EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: **CASE NO.**
Employee UD215/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary BL

Members: Mr D. Moore
Mr J. Moore

heard this claim at Navan on 2nd January 2008
and 19th March 2008

Representation:

Claimant(s) : In person

Respondent(s) : Mr. Bernard Dunleavy BL instructed by:
Mr. Michael Kavanagh, LK Shields, Solicitors, 39/40 Upper Mount Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case:

Giving evidence, a security supervisor for the respondent (hereafter referred to as CD) said that she had been working in internal auditing and security matters for six years and that she had worked in the industry for over thirty years. She added that the respondent had over a hundred (betting) shops and that, on a daily basis, auditing was done of exceptions i.e. irregular transactions which would be flagged on computer. Every bet would generate a document on which the transaction details should be a replica of the betting docket.

The Tribunal was referred to a copy of a betting slip which appeared to indicate a bet of €100.00 on 19 September 2006 but which wager appeared to have been recorded on his own till by the claimant as a bet of €1.00. The time of this bet (for a 13.30 race) was recorded as 13.29.41 but it was "translated" (i.e. entered on computer) at 13.42.25 i.e. after the race. It was not an unusual mistake but the cash should have been "over" by €99.00. However, the daily balance for that day indicated that the cash was only "over" by a few cents.

The Tribunal was now referred to a copy of another betting slip (apparently from the same customer) which also appeared to indicate a bet of €100.00 on 19 September 2006. On this occasion there was a payout and it was recorded that there was an adjusted stake in that the stake changed from €1.00 to

€100.00. CD told the Tribunal that this was "translated after the result" and that the adjusted stake flagged to the respondent that the bet had been initially rung up as €1.00 (at 14.08.56) and only changed (at 14.12.58) after the horse in question had won.

The Tribunal was now referred to a bet on 29 September which had "€200" on the docket but which had €2.00 recorded on computer as "translation details" and "capture info". This had been done on the claimant's own till. There had been no payout because it had not been a winning bet. CD told the Tribunal that this was not a transaction that would ordinarily come to her attention but that it had been found when the respondent had looked through the transactions. She added that the cash should have been "over" by €198.00 at the end of that day but that this had not been recorded and that it had in fact been "over" for that day's daily balance by less than ten euro.

The Tribunal was now referred to a 7 October "large win" bet on the claimant's till which had been originally rung up for €2.00 but which had been subsequently adjusted to a stake of €200.00.

The next example brought to the attention of the Tribunal concerned a 13 October dog race where the betting slip appeared to indicate a stake of €40.00 but where the claimant's "translation details" and "capture info" on computer indicated a stake of €4.00. Another 13 October betting slip appeared to indicate a wager of €50.00 with the claimant but the "transaction details" and "capture info" on computer indicated a stake of €5.00. Regarding these bets, CD told the Tribunal that she had "dug both out" herself and that the relevant daily balance should have been "over" by the amounts of €36.00 and €45.00 but that it had, in fact, been "down" by €6.50.

However, another 13 October bet with the claimant indicated a bet of €50.00 euro on the betting slip and on the computer's "translation details" and "capture info". This was recorded as a winning bet and the paperwork showed an adjusted stake in that the computer's "system comment" read: "Stake changed from €5 to €50".

Summing up the testimony given, CD told the Tribunal that there was a contrast between unsuccessful bets and successful ones in that the changes had only happened in the winning bets after the race in question had been won. In the case of losing bets that had been processed for lesser amounts than appeared to have been wagered, she said that one might have expected to have found additional money in the till but that this had not been the case and she added that "the common denominator" had been that these transactions had all been processed on the claimant's till. All staffmembers had to log on to their own till and only operate their own till. This was strictly enforced. Itwas in the manual.

(At this point in the Tribunal hearing the claimant interjected to say that he had not seen this before but that he was aware of the procedure.)

The Tribunal was furnished with a copy of a document headed "Log Off For Shop Tidies etc" which told employees how to suspend their till when leaving it to do a "shop tidy" or to go to the toilet etc.. The document told employees that, once suspended, their till could not be used by anyone else unless they logged on under their own name. The document ordered (in bold block capitals) that employees were never to use someone else's password and were not to give their password to anyone else.

CD told the Tribunal that the details in this document were displayed in every shop and that she could not come to any conclusion other than that a fraud had been committed.

Asked by her representative what steps she had taken on foot of all that she had seen of the claimant's till transactions, CD said that she had rung a security consultant (hereafter referred to as DM) who had previously worked as security manager with the respondent. She asked DM to have a

meeting with the claimant.

It was put to CD that the claimant had said that he had drawn suspicious transactions to the attention of the respondent and that he would be a fool to do it himself. CD replied that she had known of the claimant telling the respondent about stake adjustment regarding an employee who was no longer with the respondent and that it was "a similar adjustment".

In cross-examination it was put to CD that in a busy shop the number of mistakes would "multiply" and that most mistakes were spotted. CD replied that not all mistakes would be spotted but that the cash would then show an "over" or "under"on the day. She added that she had regarded the claimant as very experienced.

The claimant then put it to CD that the respondent's procedure enabled the locking of computer tills but not of the money itself. In reply CD acknowledged that the money was not locked up but said that this did not explain the transaction documentation.

The claimant having put it to CD that someone else could have taken the money out, CD said that it would have been "a bit of a coincidence that somebody could take a hundred euro". CD added that staff were required to do cash checks but not every time that someone went to the toilet and that she thought there were eight cashchecks per day. When the claimant put it to her that there might be five or six on a busy day and ten or twelve on a quiet day CD replied that eight would be the norm.

CD told the Tribunal that the claimant had been there on each of the key occasions. When the claimant asked her how many of the staff would be still with the respondent she replied that she did not know. When the claimant asked her if similar incidents had happened with other staff in other shops she replied: "I'm not aware." When the claimant asked her how she would rate the chances of getting away with what was alleged she replied: "People will always be found out." When the claimant put it to her that it would be "on the verge of stupidity" she replied: "Yes but many people think not. It would be one of the most common acts of fraud that we see."

When the claimant put it to CD that he had rung security four times she replied that she did not dispute this. The claimant asked her what was the likelihood of his doing this after he had rung security to keep an eye on it but before she could reply he asked had anyone been dismissed for similar. She replied: "No. Not the people you mentioned."

The claimant put it to CD that if one was doing fraud one would be signing it. CD replied: "Any exception must be flagged but there are so many of them. I accept there are misbets. When we find the cash is over that's concerning."

At this point the claimant was asked by the Tribunal about the list of end-of-day balances for his shop in the respondent's documentation for the hearing i.e. whether he could dispute any of it, the claimant said that he could not prove it wrong. He said that he had been told that he could not go into the system himself (to check it) and that he had had to take the respondent's word. Asked if he had kept a list, he said that it had all been done on the computer. Asked if he had any reason to be suspicious of the list of key end-of-day balances and told to tell the Tribunal at this point if he was disputing it, the claimant replied: "It can be altered." However, he added that he had no information on this and that he was accepting the record of the key end-of day balances.

The claimant now put it to CD that, about a week after he left the respondent, an e-mail was sent to all staff saying that they would be assessed and that thirty people were let go in a two-month period. CD replied that the respondent had about four hundred people in the shops but that she was not aware of thirty people being let go in a two-month period.

The claimant put it to CD that he believed that an e-mail had been sent out and that a number of people had "jumped ship" when it occurred. She replied: "I recall an e-mail but I'm not aware of thirty people." She added that she recalled saying to people that if anyone was in trouble to contact the respondent i.e. if they wanted advice from Operations. She also told the Tribunal that this e-mail said that each individual would be subject to individual audit.

In re-examination CD said that she was aware of people other than the claimant "being dismissed for similar". She was asked how she would rate the claimant's actions on a scale of one to ten if ten was very serious. She replied: "Ten."

Questioned by the Tribunal, CD said that she was not aware of other discrepancies involving the claimant. Asked about the list of key end-of-day balances and whether other days had been under or over, CD said: "Probably the same as what's there. Nothing stood out."

Asked about a day when a winning stake had been changed from one euro to one hundred euro, CD said that the adjustment had been made after the race was run, that it had to be one hundred euro at "capture" to pay out, that it could not be seen where one euro had been registered and that the customer gets a carbon copy of his betting docket.

Giving evidence, a respondent witness (hereafter referred to as DM) said that he was a security consultant for the betting industry and that he had his own company. He said that he had worked as security manager for the respondent and for a major bookmaking chain but that he was totally independent.

DM told the Tribunal that he had received extensive training specific to bookmaking, that his role varied and that this case had involved interviewing in that CD had contacted him, had provided him with information and had asked him to interview the claimant about betting irregularities.

DM told the Tribunal that he did not tell the claimant in advance that he would interview him, that this would be left to the respondent and that employees would normally be told on the day of DM's arrival. Asked what had been the claimant's reaction when DM had turned up, DM replied: " I suppose surprise." The claimant and DM then met at the appointed place in a hotel. Asked if the claimant had been co-operative, DM said that the claimant had been and that DM had put all the irregularities to him. DM told the Tribunal that a HR director from the respondent had also been present to observe. DM prepared a statement.

Asked if he had prepared the statement as he had gone along, DM replied that he had discussed the irregularities with the claimant, had shown the claimant each document that CD had given him and had written out the statement with the claimant's agreement at all stages.

The said statement was read into the Tribunal's record. It stated that DM (with the respondent's HR administrator present) had informed the claimant that this meeting was "a security meeting into a number of bet irregularities discovered" on dates that the claimant had worked and "that this statement may be used in any future disciplinary meeting".

The statement said that DM had shown the claimant "seven specific bet irregularities" on four dates that the claimant had worked and that, although the claimant accepted "responsibility for processing each of these bets incorrectly", he "did not deal with them in a fraudulent manner". The statement

contain the concession that the claimant could "offer no tangible explanation as to where this money was gone" and said that the respondent had "checked the business fully for a compensating error to account for these errors" but that none had been found. The statement added that the "cash differences on each date did not account for the discrepancies either".

Regarding a bet placed on 19 September 2006 the statement said that the claimant could "see that this bet is clearly staked for €100.00" and that the claimant had "processed this bet for just €1.00" but "had no explanation as to where the excess €99.00 has gone". The statement added that the claimant "did not gain in any way from this bet" and that on this date he had been working with someone who "was a former monitored customer" whose "stakes would be in the thousands". The statement made out that the claimant had "never felt comfortable working with him and reported this" to the respondent but the statement conceded that the claimant had "not witnessed him doing anything untoward in the shop".

The statement next referred to another bet placed on 19 September 2006 and which was "in the same handwriting as the first bet listed above." Again the statement accepted that "this bet is clearly staked for €100.00" and that the claimant "was responsible for initially putting it through for just €1.00" but had "adjusted the stake back up to €100.00 after the result was known" and had "paid out the customer €325.00". The statement said that "this was an error" on the claimant's part "processing it for just €1.00" and that the claimant "did not purposely do this".

The next bet dealt with related to 29 September 2006. The statement said that the claimant could see: that this bet was "clearly staked for €200.00"; that he accepted "responsibility for processing it for just €2.00"; that he could "offer no tangible explanation as to where the excess €198.00 has gone"; and that he "did not do anything fraudulent with this bet". The statement added that on this date the claimant had been working with two others (AA and BB).

The next bet dealt with related to 7 October 2006. The statement said that "this bet is clearly staked for €200.00" and that he accepted "responsibility for initially processing it for just €2.00". The statement added that the claimant "did adjust the stake back up from €2.00 to €200.00 after the result of the race was known" but that he "did not purposely process this bet for just €2.00". The statement added that on this date the claimant had been working with two others (CC and the abovementioned AA).

The next bet dealt with related to 13 October 2006. The statement said that the claimant could see: that this bet was "clearly staked for €40.00"; that he accepted "responsibility for putting it through for just €4.00; that "this was a genuine mistake" on the claimant's part and, however, that the claimant "did not purposely do this".

13 October 2006 was also the relevant date for the next bet dealt with in the statement which said: that the claimant "can see that this bet is clearly staked for €50.00"; that he accepted "responsibility for putting it through for just €5.00"; and that he could "offer no tangible explanation as to where the €81.00 from this bet and the previous bet above went to".

Once again, 13 October 2006 was the date involved for the next bet dealt with in the statement which said that "this bet was clearly staked for €50.00" but that the claimant had "accidentally processed it for just €5.00". The statement went on to say that the claimant remembered this bet as, when he did a cash check at around 4.30 p.m., he discovered he was "€45.00 over" whereupon he had started to check the stakes and "discovered that this bet had been under-rung by me so I adjusted it up to €50.00 from €5.00". The statement added that DM had asked the claimant to explain how he had not noticed "the two under-rings" of €36.00 (€40.00 - €4.00) and €45.00 (€50.00 - €5.00) when he had been checking the stakes. However, the statement then said that the claimant had "stopped checking

the stakes when he found the under-ring of €45.00" that he had been looking for because he had just been looking for one under-ring. The statement added that on this date the claimant had been working with the abovementioned AA.

The statement contained the following: "I accept that the irregularities listed above look terrible and the fact that there were no compensating errors to account for them and the fact that the cash differences on each date didn't account for it either. I can see it looks really bad. All I can say is that I am honest and didn't do anything untoward with any of these bets nor did I witness any other member of staff doing anything with these bets either.

At the foot of the above was written that the claimant had read through it, that it was correct and that DM had given the claimant the opportunity to add to it or delete from it but that the claimant did not wish to do so. The claimant's signature appeared at the foot of each page of the statement.

At this point in the Tribunal hearing DM confirmed to the Tribunal that this was the statement that he (DM) had prepared and that he had offered the claimant the chance to change it. However, DM told the Tribunal that the claimant had signed the statement and had not availed of the opportunity to change it. DM also confirmed that the respondent employee referred to as XX had been monitored as someone who had had large bets but that XX had worked with the claimant on only one of the days at issue and that DM had been given information as to who had been working with the claimant.

Asked about the claimant's degree of co-operation with him and about the claimant's demeanour, DM said that he had found the claimant "okay" and that the claimant had answered all DM's questions. The claimant indicated that he was not so stupid as to do what was suspected but did not ask to stop the interview.

DM told the Tribunal that his next step had been to contact the claimant's operations manager about how the meeting had gone. The operations manager then had to decide if the claimant "would be suspended or go back to the shop". DM gave her a verbal report over the phone. His report was that the claimant had not admitted to fraud but, because there was no explanation, he felt that what had happened had been fraudulent.

Asked at the Tribunal hearing if he had felt that he could draw a conclusion, DM replied that the claimant had had enough time to give an explanation but had not done so and that he (DM) thought there had been fraudulent conduct. Nothing else, including what had been said by the claimant, had suggested itself to DM as an explanation.

In cross-examination DM was asked if the claimant had not been in shock. DM replied: "No. Just surprised." DM told the Tribunal that he had told the claimant "that there was a security matter to discuss about irregularities". When it was put to him that this had been just before the meeting, DM replied that he was not an employee of the respondent, that he had just taken the documents that he had been given and that he assumed that the respondent's district support manager had told the claimant in advance.

DM told the Tribunal that he did not recall the claimant asking about the respondent HR director who had attended the meeting and said that he had said that she had been there for the protection of both employer and employee. She had put no questions to the claimant. When it was put to DM that she was not independent he replied that he did not agree.

Questioned by the Tribunal, DM acknowledged that he had not given the claimant an opportunity to bring a witness but said that it had not been a disciplinary meeting.

When the claimant put it to DM that he had only been told what the meeting was about when he had walked into the room DM replied that he assumed that the district support manager told the claimant.

The claimant put it to DM that when he (the claimant) had "walked in the door it was a kick in the teeth" and that he had no chance to prepare. DM did not dispute that the claimant had had no chance to prepare and admitted that he knew that the seven issues had not been put to the claimant before the meeting.

When the claimant said that he did not know if the bookmaking printouts furnished at the hearing were facts and that he had had no chance to check the system the respondent's representative said that the claimant had said that he did not dispute them whereupon the claimant said: "I can't prove them wrong."

At this point in the hearing the Tribunal put it to the claimant that perhaps one reason why he could not prove them wrong was because they were right. The claimant replied: "I don't recall every individual bet." He added that had taken the respondent's word that all was correct. DM now stated that he had given the claimant that opportunity to which the claimant replied: "I was not offered a break." DM replied: "You could have had tea or coffee or water. I didn't realise the time. I agree the interview took about two-and-a-half hours."

DM now told the Tribunal: "I've done hundreds of those interviews. I was a hundred per cent satisfied of the accuracy of the documents. I was asked my opinion after the interview." He added that he was familiar with the documentation used in the betting industry.

Asked how the interview had not been part of a disciplinary meeting, DM replied that it had not so been and that he had had to tell the respondent's operations manager how the meeting had gone. He added that he took a statement but did not make a recommendation. DM told the Tribunal: "He would have been told why he was going to a meeting." At this point in the hearing the claimant said that he had been asked to go to meet DM about betting irregularities and that he had been told it would take ten or twenty minutes.

In re-examination it was put to DM that the claimant had said that DM had not been aware of the status of XX. DM accepted this. DM was then asked if it would have changed matters if he had been aware. He replied: "No. It has no effect on these facts. What we have is clear evidence of fraud." He added that the claimant had not asked for a break or said that he was tired or asked to reconvene but had signed the statement although DM had given him time before he did so.

DM, telling the Tribunal that he had known that the claimant was experienced, said: "If someone has been up to no good they can prepare for a meeting." DM added that he had been extremely surprised that the claimant had had no explanation for "all bar one" of the betting irregularities.

On the **second** day of the hearing the then Area Manager (known as JL) for the respondent gave evidence. She stated that she was now employed with the respondent in Human Resources and training. She had thirty years experience in the industry.

When asked, she stated that she had known the claimant for years, had worked with him for a previous employer and had attended some of the same social events as the claimant.

The claimant was suspended on October 16th 2007 due to the seven betting irregularities that had

occurred while he was Manager on Duty. The following day he was asked, in writing, to attend a meeting on October 21st 2006 with the witness and the District Support Manager (known as NM). The claimant attended alone even though he had been told in the letter that he could a staff member attend with him. The claimant said that he should have been allowed to have representation, other that a staff member, at the meeting and given a chance to look through the business day in question. The claimant was not upset or confused and was very calm. The witness told the claimant that they could take a break in the meeting at any time.

A copy of the notes of the disciplinary meeting was read out to the Tribunal. At the meeting a copy of seven adjusted betting slips, the letter that had been sent to attend the meeting was read out and a copy of the statement by the security consultant. The witness told the Tribunal that the claimant did not give sufficient explanations for the betting irregularities.

During a break in the meeting the witness spoke to CD. She also checked if there were any problems with the other staff members who had worked on the days of the betting irregularities. The witness said that she asked the claimant if he wanted to add or delete any information given in his statement. He replied, "It is as it is".

When asked the witness said that all the betting irregularities had been put through the claimant's till. She explained that all tills were password protected and if you needed to leave your till for any reason, you would suspend it. The witness read out the logging off procedure. She said that she had never seen anyone use another's till on seven occasions. She said that the only common denominator on the days of the irregularities was the claimant was present. He had worked on each occasion with different staff.

The witness said that she came to the conclusion that the claimant had acted dishonestly and falsified betting slips. She had no option but to dismiss the claimant. The grounds for dismissal in the staff handbook were read out. The witness stated that she had dismissed the claimant under reason number three – *Misappropriation of Company property, theft, fraud, fighting, persistent refusal tocomply with reasonable instructions.* The witness walked the claimant to the door, shook hands andswiped him off the premises. The claimant was given a letter of dismissal and was given theopportunity to appeal the decision. Which he did.

On cross-examination she stated that she was a work colleague of the claimant's but not a friend. When asked, she stated that she was not a member of the security staff. When asked, she said that she had not spoken to the other staff who had worked with the claimant on the days in question whether they had seen him taking money out of the till. When asked if there was any other record of the betting irregularities, she replied that copies were only kept for a month as all the details were on the computer system.

When asked by the claimant when she had found him guilty, she replied at the disciplinary meeting on October 21st 2006. She came to this decision as it had all happened through the claimant's till and he could not explain why. When put to her that the computer system could freeze for hours, she replied that if this happened I.T. were to be contacted straight away. When put to her that money was left in a box and all staff had access to it, she replied that if you went on a break you balanced your till and put the money in the safe. When asked if the staff members the claimant had worked with on the days in question were still working for the respondent, she replied that only one remained.

When put to her she stated that she had not held another disciplinary meeting during the break of the claimant's disciplinary meeting. When asked by the Tribunal the witness said that the DM had the expertise in carrying out the investigation.

The Head of Operations (known as HG) gave evidence. She explained that she had twenty-eight years experience in the industry. She conducted the claimant's appeal of his dismissal. She received his letter of appeal and contacted the claimant. She explained that she had all the documentation available to her. The meeting took place on November 2nd 2006 and lasted an hour and a half. The witness told the Tribunal that the three explanations the claimant gave in his letter of appeal were inadequate of a person of his experience. The witness stated that she had interviewed the claimant for the Manager's position and found him very experienced. The claimant did not give any other explanations for the seven errors. The claimant did not seem to have any problem with the security statement of events.

The witness said that she toiled over her decision for a few days but came to the conclusion that the decision to dismiss the claimant was to be upheld. She said that she hated the idea of losing an experienced member of staff but everything pointed to the claimant carrying out the transactions. The claimant was offered a further appeal but he did not use the opportunity.

When asked, she stated that she did send an email, dated October 31st 2006, to all staff clarifying three main areas, which could lead to dismissal. This was credit betting, staff fraud and failure to follow procedures. She agreed that there had been ten staff dismissed over the previous two months of the date the email was sent. She said that the email was sent as a preventative measure for the future.

On cross-examination the witness said that some other staff had left as they returned to college. When put to her she stated that she had not produced the letter the claimant had sent to the Managing Director of the respondent company and had not asked him why he had gone over her head.

When asked by the Tribunal the witness said that there was CCTV surveillance but that it was homed in on the tills.

Claimant's Case:

The claimant gave evidence. He explained that he had twenty years experience in the business and had worked with JL in the past and they had been friends. She had contacted him when he was working for a previous employer and informed him of a position with the respondent in the Cavan/Monaghan area. He applied for the position, was successful and moved to Cavan.

Two months later a new superstore was to be opened in Navan. JL advised the claimant to apply for the position but he decided against it, as there would be a lot of commuting. Having been informed that relief Managers were to be phased out, he applied for the position in Navan and was successful. The claimant said that he went to the premises, which was in mayhem. JL was there to give him his uniform. The claimant told the Tribunal that the staff feared her and HG.

The claimant said that he was not happy in the job and was annoyed to be picked up on the smallest of issues. On return from a week's leave he spotted two errors and reported them to the security department. It again happened after another week off. He explained that the quality of some of the staff were "not great" and had expressed that he did not want to work with one of them. He began to look for a new job. A rival bookmaker was to open in Kells and he contacted them to enquire about a position.

On October 16th 2007 NM came into the premises and asked him to a meeting with the DM in a nearby hotel. When he asked why, he was told that it concerned some bets and the meeting would be only ten to fifteen minutes. The claimant thought the meeting was about the irregular bets he had

reported to the security department. He attended the meeting and was introduced to the DM. He was shown the seven bets in question but could only remember one of them. He said it was hard to explain the reason for the bet irregularities, as he did not know the answer. He told DM the he would not confess to something he had not done. He brought the subject of his betting errors while he was on leave but DM did not seem to know about it. At the end of the meeting he and the NM returned to the premises but he was not allowed to enter.

On October 21st 2007 he met with JL. They discussed the previous meeting on October 16th 2007. The meeting stopped for a break and resumed in the afternoon. At the end of the meeting JL left for ten minutes and returned to inform him he was dismissed. The claimant said that he had concerns, the other staff had not been questioned and the question of the reliability of the computer system. He appealed the decision and wrote to the Managing Director. The appeal hearing took only a half an hour. He decided there was no point in appealing that decision as he felt the respondent thought he was "guilty as charged".

The claimant gave evidence of loss.

On cross-examination the claimant stated that he understood that the respondent company was concerned about the irregularities. He said that the respondent's premises were very busy and noisy and mistakes could happen. He explained that he had seen staff disciplined in the past but stated that all staff would be questioned about any incidents. When put to him he said that he could have made some mistakes but that some one else must have taken the money. He agreed, when put to him, that he had been the Manager on Duty on the days in question, that it was his till that the bets were recorded on and that no other staff member worked on all the same days in question but it did not mean that he took the money. He said that there was nothing to state on his till that he had processed the bets but could not prove who had done it. He stated that he had not been given the opportunity to check the computer system after he had been accused. He again stated that the other staff should have been questioned and the CCTV viewed before the decision to dismiss him was made.

When asked if he could think of any other explanation than him, he replied that there could have been a fault in the system or some one else had done it. When asked, he stated that at the first meeting he was not allowed to being anyone with him. At the second meeting he could only bring a work colleague and he did not want to get anyone else into trouble.

Determination:

Having heard and considered all the evidence adduced over the two days of the hearing, the Tribunal finds that the Respondents investigation into the matter was not properly carried out. The Claimant should have been informed prior to the meeting of the subject matter of the meeting and been furnished with the allegations and information to be used at the meeting so that he could give considered responses to the evidence presented to him. The claimant should have been afforded the opportunity to view the CCTV footage of the transactions and allowed to go through any dockets or paperwork relevant to the irregularities all of which was denied him. In addition none of the other staff in the Branch were questioned about the irregularities and the investigation appeared to be directed towards him alone when others worked in the Branch and despite the security measures could have been involved. However, the Tribunal finds that the claimant contributed to his dismissal by failing to provide the explanations at the time of his dismissal which he later relied on.

Accordingly, the Tribunal finds that the claimant was unfairly dismissed and considers the most appropriate remedy to be compensation by reason of the breakdown of trust between the parties and awards the Claimant the sum of €7,000 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)