

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD18/2008

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr F. Moloney
Ms. A. Moore

heard this claim at Dublin on 16th June 2008

Representation:

Claimant(s) Mr. Peter O Sullivan BL instructed by Ms. Mandy Walsh, Colgan & Company,
Solicitors, 38 Arran Quay, Dublin 7

Respondent(s): Mr. Adrian Twomey, Advokat, Dun Barra, Dunanore, Bree, Enniscorthy,
Co Wexford

The determination of the Tribunal was as follows:-

Respondent's Case

ZR told the Tribunal that she was the senior administrator in the respondent's centre in Liffey Valley. She was eight months in the position. The procedure in place in the respondent was that if an item was for sale at a discount of more than ten per cent staff would have to ask the manager to approve it, and that was always the case. She trained the claimant over a period of three weeks on how to operate the till and the discounts. She made it clear to the claimant that she needed to obtain managerial approval regarding discount.

In this instance claimant brought it to her attention that she could not scan the sticker. She rectified the matter for the customer. She then discovered that the full price of the product was €189.97 but it was sold for €69.97. The claimant cancelled the original transactions and re-entered it. ZR made a copy of the receipt and gave it to the deputy manager. It was then

given to the general manager

In cross examination asked why she did not go to the claimant herself she replied that she did not see the reason why she should go and the customer had left. It was the policy if discount was greater than ten per cent that staff had to go to the manager. It was possible that product could be returned with a part missing. If the discount was more than ten per cent it should be written on the box or on a sticker. She went to the warehouse to get the graphic card and the customer did not need the box. She had a meeting with her manager and the claimant and she could not recall where the box was during this time.

JK the general manager told the Tribunal that he was responsible for operations, employees and health and safety and he was two and a half years in the role. The policy in the respondent was that if a customer brought back goods that they did not want the goods were resold at ten per cent discount. This product was not damaged or faulty. The product that the claimant sold was a graphic card, it was just one part and the respondent did not sell damaged or faulty goods. On certain items the goods on display were not in the box and this was for reasons of theft. The graphic card product price was on the shelf or in front of it. The receipt for the graphic card was brought to his attention and he looked at it in detail. He did not know what happened to the sticker, it could have been taken off. From time to time customers could remove stickers from product. The claimant would not have the authority to give customers product at that price. He asked the claimant a number of questions and he was not happy with the answers. What the claimant did was wrong. She gave excessive discount on a product and failed to follow procedures.

In cross-examination asked what excessive discount was he replied that anything over ten per cent. Asked if he viewed it as theft he replied yes. The police were not called to investigate the matter. Gross misconduct was the abuse of company discount leading to a loss of money. At the time of the investigation the box was at the checkout. Asked if there was a till on the service desk he replied yes and if the shop was busy money would be taken at the service desk. On the day of the incident he noticed a lot of friendly banter going on between the claimant and the customers, which he felt was more than normal.

TA told the Tribunal that his role was general manager of and director of the group. He did not have any previous dealings with the claimant. He dealt with the disciplinary hearing. A letter issued to the claimant on 18 October 2007 regarding the disciplinary hearing. There was an error on the letter in that the claimant was asked to attend a meeting at 11p.m. A further letter was sent to the claimant on 23rd October to advise her that the disciplinary hearing was rearranged for 26 October. He was in no doubt that the claimant was clear regarding the till procedures. The claimant was dismissed and the issue was one of trust. He did not believe some of the answers that she gave him and he would not want her on the cash desk, as he could not trust her. When the customer hit the keypad she would have to cancel the transaction then. The claimant told him that she cancelled the transaction at the till and she did not follow company procedure. He told her that she should be dismissed, the claimant refused representation. A letter of dismissal was sent to the claimant on 1 November 2007. The claimant had a right to appeal the decision to dismiss her and she did not do so.

In cross-examination asked where the dismissal could be appealed to he replied the HR manager. He did not have knowledge of previous issues with the claimant. He based the dismissal on the incident that occurred. HR did not give him information on the claimant and he never saw a warning on the claimant's file.

The HR manager told the Tribunal that employees were always invited to sign a contract. It was unusual that an employee would not sign it. The appeal option was given to the claimant but she did not avail of it. The respondent encouraged employees to bring witnesses to meetings. The respondent used the appropriate stage of the disciplinary process depending on the disciplinary. He stated that on a transaction the claimant gave a significant discount to a customer and the same credit card was used.

In cross-examination he stated that he would not have personal knowledge of the transaction. He did not know if it would be possible for someone to put in the code

Claimant's Case

The claimant told the Tribunal that on 29 May 2006 that she completed an interview and undertook a period of training with the respondent. She did not receive a contract and never signed one. Two to three colleagues informed her that they did not get anything like that. She went to the duty manager who told her that she was on the payroll for three months and that she had a permanent job.

On 28 September 2007 three customers brought a graphic card to the till. She had to check to see if the product was in store, as she did not know if it was in stock. The manager scanned the product and gave ten per cent discount. She left the till and the customer waited to pay for the product. She waited for the customer to insert the pin number and there was no price on the box. A sticker on the box indicated that the product was €119.99. If there was a ten per cent discount on the product it meant that there was something missing. She sold the product for €120,00, the procedure was go through a scanner and get ten per cent discount. If the price was wrong the new price was put in the system and that is what she did. The product was a second hand product and there was something missing from it. She did not know who the three customers were. She had a good relationship with staff and she did her job. Since her dismissal she has endeavoured to find employment. She was told before she received her P45 that she would suffer for it. At the investigation, which she attended, the box was not there.

In cross-examination she stated that JK told her off the record that if she resigned that she would be given a reference. Asked if the sticker on the box indicated that the product was €119.99 she replied that ZR took the sticker and scanned it. Asked if ZR said that the claimant called her and did not scan the box she replied she asked ZR to check it to see if it could be sold to the customer. The claimant scanned the sticker, as she did not know if they had the product in the warehouse. Asked why the warehouse would reduce it beyond ten per cent she replied it happened. Asked if she was aware of the procedure to be followed she replied if it was a new product she would have to call a manager. If she found that the price on the box was different when she scanned the item she would have to do the discount herself. She did not call the manager if there was a price on the product. Asked if she breached procedures she replied yes and if she did it was a procedure that was used and she was the one serving the customer. When questioned again regarding a reference she stated that she met JK and he made it clear that she was not going to get a reference and therefore there was no point in asking for one. She did not request a reference in writing. She did not contact HR and she did not register with FAS. She is presently studying. Asked if she discussed JK's comments with senior management she replied she did not think it would make any difference. Asked if ZR scanned the product she replied that ZR put in the product code. Asked why she could not have done it she replied that ZR told her that she knew the code for the product.

In answer to questions from the Tribunal asked where was the sticker she replied it was on the front of the box. Asked when the customer approached her and gave her the empty package did she see a price sticker on the package she replied that she gave ZR the sticker.

Determination

Having heard all the evidence the Tribunal are of the view that the evidence of the claimant was entirely inconsistent and completely at variance with the evidence given on behalf of the respondent. In addition to that the account of the various procedures undergone by the respondent was signed by her and acknowledged by her as being accurate and this was also contradicted by the claimant at the hearing. The Tribunal is of the view that the facts as set out by the respondent are accurate. The claim under the Unfair Dismissals Acts 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

