this meeting, you and other staff were informed that other employees were no longer to profit from the sale of pallets.

After interviewing the vast majority of the Production Staff and one ex-employee of the Organisation, most employees admit to receiving money prior to 2003 and deny that the practice ever stopped, but was merely driven underground. The employees agree that you continued to distribute funds amongst Production Staff, for the sole purpose of sorting and loading pallets. The amounts of money they were given by you varied between 100-150 euros per annum.

Throughout the investigations led by Group Auditors and HR and myself, you have denied

receiving any money for pallets, either now or prior to 2003. You have denied any role in the sale of or distribution of funds amongst the Production Staff for the sorting and loading of pallets. However, both Investigations have concluded that you (sic)

The investigation has provided us with significant evidence of your involvement in the distribution of the proceeds of pallet sales amongst the staff, a practice prohibited 3 years ago. This leads us to strongly believe that you were involved in the sale of the pallets, which would have amounted to a significant amount of money.

By your actions, you have defrauded the Company over a period of time, have been involved in selling Company property and have distributed Company money amongst the Production Staff.

Under the circumstances we have no option but to summarily dismiss you by reason of gross misconduct. Your final day of employment with the respondent being Friday 2 March 2007”.

On 5 March 2007 UR wrote to GM stating that the new shop steward (NS) had complained of being harassed and intimidated by PM. UR requested that the respondent take whatever action might be necessary to ensure that the harassment ceased immediately.

UR submitted the decision to appeal the dismissal to MD on 8 March 2007 and the appeal was heard on 15 March 2007. The claimant, UR, MD and OM attended the appeal hearing. At the appeal hearing UR again asked for the names of the staff that gave statements and to see those statements. MD refused on the grounds of staff intimidation. UR then submitted an undated letter from IC in which IC stated that he had never paid money to the claimant. This letter, apparently posted on 28 February 2007, marked for the attention of OM was never received. MD refused to consider this letter seriously as he doubted its veracity. On 16 March 2007 MD wrote to UR to express his disappointment at UR’s continued pressure for MD to release both the names of those who had spoken against the claimant and the detail of what they had told the investigators. On 19 March 2007 MD wrote to the claimant rejecting her appeal.

Determination:

The Tribunal is satisfied that there were grounds for dismissal but finds that due to a failure to implement proper procedure the dismissal is rendered unfair. However the Tribunal finds that the claimant by her behaviour contributed 100% to her dismissal. Accordingly the Tribunal is making no award under the Unfair Dismissals Acts, 1977 to 2001. The Tribunal awards €4781-84, being eight 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)