

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
Employee

CASE NO.  
UD1313/2005

Against

Employer

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney B L

Members: Mr. J. Redmond  
Mr. T. Kennelly

heard this claim at Galway on 26th March 2007 and 26th February 2008

#### **Representation:**

Claimant : Mr Paul McGettigan B L instructed by  
T. A. O'Donoghue & Son, Solicitors, Dublin Road, Tuam, Co. Galway

Respondent : Mr. John Brennan, I B E C, West Regional Office,  
Ross House, Victoria Place, Galway

The determination of the Tribunal was as follows:

#### **Claimant's Case**

Giving sworn testimony, the claimant said that her employment with the respondent had commenced in September of 2004. Though she had worked for other employers previously she had not had experience of stocktaking. When interviewed to work for the respondent she was asked if she had experience of invoicing and haulage-related office duties. She started on 27 September 2004. Her job was a general office job with an emphasis on distribution. At interview there had been no suggestion that she would be involved in stocktaking.

The claimant did four or five days of training for the respondent with a certain lady (AF) but none of these days was devoted to stocktaking. The claimant was in the office full-time with AF who took the claimant through the job as regards getting orders, following up on them, setting up distribution and dealing with spare parts. The claimant did invoicing and printed off materials from the computer. Every pallet had to have four address labels. After a few months the claimant took over from AF.

The claimant also had to answer e-mail. There would be about two hundred e-mails per day. Spam had to be got rid of and e-mails had to be put in files.

In April 2005 the claimant went to two tradeshow in Germany. When she returned there were about 1,200 e-mails as well as all the orders that had come in. The respondent's MD had been busy in March and away in April. The claimant's review was to happen after the tradeshow.

The Tribunal was furnished with a copy of a document dated 26 May 2005 for signature by the respondent's MD and by the claimant entitled "Review 26.05.05 Final Draft". It described this review as being very important, as it was the end of the claimant's probation period. It stated that "overall" the respondent was "happy" with the claimant's "work and commitment" adding that the respondent was increasing the claimant's salary to "22,000, backdated to April 1<sup>st</sup>". (The claimant told the Tribunal that her salary had been €19,000.00 per annum.)

The review letter also contained the following:

"We also commend you on your work at the two shows this year. Your fluency in German and ability to handle customer queries proved to be a good asset. You have learned very quickly the daily office tasks that make up your job description. You also have developed a good rapport with both ... employees and customers and have become a valued member of the ... team.

An essential part of appraisal is to highlight where you can achieve improvements. The aim is to ensure that you spend the vast majority of your time carrying out your most important duties to a very high standard.

Some elements (eg freight) of your job take too long, while you neglect critical tasks such as stock control and previously debtor control. I need you to take on additional responsibilities.

Your planning and scheduling of work can improve and you are to use Outlook reminders to ensure tasks are completed and that the important tasks are prioritized and not forgotten.

Company Procedures state how you carry out most tasks and these must be followed at all times unless you propose and get a concession....

Attention to detail (in particular with customer correspondence and accounting matters) is an absolute must and requires you to think and consider what we are saying to customers. Similarly, you are responsible to ensure invoice figures are correct and that customers files are kept up to date where terms and conditions change."

The document went on to say that the respondent had spoken to the claimant "about cases where, in you(sic) effort to take initiative, you have made errors, which caused embarrassment or angered customers."

The document continued as follows:

"As you become more experienced, we will want you to take more responsibility and initiative but as a new employee, you need to take instruction and use the experience of those of us who have longer service.

We value your opinion and look for your input in any areas that you may wish to contribute your ideas.

To conclude, please treat this review as a reminder of the importance of your role to the company."

Resuming her testimony to the Tribunal, the claimant said that in the respondent company people were so busy and that, although one could ask for help, not always was there time for someone to give that help.

The claimant told the Tribunal that she had got on well with all customers she had dealt with and that her background was customer service. She did concede that “perhaps in over enthusiasm” she might have made promises that could not be kept.

Asked about the reference in the review document to the respondent having spoken to her about errors that had caused embarrassment or had angered customers, the claimant said that she could not recall this.

Asked if she had been happy there, the claimant said: “Yes. I loved the job. I got on well with everybody there. I loved dealing with customers. It was so different to anything I had done before.”

In the last week of June 2005 or the first week of July 2005 the claimant found that she was pregnant. On 14 July she told RT (the claimant’s manager and sister of the MD) of her pregnancy. She had been in touch with a doctor who had said that she could just say that she was sick. The MD had children of his own and RT had a child. The claimant thought they might be happy for her.

After the claimant told RT of her pregnancy all that the claimant did was wrong. There seemed to be a problem with everything she did. She was “constantly bombarded” with e-mails telling her “to check and re-check things”. The respondent company was very busy at the time. There was new work as well as day-to-day work. Everything to which the claimant turned her hand seemed to be wrong. She was “roped in” to assist in stocktaking. The factory was due to close for “Race week” (the last week of July) and for the first week of August 2005. The MD told the claimant and others that profits were down.

Stocktaking was due to start on the Monday of “Race week” but did not start then. Orders went out and came in. Most staff stayed on and, though people should have been on holidays, work went on into the second week. The claimant finished on the Thursday of “Race week”. She had a wedding on the Friday. People were coming from England to stay with her. She agreed with CD (the purchasing and stock controller) to go in to work the next week.

CD started the stocktaking on the Wednesday of “Race week”. The claimant did not believe that she had been trained for this. AF (an employee who had trained the claimant and who was going to be absent from the respondent) had said that she (AF) hoped to take over on AF’s return. The claimant went with CD to try to learn about this.

The claimant told the Tribunal that she had got involved in monthly stocktaking of her own initiative and that she was never given any specific training in this regard. She said that she had been “trying to help” but that she “could have been hindering”. She was due to be off for the first week of August but she had agreed with CD to go in and do what she could. Her partner’s father took ill around that time. It was thought that he would not “make it”. The claimant went in and did some hours. Every time they set out to do the stocktaking CD would get called away. It was not unusual to get called away from a job to do something else.

Production was ongoing. The claimant told the Tribunal that, for a complete stocktake, nothing should move. There was an issue with tidiness on the factory floor. Things were in the correct area but not where they should be. Items could be mixed in with each other. Each production area had its own tools. Some parts were so small. They fell on the ground. At times the claimant had difficulty

counting items. There was a little weighing scales. The claimant was not sure of the machine in question and counted by hand.

There were stock cards for a lot of items. Some parts had stock cards but not all of them. CD kept some in his office. If the claimant took a part she would make sure that a stock card was filled out. Sometimes a stock card could go missing. There was general access to these items. CD was the store person. It was a “free-for-all”. If someone did not know that person would ask CD. If the person did know the person would just take what was wanted.

RT had given a date for the stocktaking to be finished. It was not ready at all. They tried to put something together. It was not what it should have been. They had as much work done as they could. They were asked to go to a meeting with RT, the MD and another person. They discussed the stocktaking. RT alleged falsification saying that it had been done “just to fit the computer”. It was said that the allegations could not be proven. A date was given for the stocktaking to be redone.

They “went through invoices et cetera”. The figures “started to tally up”. They “found reasons for the discrepancies”. They “had a couple of hours left to end it” when the claimant was dismissed. It was 12.35 p.m. and the claimant was putting items on computer when the MD came in and dismissed her. He said that he was not satisfied with her work, that she was “not up to it”, that he had advertised her job that day and that she was to go that day. There was no mention of dishonesty or of falsification of records. The MD had just said that he did not think the claimant capable of doing the job.

The claimant told the Tribunal that, after she complained to the Employment Appeals Tribunal, the respondent’s notice of appearance said that she had been fairly dismissed. The claimant pointed out that CD, though the purchasing and stock controller, had not been dismissed but had been brought out to lunch and told what a great job he was doing. DH (a salesman) was “roped in” to count items. Anybody one had to give help was “roped in”. None of them was dismissed. Most people there had left but had not been dismissed. The claimant was never shown a document that she had falsified. RT had claimed that sheets had been falsified but this was before the MD had said that he could not prove falsification and to redo the stocktaking.

The Tribunal was referred to a memo entitled “Stock Control Review 19<sup>th</sup> August 2005” which stated that it had been the responsibility of CD and the claimant to ensure that stocks were being monitored and that findings were reported on a monthly basis. The memo stated: “Neither are completing this function.” The claimant was asked at the Tribunal hearing if it had been wanted by 16 August 2005. She replied that RT had wanted it as soon as possible but that the claimant had known that it was not accurate in all respects and had said as much.

Under the heading “Year End Stock Check” the memo said that the stock check had been due to start on 25 July 2005 and to be completed no later than 8 August 2005 (this date having been selected by CD) but that a finalised report was not given until 16 August 2005. The memo stated that on all occasions prior to receipt of this report the respondent had been informed by both the claimant and CD “that the stock check was running smoothly and that there was very little discrepancy (i.e. down to 1 or 2 parts) between Pastel and the counts”.

Alleging that “this report submitted was completely inaccurate/incomplete as follows”, the memo set out this paragraph:

“A very large percentage of the stock counts that were manually entered on the stock count sheets did not agree with the figures transferred to the stock check report – these figure transfers were made by both Emily and Colin. The figures transferred in many cases were used in order to hide discrepancies between Pastel and stock counts.”

Commenting on this, the claimant told the Tribunal that CD had been the only person who had had an input into the stock check report and that she had “had a lot more involvement the second time”. The claimant added that she had spoken to CD a week after she had been dismissed, that he had rung to offer his condolences regarding the claimant’s partner’s deceased father and that he had said that the stocktaking had been fine. The claimant told the Tribunal that it had not been her fault.

The next point made in the memo was:

“Many items were not counted – this is on top of hardware.”

The claimant’s comment to the Tribunal on this point was that if items had not been counted it was because there had not been enough time.

The next point made in the memo was as follows:

“Many Hero adjustments had not been entered by August 16 – we had several machines showing negative inventories. This obviously indicates that the gauge/other swapped components figures need adjusting. Two Hero machines cannot be accounted for.

The claimant’s comment to the Tribunal on this point was that, if a staff member were stuck for a part, a part would be taken. She added: “A machine minus a part is spare parts”. She also said that, when they went back through the stock, they found a machine and that a machine had been missing before the stocktaking.

The next point made in the memo was:

“Machines dispatched FOC – where no invoice has been updated on Pastel e.g. to Rostec/CPS etc have not been taken into account on the stock check” (sic)

The claimant explained to the Tribunal that Rostec was a supplier that CPS was a large company based in Europe to whose Italian base the claimant had sent a machine and that “FOC” meant free-of-charge as she had thought they were getting the machine for free. She added that a machine had been sent away for tests and that she had never been told about a machine having left the factory without her knowledge.

The next point made in the memo was as follows

“YE stock check report and report totals were not examined at all. Very little effort was made to explain why stocks were missing etc.

On the Gyro alone the stock reports showed a discrepancy of over €68000.

On the HSM alone the figure was almost €30000 – includes a discrepancy of 38 on the control panels. Siseir parts are also showing large discrepancies.”

The claimant commented that it had been mainly CD but that she also had had to go through invoices. On the reference to “very little effort” the claimant said that it had been a “time issue”. She added that part numbers and part descriptions had not always tallied. The claimant said that manufacturers tended to change the inside of machines a lot and that one part had had its diameter changed three times.

The memo concluded as follows (note: “the claimant” and “CD” have been inserted to replace first names and surnames; “the respondent” has been inserted to replace the name of the respondent):

“The stock count figures are simply unbelievable and therefore needed to have been analysed / rechecked before signing off on a completed stock report. No checking at all seems to have been carried out by either the claimant or CD. Both are paid to think and take responsibility for their work, but instead are very quick to allocate blame to one another.

The stock control system at the respondent is currently not controlled and will lead to serious problems when parts believed to be in stock are unavailable.

I have had to speak on several occasions to both Emily and Colin to push the stock check. The response from both leads me to believe that neither deem stock control as a critical element of their employment. We need to make it very clear to both the claimant and CD that efficient managed stock control is a non-negotiable requirement to their employment with the respondent.

Both CD and the claimant need now to rectify this situation that they have created. In my opinion this will require working this weekend to resolve the year-end stock check.

Looking forward the options are that both the claimant and CD need to confirm that they will start taking the stock check role their employment (sic) seriously, both in my opinion have the ability to carry out this function, but to date have not made any effective effort. If additional training is required I will arrange it. If CD and the claimant are not willing to agree to this we will need to consider employing a replacement who can complete this task.”

Commenting on this, the claimant told the Tribunal that no accusations had been made “on paper” but rather at a meeting.

The Tribunal was furnished with a note dated 19 August 2005 headed “Stock Control Meeting – see memo”. The meeting was attended by the MD, the finance manager (RT), the operations director, CD and the claimant. The meeting read as follows (note: “the MD”, “the operations director”, “RT”, “the claimant” and “CD” have been inserted to replace first names and surnames):

“RT went through Memo and CD and the claimant countered.

PT went through memo highlighting to the claimant that failure to carry out monthly stock duties unacceptable (sic) and would result in dismissal if it happened again, reminding her that this was raised at her appraisal.

The claimant and CD accepted the discrepancies reported in RT’s memo but did not accept her claim that they had falsified stock records but did not offer any explanation (sic).

The claimant and CD agreed to complete the full reconciliations and proposed the following

Tuesday as the date by which this would be completed.

The MD stated that deliberately falsifying stock records (as reported by RT), if proven would result in dismissal.

The MD told both that if at any time they could not get to stock check; they had to come to the operations director, RT or myself for a dispensation or additional resources.

The MD then separately spoke to the claimant about careless errors on invoices, having to re do paperwork many times and neglecting to look at paperwork to check before sending to me for signature.

I explained that I was rapidly loosing (sic) confidence in her and that an improvement had to be seen immediately if she was to retain her job and reminded her that these were the same performance issues raised at her review. I also reminded her that we had a similar discussion some months ago.

The claimant did not dispute anything.”

Commenting on this, the claimant told the Tribunal that she had said that she had not falsified anything. She told the Tribunal that she had not been “told anything was a lie” but that she had been told in a less direct way.

The claimant told the Tribunal that CD had not been dismissed but that he had left the company.

The claimant said that AF (who had done the claimant’s job before her) was present at the hearing.

Asked if AF had left the respondent, the claimant said that AF’s sister had been in a car crash in Australia and that the said sister had asked AF to look after the sister’s children. The claimant told the Tribunal (note: AF is substituted for AF’s full name): “Even the week I joined I was told I’d cover for AF for a few months and then AF would take it back. AF said she was pregnant and was told there was no job. I think after a few weeks she was offered a part-time job for two days and then for three days.”

The claimant continued her testimony to the Tribunal: “I don’t know what the ‘persistently poor performance’ (on the respondent’s written defence to her claims to the Tribunal) is about. I’m a human being. I make mistakes. I should be told and let rectify it. I enjoyed the job and worked hard at it.”

At the Tribunal hearing the claimant was asked if RT or the MD had ever taken her aside, said there was a problem and told her that she would have to sort it out. The claimant replied that, about a week before she was dismissed, RT had said that there were problems and that the MD wanted to advertise the claimant’s job whereupon the claimant had answered that she would work harder if she could and that she wanted everything to be as it had been. When the claimant left the office she was told that her job was safe.

The claimant told the Tribunal that RT had said that the MD had been thinking of advertising her job. The claimant said that, when she was being dismissed, the MD had told her that her job had been advertised and that she had replied that she had been told that. The claimant told the Tribunal that she had not been reprimanded nor taken aside at any time about her work.

Asked at the Tribunal hearing why she had been dismissed, the claimant replied: "I can only presume it was because I was pregnant. Everything was fine until mid-July. Then I felt I was being pushed. I did not want to bring a child into a world of poverty. That was not how it worked out."

The claimant told the Tribunal that she had got no reference and that she had been accused of falsification and dishonesty. Her claim form to the Tribunal gave 1 September 2005 (a Thursday) as the date on which dismissal notice was received and the date on which her employment ended. She said that she had registered with FAS on 7 September 2005 (a Wednesday) and that she had given birth on 21 February 2006. She had "sent out" her curriculum vitae "over the last couple of months" but she felt that her confidence had been "shattered". She doubted herself and thought that maybe the respondent's MD had been right and that she could not work in an office. She had got no job offers. She lived eight miles from Tuam. Galway was one-and-a-half hours each way. She "would need big pay for that". She had been on a gross salary of €22,000.00 per annum with the respondent.

The claimant was not fully familiar with all the parts that had to be counted in the stock taking exercise and never got "a straight run" to undertake that task. She felt under a lot of pressure at the time and felt "pulled very hard". Her dismissal meeting lasted less than ten minutes.

In cross-examination, the claimant was referred to the final draft of her 26 May 2005 review and asked to comment on the part commencing: "Some elements (eg freight) of your job take too long, while you neglect critical tasks such as stock control and previously debtor control."

The claimant replied that she had got no training and that, though these issues did come within her job description, the review was the first time the subject was raised to her as being important. She said that her background was customer service.

It was put to the claimant that in her appraisal in that May of 2005 she had been given a "B" grade for "Stock Management and reporting"(sic) and that "B" corresponded to her being at "Minimum required standard". She replied that she had not been told of this heading's importance or of her relevance to it and that she had been told to help CD.

It was put to the claimant that on 26 May 2005 this had been discussed as a critical task. She acknowledged that it had been brought up then and said that she had "made more of an effort".

When it was put to the claimant that she had not written back to say that she had not been trained she accepted this.

When the claimant was invited to comment on the fact that she had been given a "B" grade in five categories she said: "Criticism is rife in the company. I was never told I was doing a good job. There was always criticism coming. We all got weekly e-mails from RT (initials substituted for name) criticising aspects of our work."

The claimant told the Tribunal that, despite receiving so much criticism, she had "loved the job" and had "wanted to stay there".

Asked if there was not a contradiction in this, the claimant agreed saying that she took criticism as being part of RT's personality and that RT liked to criticise. The claimant then told the Tribunal: "I enjoyed the job more than any job I've ever done."

Asked about probation, the claimant said that at interview she had asked for €22,000.00 per annum but that RT had said that she could offer €19,000.00 per annum and would review it after three months. The claimant told the Tribunal that she did not approach RT after three months because she was “still learning”. She added: “I was doing a grand job. I’m not saying I was the best there.”

(The claimant said that the MD owned three-quarters of the respondent.)

It was put to the claimant that on 14 July 2005 she had told RT that she was very recently pregnant. The claimant replied (note: “RT” and “the MD” substituted for RT’s and the MD’s names): “I’m human I err. I make mistakes. I had a good relationship with RT and the MD. After 14 July things went downhill. After 14 July I did not get verbal warnings or written warnings.”

When it was put to the claimant that she had got e-mails about problems at work she replied: “I was involved in everything in the company.” She agreed when it was put to her that she was saying that she had been dismissed “for being pregnant”.

When the respondent’s representative referred to a 2 March 2005, the claimant’s representative said that the respondent was being selective and that e-mails had intensified after 14 July 2005. The respondent’s representative replied that there were more e-mails and that he “could bring the lot”. He said that there had been twenty-four entries on the claimant’s file and that “the vast bulk of them” pre-dated 14 July 2005.

It was put to the claimant that problems had started in January 2005. The claimant replied that everybody in the respondent company got them (e-mails) and that CD had six years’ service.

The claimant was referred to an April 2005 document but did not recall getting it. Asked if she recalled a meeting relating to a paint company, she said that she and the MD had met once about it. She also said that there had been “a mix-up between a dollar amount and the euro amount”. Asked if the MD had raised this with her, the claimant said: “We had a phone discussion.”

It was put to the claimant that she had sent goods to customers who were two years overdue with their payments to the respondent. The claimant replied: “I would not do that. I kept sending goods to large customers.” The claimant named another employee (MF) as having been responsible for payments from customers. The claimant added that many orders remained unpaid over queries, that every customer had its own characteristics and that “there might be an issue”.

Asked who would decide if a customer should not get more goods, the claimant said that would be RT in her capacity of finance manager. The claimant said that there had been a time when she was told that no more goods were to go to a certain customer.

The claimant was referred to a note dated 4 May 2005 from the respondent’s MD to her asking her to take care when filing e-mails and saying that he had just found an e-mail from a company in the file relating to another company.

The claimant said that she had been given figures by the salesmen who agreed prices with customers.

Asked about an e-mail dated 10 May 2005 from the MD to the claimant, RT, CD, the operations

director and three others, the claimant said that she did not recall it, that it had been sent to many people and that a red highlight reference to her had been put in afterwards. The respondent's representative stated that this was for his benefit.

When it was put to the claimant that the respondent had had "issues" with her performance she replied that this had not been made clear to her. Asked if she had not been addressed, she replied: "I was not the only one. I know I'm included. I always try to better myself."

When it was put to the claimant that the respondent had had "concerns" about her performance, she replied: "That's to help me. I'd had minimal training." She added that this had not been AF's fault and that AF had had to go to Australia.

The claimant was asked if her performance had not, therefore, been an issue. She said: "No more than other employees of the company."

The claimant was asked about an e-mail dated 8 July 2005 from RT to her saying that she had invoiced a company at different prices. She replied that there had been confusion about the price at which that company should have been invoiced. She added that prices were "done" for a customer and that the MD could do a deal without telling staff.

It was put to the claimant that she had had meetings with RT and the MD. She replied that she did not recall meetings.

It was put to her that they had not been formal but when somebody passed her desk. At this point, the claimant's representative objected and the respondent's representative said that he could not call them formal meetings.

It was put to the claimant that after 14 July 2005 she had got similar e-mails from the respondent about prices and invoices. She replied: "There was a definite change in attitude towards me. I had considered RT as a friend. The relationship started to deteriorate. There was a kind of chill. Previously I'd seen e-mails as helpful. After 14 July it was not being done in a helpful way. There was a definite, definite change in the office environment I was in."

It was put to the claimant that RT would say that there had been no change in her attitude and that RT herself had been pregnant. The claimant replied that RT had been pregnant at the same time but that the claimant had not known that. The claimant added that there had only been three women there including herself and RT. The claimant said that she thought that RT had given birth to a baby a week or two after herself.

Asked what maternity arrangements the respondent had had, the claimant replied that she did not know and that she had not "put in" for maternity leave. She added that, if she had stayed, she would probably have left about two weeks before her due date.

Asked if the bulk of the e-mails had pre-dated 14 July 2005, the claimant accepted this.

Asked if she understood stocktaking, she said: "I do now."

It was put to her that data is inputted to say what one has. She replied: "Data is adjusted when it's invoiced out."

It was put to the claimant that the end of July had been the end of the financial year. She accepted this.

It was put to her that most customers were on holiday in August given that they were European. The claimant replied that there was a lot of production going on then.

The claimant said that, at first, she had not been told her responsibility and that there had always been interruptions when she had done the stocktaking. She added that she had only been there for one stocktaking.

It was put to her that she had just been counting stock. She replied that it would have been straightforward if the floor had been kept tidy and if there had been no ongoing production.

The claimant said that CD had taken compilation of figures to be his responsibility and that she had not known that this had been part of her job description. In May she had been asked if she would take a minor part in the stock check. She had said that she would.

It was put to the claimant that RT had stated that the stocktaking took precedence over all other tasks. The claimant replied that one could always get a call from the MD to get something for a customer and that, always, somebody could say that something else took precedence.

It was put to the claimant that this did not mean that the respondent was out to remove her because she was pregnant. The claimant replied: "Why was I the only one fired? The week before I was dismissed, two colleagues were brought out to lunch and asked how they would feel if I was to disappear."

Asked if it was reasonable for the respondent to raise issues with her, the claimant said that it was. The claimant accepted that the stock-check would not be expected to be 100% accurate but when it was put to her that 97% accuracy would be expected she replied (note: CD replaces the name of the gentleman in question): "I don't know. I was not trained for this. CD had the main responsibility for this. Everyone in the company got critical e-mails and did not reply. I may not have replied but I took it on board. I was constantly getting more responsibility. I helped with the stock-check but responsibility for it was with CD. I'd had no training in stocktaking."

It was put to the claimant that issues had been raised in May 2005 and then more formally in August 2005. She replied that she did not agree totally and that there had been a huge backlog after she had gone to Germany in early and late April of that year.

The claimant was referred to the paragraph in the stock control review memo of 19 August 2005 that alleged that "the stock control figures are simply unbelievable" and that the claimant and CD "are very quick to allocate blame to one another". She did not agree that she and CD had been quick to blame each other.

The claimant was referred to another paragraph in the same memo that opened with a statement that the claimant and CD "need now to rectify this situation". It was put to her that her job had been on the line. She did not dispute that there had been a need to rectify the situation but told the Tribunal that they had just started to do so.

Referring to the stock control meeting note of 19 August 2005, the claimant stated that RT had claimed that stock records had been falsified but that the claimant and CD had both denied it. The

claimant told the Tribunal that, when she had been dismissed, there had been no mention of falsifying records and that she had left the 19 August 2005 meeting confident that her job was safe. Referring to a stock count sheet, the claimant indicated that the presence of the word “rechecked” showed where it had been redone.

Addressing the question of whether the wind had been taken out of the respondent’s sails by the fact that the claimant and CD had been asked to redo the work, the respondent’s representative submitted that the claimant had changed the figures to match the computer reading.

When it was put to the claimant that there had been a breach of standard operating procedure she replied that she had not been “specifically aware” of the standard operating procedure alleged to have been breached and that she could not recall it having been raised with her “specifically before this”.

The claimant told the Tribunal that she had worked on the buying of office supplies, that RT (the financial controller) had been in the next office and that they would talk frequently. Asked why would RT send an e-mail about sellotape, the claimant said that this was normal procedure. The witness was aware of the contents of a memorandum issued by the respondent prior to attending a meeting on that topic on 19 August 2005. She described the submitted notes of that meeting as a fair summary of what transpired at that meeting but added she had no recall of a noted separate meeting with the managing director on that day. The managing director made no mention of falsification of records or discrepancies at the dismissal meeting on 1 September. However, he told the claimant that she would be better off on an assembly line in a factory as she was not capable of doing her job for the respondent.

A former stock controller at the respondent’s expressed surprise that the claimant was dismissed. He had no input into that decision nor was he part of any investigation into her work at the respondent’s. The witness had a more responsible and senior position within the company and had the qualifications and experience in undertaking stocking there. The biggest problem with that exercise was the fact that stock to be counted was located in four to five different areas of the company and the witness had brought that issue to the attention to the management. In this instance he accepted that figures were different and that discrepancies existed between counts. The number of items counted depended on when and where this was done. While he accepted that falsifying records was not acceptable he denied that his happened in this case. He was not reprimanded by the respondent in this matter and was never told his job was in jeopardy. He added that the claimant did not have enough training for her stock taking tasks.

A former employee briefly spoke of some of her relevant experience with the respondent. She undertook the same role as the claimant and described the task of stocking as very difficult. According to the witness she secured leave of absence from the respondent for three months commencing October 2004. In an email addressed to the managing director in December of that year she informed him of her pregnancy. She was shocked to subsequently hear from him that the respondent was unable to offer her as expected a full time job. She later declined to accept a part-time position nor indeed any work there and broke the working- relationship with the company.

## **Respondent’s Case**

The respondent is a medium sized enterprise engaged in the supply of tinting systems to the paint and coating industry. Most of its business was concentrated on overseas markets. Its general manager and managing director are siblings and each gave evidence to the Tribunal relating to the circumstances and background to the claimant's cessation of employment with the company.

At the time and leading up to the claimant's termination of employment the current general manager was financial controller of the business. Among her responsibilities was the requirement "to sign off" on the amount of stock at the end of the respondent's financial year. This witness was also the claimant's direct manger. She outlined in some detail the difficulties she had with the claimant's general work performance. She particularly highlighted the claimant's role in the stock taking exercise. As a result of her interaction with the claimant on that issue and allied with her previous experience with her the witness recommended that the claimant be dismissed. That recommendation was communicated to her brother the managing director of the firm.

Following the claimant's commencement of employment the witness found herself constantly coaching her on aspects of her work. Among other tasks the claimant had to deal with were customer orders, invoices, and general office administration. She received on the job training but continued to make lots of errors in her work. Nevertheless, the witness was predisposed to classify her as attaining a good standard in a work appraisal review undertaken in May 2006. The witness commented that such a grade was better than what the claimant deserved but she justified that appraisal result on the desire of the company to retain her in the workforce. However, at that time the witness did bring certain shortcoming in the claimant's work to her attention and encouraged her "to pull up her socks". The witness did not invoke any disciplinary procedures with the claimant concerning her work despite her reservations about that work.

Between that appraisal and a stock control review on 19 August 2006 the witness had cause to monitor and adversely comment on the claimant's work. She described the task of stock control as something less than rocket science and added that the claimant was capable of undertaking that task but at times choose not to. In a series of emails the financial controller felt it necessary to query and criticise some of the claimant's mistakes. During one such discussion on 14 July 2006 about the claimant's careless work she informed the witness that she was pregnant. The witness congratulated her on that news.

A stock control meeting took place on 19 August 2006 attended by the witness, the managing and operations' directors, the claimant, and the stock control manager. The witness went through a memorandum issued that day that was familiar to all present on the state of the stock control system. The claimant and the store manager had responsibility to ensure such controls were done both timely and accurately. A yearly stock take occurred at this time every year when production temporarily halted and this meant there was a minimum movement of stock on the premises. The witness was most unhappy with the state of the stock control and relayed her annoyance to the claimant and the store manager. They accepted that discrepancies were present and agreed to recount the stock for completion the following Tuesday. By that time the financial controller had formed the view that the figures already produced in stock control reports were falsified. The witness also spoke separately to the claimant that day warning her that her job was in some jeopardy due to her continuing poor performance.

The witness felt compelled to give the claimant another warning on 22 August explicitly telling her that her employment with the company was under threat if she did not complete her assigned work on that stock recount exercise. That recount on the stock count was submitted two days later and again the witness felt unable to accept the revised figures. She was certain that the claimant had

falsified her alterations to the original count to coincide with the prevailing computer records. The witness did not believe the claimant recounted the stock in question due to the brevity of that recount. The witness proceeded to recount the disputed items and arrived at different figures than those presented by the claimant. It was her opinion that the claimant inserted figures without verifying the actual stock in order to finish that job and go home. A heated row between the witness and the claimant ensued in which the claimant angrily left the premises. The financial manager was surprised to see her the next morning reporting for work. In telling her that her behaviour was unacceptable the witness said that the stock recount was to be completed. She also consulted the managing director about this situation.

The stock recount was still not completed the next day, 26 August and the claimant was unable or unwilling to give reasons for this. By the end of August the claimant had lost confidence with the claimant to such an extent that she took steps to terminate her employment. In accepting that the store manger also had a case to answer in relation to his input into this situation the witness stated she was not his supervisor and had no role or authority in disciplinary issues concerning him. The fact that the claimant was pregnant during these events was a coincidence and not related to her dismissal. The decision to dismiss the claimant “would have happened anyway”.

The managing director and principal owner of this establishment informed the claimant of her dismissal on 1 September 2005 during a brief meeting in his office. Since the claimant was so distraught at that news and just wanted to leave that office the witness was unable to give the reasons to her of that decision. He told the Tribunal that the claimant’s dismissal was due to her continuing poor performance from her review in May 2005 and her reported falsification of records during a stock taking verification exercise. The witness wholly relied upon the reports and evidence of the claimant’s falsifications from the financial director as “the buck stopped with her” in that section. While he had some direct knowledge of the claimant’s administrative work the witness drew heavily on the information he received in that regard from his sister. He did not produce or show any proof to the claimant of these alleged wrongdoings, as he was satisfied that the financial controller had done that.

The managing director said that he had perhaps learned of the claimant’s pregnancy in late July 2005. He added that her dismissal a few weeks later had nothing to do with that pregnancy. The witness expressed bafflement at the claimant’s behaviour in relation to her involvement with the stock verification count, as she was aware she was on a final written warning and had to know her job was at risk should she commit another transgression. When the financial director reported to him of yet another act of misconduct on the claimant’s part he opted to dismiss her.

The witness wrote to the claimant on 26 May 2005 in relation to her first formal employment review. Although that review was at best satisfactory the witness decided to give the claimant “another shot” at her job. The witness admitted it was not true as stated in that letter that the respondent was happy with her work and commitment. He confirmed as correct that she was, as stated, a valued member of the workforce. The witness also reaffirmed criticisms he made to the claimant about her work in that letter. He wanted her to improve her overall performance and was kept abreast of her performance by her immediate supervisor, the financial controller.

At a meeting attended by the witness and claimant among others he told the claimant and the store manager that if it were proven that they were falsifying stock records then they would face dismissal. Since that stock control manager was a senior member of staff and had a different supervisor the witness did not feel he had the same input into his disciplinary process than that of the claimant. However, he did not look for evidence of possible falsification on the stock control

manager's part. Both that manager and the claimant accepted the reported discrepancies in the stock count but did not concede they had falsified records. The witness also spoke separately to the claimant that day and in telling her of his disappointment at her work he gave her a final warning.

While accepting that he did not dispute the letter written by a former employee in the autumn of 2004 the witness insisted he did not guarantee her a job back when she returned. That employee was not on leave of absence and he never gave her permission to leave the respondent under those circumstances. However, and in the knowledge she was pregnant he was prepared to re-employ her as she was a very good employee.

### **Determination**

The Tribunal are unanimously satisfied that the claimant was not dismissed wholly or mainly for reason of pregnancy and cannot comment therefore on the fairness or otherwise of the decision to dismiss for other reasons due to the fact that the claimant did not have 1 year continuous service.

Therefore the claim fails.

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Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

