

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD538/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. M. Forde
Mr. J. McDonnell

heard this claim in Cork on 13 December 2007 and 23 April 2008

Representation:

Claimant(s): Ms. Sarah Daly BL instructed by
Ms. Aoife Thornton, Michael Powell, Solicitors, 5 Lapps Quay, Cork

Respondent(s): Mr. Cyril Cawley, Kinsella Heffernan Foskin, Solicitors,
Otteran House, South Parade, Waterford

The determination of the Tribunal was as follows:-

Respondent's Case:

The joint managing director (JMD) of the respondent company gave evidence. She told the Tribunal that she had commenced an investigation on the premises after anomalies kept occurring with the cash. Over a short period of time, money went missing and then reappeared. There was no question of theft but she wanted to get to the bottom of what was happening.

Money was to be placed in the safe in a plastic tube. However, on one occasion, two loose €50.00 notes were discovered in the safe. The cash drawer had been short by €100.00 prior to this discovery. The money allocated for the telephone had been short and then mysteriously corrected. These irregularities were inexplicable and the manager of the shop contacted JMD. JMD then spoke to the Gardaí to get advice on how to proceed with her enquiry.

On 28 March, JMD arranged a meeting with the staff in the shop and spoke to all of them regarding the list of occurrences. She asked them if they could offer any explanation as to why this situation arose and offered to speak to them on an individual basis if they had any information. She proceeded to speak to them all individually, including the claimant, to no avail. It emerged that the claimant had lent an amount of money out of the cash drawer to another member of staff and this

had been repaid. The claimant asked JMD if she wished her to discontinue working with the cash and JMD said to carry on with her duties.

JMD attended the garda station on 29 March and provided a list of what had happened in the shop. The gardaí offered to come and speak to the staff themselves. JMD returned to the shop and informed the manager and staff that the gardaí would attend the shop on the following Monday if the matter had not been sorted out. On Friday 13 April, a detective garda attended the shop to interview the staff. When his investigation concluded, JMD decided to deal with the matter in the shop and called the claimant to a meeting. The claimant admitted having lent money to another staff member and JMD was shocked. She decided to suspend the claimant without pay.

She discussed the matter with the other managing director of the business and held a further meeting with the claimant on 17 April. She offered the claimant the opportunity to bring someone to the meeting with her and the claimant declined. JMD told the claimant that she was not permitted to take any money from the shop for any reason and the claimant said that the manager of the shop had known about the practice all along. The claimant had kept a notebook with a record of the money she had lent and this made no sense to JMD. She felt that the claimant was a great loss to the business as a senior shop assistant and issued her with a letter of dismissal on the 17 April 2007. This set out JMD's findings and sought a response. The claimant telephoned her and queried her findings relating to what she had told the gardaí and JMD refused to alter the letter. Correspondence ensued between JMD and the claimant's solicitors culminating in a request for the claimant's P60 on the 30 April 2007.

Under cross-examination, JMD said that the claimant had originally been employed as a dispensary technician in the shop. When the most senior person left, JMD had a discussion with the manager, the claimant was made senior shop assistant and had responsibility for the cash and ordering the stock. Her wages were not increased to reflect her seniority position in the shop. If the cash balanced correctly at the end of the week, anomalies during that week would not be brought to JMD's attention. Anything over €10.00 of a discrepancy in the cash was reported to the accountant. The employee handbook indicated that all staff were responsible for reporting any difficulties or suspicions to management. JMD denied that it was common practice to lend money from the shop even though the claimant claimed it was. JMD was the investigator and the decision-maker for the dismissal of the claimant. She had never experienced any problems with the claimant in the five years she worked in the shop.

The detective garda (DG) gave evidence. On 26 March, JMD and the manager of the shop called to the garda station and explained the situation to him, asking for his professional advice. He suggested calling a staff meeting and that might bring matters to light. If no information was forthcoming, he suggested speaking to the staff members individually himself. On 2 April, he received a letter from JMD outlining the fact that a meeting had been held and no-one had come forward to volunteer information. JMD requested that he attend the shop and formally interview the staff.

DG attended the shop on 13 April. He advised each member of staff that they were participating in the interviews on a voluntary basis and were not under caution. He was there purely to get to the bottom of the matter. He was to report his findings to management and recommend further Garda involvement should the situation warrant it. DG interviewed the claimant and she insisted that she knew nothing about any money going missing. She denied any involvement in theft or misappropriation of money. A colleague of the claimant's was interviewed and confirmed that the claimant had lent her money which she always repaid. Upon re-interviewing the claimant, the

claimant admitted her involvement. DG understood that if money was missing, provided it turned up at the end of the week, it was not treated seriously.

DG advised the claimant that he would be reporting the facts to JMD and she should tell JMD herself before he did. He gave the same advice to her colleague. The claimant acknowledged that she did not have permission to remove money from the cash drawer. DG compiled a report of his findings and posted them to JMD with a recommendation to bring the matter further and make a formal complaint to the gardaí so charges could be brought. DG was satisfied that there was enough evidence for a file to be prepared for the DPP. JMD thanked him for the report, said that she would not be taking the matter any further and that she would deal with the matter within the shop. DG encouraged her to bring charges so as to “stamp out” that type of behaviour. Some weeks later, JMD confirmed that she did not wish to prosecute the matter any further.

Under cross-examination, DG said that the claimant’s colleague was the instigator of the arrangement and the one to benefit from it. She admitted this at interview and when the allegation was put to the claimant at a subsequent interview, the claimant admitted to having facilitated her colleague. DG was made aware that the claimant had been dismissed at a later date. There was no doubt that the claimant made no gain in these activities. The claimant was of “upward” (sic) character.

Giving sworn testimony on the second hearing day, a former pharmacy technician (FPT) with the respondent said that at the relevant time of March/April 2007 she had been working for the respondent. FPT had been taken on before the claimant but when FPT moved to another branch the claimant took her place. When FPT came back the claimant was now a senior shop assistant and therefore at a higher level than FPT.

FPT told the Tribunal: “If I was to borrow money I’d put it back on Friday.” FPT added that she had only known of borrowing by herself (rather than by other staff members) although she knew that the claimant had once borrowed for herself and had put it back on Friday.

FPT said to the Tribunal that she “always went through” the claimant and never borrowed on her own. FPT mentioned a specific occasion when she had been ill and had needed to see a doctor whereupon the acting pharmacist authorised money for this and she duly went through the claimant.

Under cross-examination, FPT said that she had borrowed money “maybe six times at least”. When it was put to her that the claimant would tell the Tribunal that FPT had never asked to borrow, FPT said that her number could not open the relevant till and that all her borrowing had been done through the claimant. She acknowledged that she had opened the till in the other branch where she had worked. When it was put to her that the claimant would say that she had used the claimant’s number to open a till FPT replied: “I wouldn’t open a till on somebody else’s number.”

Questioned by the Tribunal, FPT said that she thought that it had just been the claimant who had known about her borrowing. FPT did not know how many times she had done it but, though it had been done through the claimant, she acknowledged to the Tribunal that she (FPT) “did do wrong”. She added that JMD “gave me the chance to own up”. FPT also told the Tribunal: “I think it’s all the same if it’s one time or twenty-six times.”

Asked if she thought it had been wrong to borrow, FPT said: “Now, looking back, yes. I made a mistake. I hold my hands up.”

Giving sworn testimony, another witness for the respondent said that she was fifteen years with the respondent and that she had worked in the pharmacy in question for the last five years, on a part-time basis, both dispensing and assisting in the shop.

The witness said that the claimant had once told her that she had lent forty euro to FPT, that FPT would pay it back on Friday and not to divulge this. The witness told the claimant that she would be dismissed if head office knew. The witness “thought it was a one-off”. The witness told the Tribunal that the claimant knew she was wrong and “went bright red” whereupon the witness “got very cross” and told the claimant “to cop herself on”.

In cross-examination it was put to the witness that the claimant would say that people “chipped in” for birthday presents. The witness replied: “If somebody was off that day the change drawer would be used but a note would be put in. It would be with the authority of the person in charge if money was used for somebody who was off.”

Asked if FPT had borrowed from the Marymount fund, the witness replied that “once or twice” she had done so and that, if the cash was down, FPT would say that she had borrowed. Asked if FPT could have taken other people’s money, the witness replied that FPT was honest.

The witness told the Tribunal that she had been on holidays when the garda questioning had occurred and that no request had been made that she be questioned.

The witness added that it had not been up to her whether or not the claimant was doing her job as the claimant was the senior shop assistant and had her own way of doing things.

Asked if FPT had been the only borrower, the witness replied: “I don’t know of anyone else. Maybe most of us manage money better.”

Giving sworn testimony, the respondent’s store manager (SM) for the material time of March/April 2007 said that she had recommended the claimant for the position of senior shop assistant in September/October 2006 when FPT went to another branch. FPT subsequently moved back from that other branch.

SM told the Tribunal that, over a couple of months, it came to her attention that the change drawer cash was dropping and righting itself. SM had done two spotchecks. The change-book was missing on both occasions. The change-book tells what amount of money should be in the drawer. SM left a note to ask the claimant the whereabouts of the change-book. SM did not get a response but the change-book was put back and the money was right again.

When, around March, a hundred euro was missing SM raised it with head office and informed the group general manager (GGM). SM asked all of the staff where this hundred euro was. The cash had never been down that much before. It would be twenty or thirty euro but it would seem to right itself.

SM was a pharmacist who trusted people on the tills and change-drawer.

Asked about a meeting on 28 March, SM said that the meeting had been called after GGM came to collect money and found two loose fifty-euro notes. All that should have gone in the chute should have been in a tube or a plastic bag labelled with the date. SM was at the 28 March meeting and was at the interviewing of each staff member.

Asked at the Tribunal hearing if it was true that there had been no loss to the respondent, SM replied that there had been a huge loss in terms of her time. She had been counting change to try to find what was missing in the claimant's records. The claimant did not indicate where the money was.

SM told the Tribunal that this had happened many times but more so over the last six months up to March. She had no knowledge that the claimant was lending to FPT or to anyone else.

SM told the Tribunal that, subsequent to DG interviewing FPT and the claimant, she was at the 13 April meeting also attended by JMD, the claimant and FPT. DG had said that there had been lending and borrowing over a considerable period of time. The claimant said that she did not see a problem because she was "keeping a tab" and that she had this in her personal possession in her bag. It was not available to SM. When the claimant said that she had been "keeping a tab" SM was asked about it. SM knew of only one occasion when a sum of forty euro had been lent but had not known of a "tab" being kept. Regarding the forty-euro loan, the fact that such an amount was not there had been noticed whereupon the claimant had said that she had given it to FPT and that FPT would pay it back on the Friday.

SM stated to the Tribunal that the claimant had subsequently said that she (SM) had known about the borrowing. However, SM told the Tribunal: "I did not in any circumstances." After the admissions made to DG and to the respondent JMD decided to suspend the claimant. The claimant had referred to a fifty-euro loan for a medical appointment and had said that her previous manager (PM) had known.

Asked if she had known anything to have been put in the change drawer before, SM replied: "Nothing about lending." She added that the claimant had said that PM had known of "several occasions when money was lent and borrowed". The claimant said that she had been on the phone to PM. The claimant took the "tab" out of her bag and GGM asked to see it. The claimant said no. GGM said that she (GGM) wanted to copy it. SM had been on holidays.

Under cross-examination, SM said that cash discrepancies could occur but that she would find them in ninety per cent of cases. It was put to SM that she had given preferential treatment to FPT. She replied that she had asked that FPT get counselling and that she (SM) had recommended the claimant for the post of senior sales assistant. It was put to SM that the claimant would say that she (SM) would say that SM would not be open to listening to the claimant about issues concerning FPT. SM replied: "She is so wrong there." SM said that she had never found who was lent money from the shop's cash-chute or from the Marymount fund but that FPT had said that she had borrowed at least six times. Another employee who had not been long with the respondent was dismissed and the matter was with the DPP.

Questioned by the Tribunal, SM said that the claimant had worked to her for four or five years and that she had found the claimant to be a good worker and had recommended the claimant for the senior shop assistant post although she (SM) had had a problem later with the claimant ordering

from over-the-counter sales representatives. When stock was overflowing SM wanted to put a stop to it and she told the claimant that her ordering had to be cut down. She told the claimant the cost of her ordering and took over the ordering from some of the reps because the stock level had gone too high. She told the claimant the proper way to conduct the ordering.

Asked if she had been satisfied with the claimant's work apart from that, SM said that she had been but that "if there was a problem she was central and then got into the periphery". There had been no problem with the claimant at the time but then SM "thought about it afterwards".

Finally, SM said that there had to be a float and that, if someone took out fifty euro, a note had to be put in.

Giving sworn testimony, GGM (the respondent's group general manager) said that alarm bells had rung for the respondent's head office when cash appeared to go missing and then reappeared at the claimant's branch. Asked if the respondent had a borrowing policy, she said that it did not but that it had come to light that borrowing had been occurring. Meetings were held regarding cash irregularities and GGM took minutes. On one occasion when GGM went to collect from the safe the claimant asked her to wait to see if a missing hundred euro had been put into a tube in error. When GGM left the shop the claimant followed her to her car, knocked on her window and asked to be told if the missing money turned up. GGM thought this unusual. The claimant said that she had no knowledge of anything unusual regarding the cash drawer. The respondent went to the gardai about the matter. Asked at the Tribunal hearing if the claimant had volunteered information, GGM replied that she did not recall this.

DG (the abovementioned detective garda) interviewed the claimant and FPT in turn. DG reported back that the claimant had been regularly lending money to FPT from the change drawer and that he had told them that they should inform the respondent. He said that they had admitted that they had not had authorisation for this lending.

After JMD had heard from the claimant and from FPT that lending had been happening, a meeting was held at which the claimant said that she had been keeping a "tab" and that PM (the claimant's abovementioned previous manager) had been aware of this.

GGM e-mailed PM a list of questions and asked about the occasion when FPT had needed to attend a doctor. PM told GGM that FPT had come to her wanting to see a doctor and that FPT had been let borrow fifty euro from the change drawer. A note was put in and it was returned.

Asked if there had been another incident, GGM said that, on one occasion when PM had been working on a Saturday, the change drawer had been short forty euro. GGM asked PM if she had given permission for anybody to make regular loans. CPM replied that she had not.

Speaking about an April 2007 meeting, GGM told the Tribunal that the claimant and FPT were told that they could bring somebody. They went through the respondent's policy. The claimant admitted that she had been lending money and SM (the claimant's store manager at the time of the meeting) denied that she had been aware of lending. The claimant said that she had been in touch with PM in Australia and that she (the claimant) had been keeping a "tab" in her diary. The claimant showed GGM a page with figures on it. The claimant went to a photocopier with GGM and GGM copied it.

The claimant said that others in the shop had known what was happening. The respondent asked

others who said that they did not believe it was abundant or that it was happening on a regular basis. The claimant said at the meeting that she had not told the garda that she had lent money to FPT. GGM told the Tribunal that the claimant was now changing her story and that JMD (the respondent's joint managing director) said that it was a pity that the claimant's version of events had changed since the previous Friday.

In cross-examination GGM was asked if all staff had known that the cash had been going up and down. GGM replied that she did not know but that all had been surprised especially by the two loose fifty-euro notes that had turned up. The claimant admitted that she had known that FPT had been borrowing and was quite upset and flustered but denied that she (the claimant) had been lending to FPT.

The claimant was suspended on 13 April. She was asked by letter to put her submissions to the respondent. GGM denied to the Tribunal that the respondent's mind was made up.

It was put to GGM that the claimant had felt that the respondent had not been open to hearing the claimant's side. GGM replied: "I disagree. We gave her a chance to make submissions to us." Asked if money had gone out more than ten times, GGM replied that she did not know but that the respondent had felt that it had to investigate when money had been found in a chute. FPT resigned and the respondent accepted.

GGM told the Tribunal that head office had to be told when the cash was ten euro up or down. She added that the decision to dismiss was a matter for the joint managing directors but that she (GGM) had been present when the decision to dismiss the claimant was made.

It was put to GGM that the borrowing and returning of money did not constitute theft. GGM replied that it was gross misconduct.

Concluding her testimony, GGM said that both the claimant and FPT had been suspended and told to be at head office at 11.00 a.m. on Tuesday 17 April. The respondent had a letter for each but had not yet made the decision. The respondent expected to hear from both girls. The next contact from the claimant was via her solicitor.

Claimant's Case:

Giving sworn testimony, the claimant said that her employment with the respondent had started nearly five years earlier in a new shop where she had worked initially as a pharmacy technician. Asked if she had had difficulty with staff members, she said that she had got on fine with everyone.

For two to three years the claimant had had as a duty the counting of money. Most days it was fine but sometimes it could be up or down by amounts of between twenty and forty euro. There were two change drawers. If the cash was wrong the claimant would count it in the evening and work out what was wrong. Then it would be a matter for SM (the abovementioned shop manager) or for head office. Money would be put down a chute. JMD (the abovementioned joint managing director) would come and do a "Z read".

Asked how she had found working with FPT, the claimant replied that she had had "run-ins" with FPT but that she had never brought it to SM's attention. She felt that SM was "looking after" FPT.

She told the Tribunal: "That's the way it came across." SM said that she could not say anything about what FPT had done because FPT did not act in that way when SM was there. The claimant told the Tribunal that she felt that it was no use complaining about FPT.

The claimant told the Tribunal that there were change drawer discrepancies although this money would be counted once or twice a week. She added that the book that had been said to have been missing was actually there. Money was counted in the change drawer and written in a book saying if it was up or down. The claimant told the Tribunal that she had never seen anyone take money from the change drawer but that she had known that FPT had been borrowing money.

Asked at the Tribunal hearing how she had known about FPT's borrowing, the claimant replied that FPT would open the change drawer and say: "I'm borrowing this." The claimant added that she could not understand how the respondent was saying that she (the claimant) had been lending money.

Asked why she had not told SM or the respondent's management what was happening, the claimant replied that the reason why she had not done so was because the claimant had been putting the money back and that the claimant had felt that it was "petty" to say that FPT had been borrowing money. Asked what the respondent's management would have said about it, the claimant replied: "I can't imagine much." She said that, if she had known where the money was going, why should she "make a big deal" of it but she did add that her job would have been "a hundred times better" if there had been no problems with cash.

Asked about keeping a diary, the claimant told the Tribunal that, once, when SM was on holiday, the cash was going up and down. The claimant was keeping a "tab". Asked about her journal, the claimant replied: "Things were wrong for too long. I had the journal for a reason." Asked if the reason for it was in case there were issues, she said yes.

Around end March 2007 the claimant got a call about an 8.00 a.m. meeting in the shop. The employees were all brought up one by one. The claimant was asked if she had known about money going missing. She said that she had not known.

Regarding asking GGM (the abovementioned group general manager) to let her know if a cash float was down €100.00, the claimant told the Tribunal that the cash had been up and down so often that she (being the one who counted the money) had wondered if there were fifty-euro notes there.

Asked again at the Tribunal hearing about the 28 March 2007 meeting, the claimant said that she had been asked to give fingerprints and had said that she had no problem with this. However, she told the Tribunal that she could not believe that she was being questioned about money going missing. She was very upset. On Good Friday she was told that the matter had gone to the gardai. She wanted there to be a result. Maybe then the respondent would see what was happening and something would be done.

The claimant told the Tribunal that a garda had asked her if she knew if anyone was borrowing money and that she told him that she did. Then he told her that this was not official but who was doing the borrowing whereupon she named FPT. The garda then told her to tell the respondent. FPT had been borrowing from the change drawer.

JMD was at the foot of the stairs. She asked and the claimant told her that she (the claimant) did know who had been borrowing money. The claimant went back to the shop. FPT (and the girl who

was subsequently dismissed) went up. The garda had told the claimant that FPT had said that the claimant had been lending money to her. The claimant told the garda that it was impossible that she was lending money.

The claimant told the Tribunal that she had not been lending money to FPT because she could not lend what was not hers and that FPT would take out the bottom drawer and say to whoever was around: "I'm borrowing this."

JMD told the claimant that the respondent wanted to see her upstairs. The claimant was upset that this had happened and that she was being accused. She went to get legal advice. Subsequently, at a meeting, the claimant was told to pack her bags and go. She did not get to say much at the meeting. She could not admit to something that she had not done.

The claimant was told to be at head office the next Tuesday at 10.30 or 11.00 a.m.. FPT went in first. Then the claimant went in and was asked what had happened. Her solicitor had asked her to just listen to what the respondent had to say. FPT had been saying: "I'm borrowing this." When the claimant said that FPT had been saying "I'm borrowing this" JMD said that this was the first she had heard of it. The claimant was told that it would be a huge thing for JMD to get rid of the claimant and FPT in terms of replacing them. At the end of the conversation the claimant was given a letter saying that the police had said that the claimant had been giving the money. The claimant denied this saying that she had never said that she had been lending the money. She told the respondent this but they said that they had it written down. The claimant's solicitor took over from there.

The claimant concluded her direct evidence to the Tribunal by giving testimony as to her efforts to find new employment and as to the jobs she did obtain.

In cross-examination it was put to the claimant that, when she had first been asked if she had seen anyone near the safe where money was found and near the cash drawer where money had gone missing, she had untruthfully said no. The claimant replied that she had not seen anybody take money but that she had known there was money missing. Pressed on whether what she had said had therefore been untrue, she conceded the point but said:

"Afterwards I asked what they were talking about. I did not realise at the time. I said I'd never taken money and knew nothing about what was missing."

She added that she had known that FPT was borrowing money but that that was not what was missing.

It was put to the claimant that she had admitted to the police and to JMD and to others at a meeting that she took money and lent it to FPT. The claimant replied that, if she had admitted that she had been lending money to FPT, why would she go through all this (litigation). She said that "from day one" she had never stated that she had lent money to FPT but that what she had stated was that she had known that FPT was borrowing it.

It was put to the claimant that she had made an admission on the steps of the stairs. She replied that she had said that the garda had asked her if she had known about somebody borrowing money and that she had said that she had indeed known that money was being borrowed.

It was put to the claimant that she had said that she had been doing the lending and that this had been authorised by PM (her abovementioned previous manager). The claimant replied: "I've not changed my story. The money was being borrowed and being put back." She added that both PM and SM (her subsequent shop manager) had known about this.

Asked if PM had authorised borrowing, the claimant replied: "I did not ask for it apart from one incident about a doctor."

It was put to the claimant that, at a meeting, she had acknowledged that she had had no authorisation. She replied: "I could not have made those acknowledgements."

The claimant was now asked if she was saying that the respondent were all telling lies. She replied that she was just telling her side of the story and added that she had never said that she had taken money from the safe and had given it to FPT. She said that FPT had taken it from the drawer.

It was put to the claimant that FPT had said that the claimant had taken a loan. The claimant did not accept this contention.

It was put to the claimant that she had been responsible for the cash drawer and she was asked if she had inserted a hundred euro. She replied: "I did not put in a hundred euro because I was not borrowing money."

However, the claimant did accept that she had never reported borrowing to management and did not reply when it was put to her that, consequently, no note was made of the borrowing in the cash book or drawer. The claimant acknowledged that at the meeting on 13 April she had had an invitation to be accompanied.

Asked to confirm that she had been advised to be represented for the 17 April meeting, the claimant replied: "Maybe I was told and did not pick up on it." It was put to the claimant that she had brought her sister. She replied: "My sister was in Carrigaline for the day. My sister did not come to the meeting." She added that FPT had had someone with her and that FPT "had been through this before".

The claimant did not contest the contention that her denial had cast suspicion on other employees but said that, on the night that she was told of missing money, she had put it down to money being missing from different places.

It was then put to the claimant that she had ended by blaming everything on FPT. She replied that she had had "no strategy to blame anyone". She had simply said that she had known that FPT had been borrowing money.

It was put to the claimant that her line had been that everyone had known that FPT was borrowing and, for example, that the claimant had made specific reference to her previous manager, PM. The claimant replied that she was not blaming anybody but that everything had been talked about openly and that it had been known what was going on.

It was put to the claimant that a bank teller cannot lend to another employee and the claimant accepted this.

The claimant told the Tribunal that FPT had had an ongoing relationship with the respondent's

directors and had moved from shop to shop. The claimant said that she did not accept that she had been senior to FPT and that FPT had been there before her.

It was put to the claimant that she had given the impression that she had been acting under pressure from FPT. The claimant replied: “She was there before me even if she (moved to another shop and) came back.” The claimant added that she did not know what FPT had been earning.

In re-examination, the claimant was asked if borrowing had been authorised or not. She replied that “it was just happening” and that FPT “just took money to borrow it”.

Questioned by the Tribunal, the claimant said that the garda had asked her if she had known of anyone borrowing money and that she had said that she did whereupon the garda had told her that she had nothing to worry about. The claimant denied that she had ever taken money but said that FPT had borrowed when she needed and put it back when she got paid. The claimant said that she did not know when the two loose fifty-euro notes had been paid back.

Asked about her diary record, the claimant said that it had been her own idea to keep a record. It was put to her that her diary “tab” appeared to indicate that FPT was borrowing a lot. The claimant admitted that she had been aware of this.

Determination:

It was not established to the satisfaction of the Tribunal that the claimant’s actions amounted to gross misconduct. Accordingly, the dismissal is deemed to be unfair. However, the Tribunal considered that the claimant, through her behaviour, had contributed to some degree to her dismissal.

The claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds and, in all the circumstances, the Tribunal deems it just and equitable to award the claimant compensation in the amount of €4,000.00 (four thousand euro) under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)