

## **EMPLOYMENT APPEALS TRIBUNAL**

**APPEAL OF:**

**CASE NO. UD991/2006**

Employer

against the recommendation of the Rights Commissioner in the case of:

Employee -v-  
Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Mr. M. McGarry

heard this appeal at Castlebar on 10th December 2007 and 4th March 2008

#### **Representation:**

Appellant: Mr. Evan O'Dwyer, Crean O'Cleirigh & O'Dwyer, Solicitors,  
Ballyhaunis, Co. Mayo

Respondent: Mr. Colm Keaveney, S I P T U, Moneen Road, Castlebar, Co Mayo

This case came before the Tribunal by way of an appeal by the employer against the recommendation of the Rights Commissioner Ref: r-041448-ud-06/JT dated 16<sup>th</sup> August 2006.

The employer is hereinafter referred to as the appellant and the employee as the respondent

The determination of the Tribunal was as follows:

**Section 29 of Organisation of Working Time Act, 1997 Act enables the Tribunal to adjust the name of the employee (the Respondent in this case) to his correct name: Noel Conroy.**

#### **Appellant's case:**

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The financial controller in his evidence told the Tribunal that the appellant's premises consisted of the main factory and a number of other offices in the main building complex. He was responsible for implementation of the financial controls and general financial management of the whole company. He was based in the accounts office of the main building and the respondent was based in the main factory. The respondent was a good employee and was in charge of bringing in general consumables such as boots, safety clothing and other items.

The grounds for the respondent's dismissal were outlined as follows: misuse of petty cash, improper use of medication in the workplace and the use of ink cartridges. Witness gives authorisation for the purchase of items from petty cash. In general a couple of requests were received each week for purchases through petty cash. The petty cash is obtained from the accounts office and receipts are produced for the items purchased. The respondent did not receive authorisation for the use of petty cash. In February 2006 witness approached the managing director relaying his suspicion in relation to the misappropriation of petty cash. Witness and the managing director met with the respondent and suspended him with pay pending investigation. The respondent stated that he had received all receipts however witness did not agree and had a number of suspicions. In relation to the distribution of medication the respondent was not qualified or authorised to dispense Panadol to staff members. It was put to the respondent in February 2006 that he was not authorised to give out such large quantities of Panadol. Thirty-six cases of the tablets had been bought with twelve in each case. His response was that staff were allowed to come in and look for four tablets. Witness was not aware that the tablets were being given out without the authorisation of management and he was shocked to see such high quantities being bought and handed out in such a loose manner. It was considered to be a disciplinary matter. The particular ink cartridges which were ordered were not interchangeable with other printers and the respondent said he was using them in his own printer at home. It was also stated by the respondent that the safety officer asked him to purchase the cartridges. After the allegation was made the respondent paid for the cartridges. Their value was approximately €70.

Two to three weeks after the initial meeting witness and Mr L, who is a non-executive director, met with the respondent. Mr L was based in Cork and as an independent person could give a proper review of the procedures. He was treated as an adjudicator. Both sides presented their respective cases and Mr L. made the decision to dismiss the respondent with immediate effect. The P.45 was also issued promptly. Witness felt that the respondent had a case to answer and this was not done to the satisfaction of witness. Proper procedures were followed and he was satisfied with the dismissal decision.

He said that he did not dismiss the respondent. The disciplinary procedure was laid out in 2001. He said that he conducted an investigation into irregularities by the respondent in March 2006, the dismissal was based on point seven of the disciplinary procedure. He was dismissed for gross misconduct. The issues were put to the Managing Director. He oversaw the investigation. He said that the recommendation regarding the dismissal came from him. An independent person who was a non-executive Director, also took part in the investigation. The witness, the

independent person, and the Managing Director heard the evidence, and examined it. Based on this meeting the decision was taken to dismiss the respondent. His dismissal was fair, he had not followed proper procedure. His actions amounted to theft. A meeting was held with the respondent in February 2006 and, as a result, he was suspended on full pay until the decision was made to dismiss him. At that meeting he was told that there were a number of irregularities as to how he had conducted his work, such as: the misuse of petty cash, the dispensing of Panadol, and the purchase of a Lexmark cartridge for his own personal use (which was not paid for until after he was suspended). Other options for the respondent were discussed, but the final decision was to dismiss him.

In cross-examination witness said there was no written policy in relation to petty cash and neither was there any formal training. The respondent had been working in this post for twelve years and in January 2006 he was told that requests in relation to petty cash should be brought to the attention of witness. Witness agreed that this was six weeks prior to the dismissal. When the respondent was asked to the first disciplinary meeting he was not told in advance of the subject matter of this meeting. In relation to health and safety policies and procedures he agreed that no training was provided for the respondent. While there was an appeal procedure in place witness could not remember if this was offered to the respondent. He was not aware that the respondent had an arrangement with a member of staff in the accounts department for the payment of the cartridges.

In answer to questions from Tribunal members witness said that in his opinion the respondent should have been dismissed but it was Mr L who made that decision. There was no appeal system by which the respondent could have appealed the dismissal through the company. There was no written disciplinary policy or agreed grievance procedure.

The Tribunal also heard evidence from Mr K who is a health and safety advisor and works as an independent contractor. He worked with the respondent two to three days per week. He and the respondent worked in the same office although at opposite corners. He was not involved in the purchase of goods but if he needed something he would request the respondent to get it for him. He was asked if he authorised the purchase of the medicine and he replied that he did not. He did not instruct the respondent to purchase the particular cartridges in question and he knew nothing of petty cash. The dispensing of medication is normally done by a nurse or doctor and this was also part of his first aid training. He was aware of the up-dating of the health and safety statement in 2004 and he spoke with the supervisors and managers to tell them of their obligations regarding the dispensing of medicine. He said that he was responsible for first aid. The respondent was not medically trained. He said that the Respondent dispensed Panadol tablets from his office. The witness produced a safety statement every 12 to 15 months, and consulted widely amongst the staff for their views on what it should contain, including the respondent. However he did not have a written record of whom exactly was consulted.

In cross-examination witness said he had never seen a procedure for dispensing of Panadol.

**Respondent's case:**

The respondent worked for the company for twelve years. His job was to handle incoming and outgoing goods, first aid duties, and stock-taking. He was authorised to buy items from petty cash on occasion. He kept receipts, or recorded details of these purchases. He thought that he was trusted in this regard. He only learned of the problem with petty cash on the day he was suspended. He said that he never stole anything. He bought the Lexmark cartridge with the permission of company staff, and tried to pay for it twice, before eventually the payment was made. He was flabbergasted at the decision to suspend him, as he had always done what he was told to do. He did dispense Panadol to staff over a long period, but was never told that he should not do so. At the meeting on 17 February 2006, he was suspended, but was given no details of the allegations against him. At the meeting where he was dismissed, the company representatives were only out of the room for 15 minutes or less before they came back in and told him he was dismissed. He has received counselling since. He tried to find work without success, and is now in full-time study since September 2007, but could accept employment immediately, if it was offered.

### **Determination:**

Under the Provisions of section 6 of the Unfair Dismissals Act 1977 (as amended) the dismissal of an employee shall be deemed to be unfair, unless having regard to all the circumstances there are substantial grounds justifying the dismissal.

Furthermore the tribunal may have regard to;

- (a) “the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal”, and
- (b). “to the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in Section 14 (1) of this Act or with the provisions of any code of practice referred to in paragraph (d) (inserted by the Unfair Dismissals (Amendment) Act, 1993) of Section 7 (2) of this Act”.

In this case the tribunal carefully considered the evidence given on behalf of the Appellant and the evidence given by the Respondent. It was clear from the evidence that the Respondent had carried on his duties in the same manner for a long number of years and the tribunal was not satisfied that any change of policy or different instructions had been communicated to the Respondent prior to the incidents which led to the Appellant’s decision to dismiss the Respondent. The Tribunal accepts the Respondent’s evidence in this regard. JH for the Appellant stated that the Respondent was dismissed for misuse of petty cash, improper use of medication in the work place and the issue of the ink cartridge which was described later in the evidence as amounting to theft.

Dealing with these issues individually the Tribunal is not satisfied that new procedures in relation to petty cash had been notified to the Respondent. It seems clear from the evidence that the practice of purchasing and handing out pain killers had been going on for a long number of years and that the Respondent should have been guided and supervised by Management in this regard but due to the nature of the

management of the business this was not done. He could hardly then be blamed for carrying out a practice which apparently had been going on for a long number of years in plain view of management without correction.

The Tribunal fully accepts the evidence of the Respondent in relation to the purchase of the ink cartridge and it is clear that there was no intention of defrauding the Company in this regard.

The tribunal finds that there were no substantial grounds justifying the dismissal, and therefore determines that the dismissal was unfair.

The Tribunal heard evidence of the procedures followed by the Appellant in the dismissal of the Respondent.

During the course of the hearing it became clear that the procedures followed by the Appellant in dismissing the Respondent were entirely unfair and unreasonable. The disciplinary investigation was carried out by JH, The Financial Controller. There then was a disciplinary hearing at which JH apparently presented the case against the Respondent. The decision to dismiss was apparently made by the non-executive Director or the Managing Director but JH remained in the room with them and took part in the discussion leading to the decision to dismiss.

JH was then the only witness relating to the decision to dismiss produced to the Tribunal. He could only tell the Tribunal why he felt the Respondent was dismissed as the person who took the decision to dismiss did not attend to give evidence.

Even if the tribunal had not ruled on the evidence heard that there were no substantial grounds justifying the dismissal the complete lack of fair procedure leading to the dismissal was entirely unreasonable and would of itself have rendered the dismissal unfair.

The Tribunal determines that compensation is the appropriate remedy in all the circumstances, and awards the Respondent €51,184.00 under the Unfair Dismissals Acts, 1977 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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