

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - **claimant**

MN907/08

WT402/08

RP837/08

UD965/08

Against

EMPLOYER - **respondent**

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2005
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Cagney BL

Members: Mr F. Cunneen
Mr. S. O'Donnell

heard this claim at Dublin on 18th February 2009 and 25th May 2009.
22 September, 2009 28 September 2009

Representation:

Claimant : Ms Sarah Berkeley B.L., instructed by Thomas Loomes & Company, Solicitors,
First Floor, Unit 19, Donabate Town Centre, Donabate, Co Dublin

Respondent: Ms Maeve McElwee, IBEC, Confederation House, 84/86 Lower Baggot Street,
Dublin 2

The determination of the Tribunal was as follows:-

At the outset the claims under the Redundancy Payments Acts, 1967 to 2003 and the Organisation of Working Act, 1997 were withdrawn.

Background:

Opening statement by the representative for the respondent:

The claimant was employed as an experienced butcher and had long service with the respondent. A staff member notified his Manager of reductions in meat. This meat was mislabelled. It had been separated and bagged differently at a reduced price. Two bags were held for the claimant's wife. No reasonable explanation was given for this and an investigation was conducted. There were concerns that the claimant was selling meat to his family.

Opening statement by Counsel for claimant:

The claimant had been a very experienced and qualified butcher who did not accept a redundancy package offered to him. He was constantly harassed. He was a responsible person and used his discretion as to when to reduce meat. He was criticised for reducing and selling meat as rib steak. The claimant refused to sign the logbook. Health and Safety procedures were breached. He had no contract of employment and was unaware of disciplinary procedures. He was suspended after the first meeting he attended.

Respondent's Case:

A general assistant CG who worked in the butcher department with the claimant for approximately two years gave evidence. On 22nd February 2008 the claimant opened bags of steak trimmings. The claimant asked the general assistant to reduce steak from bags of trimmings that were delivered. Reductions are done at 30% at 8 o'clock, and later in the day at 70%. He reduced the meat by 40/45%. Meat was separated into five different bags. Three bags were displayed for sale and two bags were put aside for the claimant's wife. The general assistant had been asked by the claimant to do further reductions that day. He explained that he did not have the gun and printer as he had given these to other staff. After his break the claimant handed the gun and printer to him and asked him to do further reductions. The general assistant refused. He reported this to his Line Manager the following day and provided a written statement.

Under cross-examination the general assistant said he had received some training as to how to cut and display meat and the rest he learned from the butchers. Reductions are carried out on meat daily. If the meat does not have a good appearance it can be reduced. The general assistant contended that the steak trimmings were supposed to be labelled round steak. He was concerned about being asked to reduce the steak trimmings. He could not recall if the claimant had done further reductions on meat that day and said the claimant never did reductions. When he spoke to the Line Manager the following day he told her he had been asked by the claimant to cut trimmings and bag them as rib steak. He provided a written statement requested by his Line Manager. His handwriting was not clearly legible. On 29th February 2008 the Personnel Manager interviewed him. His Line Manager was present at that time. The Personnel Manager noted what he had said and he signed and dated the statement.

The general assistant told the Tribunal that the two statements signed by him were essentially the same. He was familiar with different types of meats and knew the difference between rib steak and round steak. There was more fat on rib steak. Bags delivered are always labelled and the bag in question was labelled as steak trimmings. Rib steak was not minced but round steak was.

The Personnel Manager gave evidence. His training had included attending workshops and he had

20 years experience in retail. He had a lot of experience dealing with people. The claimant's Line Manager informed him of the incident in the store on his return to work on Monday 25th February 2008. He spoke to two staff members. He subsequently held an investigatory meeting at which the claimant and his Line Manager were present. The purpose of the meeting was to establish if the claimant had mislabelled meat as cheaper meat. The claimant denied he had done so and said the meat had been delivered as stewing meat. In the course of the meeting the Personnel Manager took a break and sought advice from the Employee Relations Department. He believed the facts did not weigh up and suspended the claimant. This was subsequently confirmed in writing to the claimant.

The Personnel Manager held a further meeting with the claimant on 6th March 2008. The claimant's union representative and the claimant's Line Manager were also present. The Personnel Manager again enquired why expensive meat was mislabelled as cheaper meat. He enquired why there was a huge reduction on the bags of meat. The claimant's response was that the meat was not mislabelled. The meat was labelled correctly. The claimant explained that a butcher had discretion to reduce meat. There had been no report that meat was mislabelled when delivered. The Personnel Manager would have expected the claimant to alert others if incorrect meat had been delivered.

A disciplinary meeting was held on 13th March 2008. The Personnel Manager had concerns as to the process followed by the claimant. The meeting concluded with the Personnel Manager undertaking to contact the claimant again. Following that meeting the Personnel Manager spoke to the Store Manager and it was the latter who made the final decision to dismiss the claimant.

Under cross-examination the Personnel Manager contended that the handbook contained a section on disciplinary procedures. Before investigating the incident he had checked the claimant's personnel file. The Store Manager had been kept abreast of developments during the course of the investigation. The Personnel Manager deemed the mislabelling of meat and the selling of meat at a cheaper price to be an act of gross misconduct. He saw this as a fraudulent issue. The meat delivered was recorded on the traceability document as trimmings. He believed and accepted that a delivery of trimmings of round steak was delivered. There had been no communication to the contrary.

At the meeting on 25th February 2008 the Personnel Manager said the claimant was invited to have someone accompany him to the meeting but said he did not have anyone but was happy to have a chat. The Personnel Manager became suspicious when he was informed the meat had been mislabelled and reduced. The claimant informed him that incorrect meat had been delivered and guessed it was an error on the supplier's part. The Personnel Manager said he could not recall if he had checked the reduction book. The facts before him indicated that the claimant had mislabelled meat and had asked the general assistant to reduce it.

Cross-examination resumed on 25 May 2009 and a traceability sheet was presented to the Tribunal, which indicated where the meat originated from, and all trimmings sold were identified on this sheet. The issue was that trimmings were to be minced, it was not minced and it was sold as a product at a lower price. The claimant did not indicate at the meeting that it was beef trim. He assumed that employees in the counter were asked for a statement but he did not know who requested the statements. He did not recall if GK, who was responsible for the fish counter, was asked for a statement. It was normal policy to sell meat before the sell by date. He was aware that the claimant was not allowed to serve family members. MG counter manager looked for guidelines on how to proceed and he was sure that she would have spoken to other managers. Staff members should not put themselves at risk by serving family members and this was documented in the staff

handbook. BD shop steward told him that she did not see this as a hard and fast rule but he felt that this should be adhered to. A handbook was given to new staff as part of their contract. It was a very serious matter if the claimant served family members over a period of twenty-five years. The gain from undertaking a transaction had to be taken into consideration and by this he meant that meat reduced at a lower price and served to a member of the claimant's family. The meat that the claimant sold to his wife at a reduced price included a T-bone steak. He told the claimant that he was being placed on paid suspension, as he could not provide him with answers. He believed that the claimant was doing something out of line and the matter had to be investigated further.

The claimant was shocked on being suspended and if he had had furnished him with a reasonable explanation for what he had done he would be happy for him to continue in his job. The process of how the meat was delivered and how it was sold was investigated. He spoke to counter staff and he investigated what produce should be minced and he was not an expert on mince. After the incident occurred a member of management was not notified. He accepted that he asked staff for advice. He would expect the section manager to be in the loop to make a decision. No evidence came to light other than the procedures were not adhered to.

A meeting took place on 6 March 2008 and the claimant's trade union representative was in attendance. He produced a computer print out of the claimant's club card at the meeting. Asked if had accessed information that is legally protected he replied that security provided him with proof of purchases. He opened the meeting of 6 March 2008 and the counter manager MG took a note of the meeting. The claimant mentioned to the production manager DMcC that it had happened on previous occasions but the Personnel Manager did not have previous evidence that meat for mincing had been sold or reduced, this was a once off. The claimant told him that he did not wish to mince it and sell it as particular meat. He was more suspicious about meat being purchased in a particular way and sold to a member of the claimant's family. No one in the department sold a product as something that it was not. He was not satisfied with the claimant's answers. He believed he was informed that goods were bagged before going on sale. If a member of staff reduced meat and sold it to themselves it needed to be transparent. The claimant had selected a product and it was mislabelled.

He was concerned about staff serving relatives but he did not bring this to the attention of senior management and he did not deem it a problem. He then stated that there was no rule that staff should not serve family and it was not a management issue if the claimant served a family member. The meeting concluded after two hours and they tried to get reasonable answers from the claimant. A statement was requested from some employees. He asked the claimant if he recalled events and if he would give a statement. G K who worked in the fish department was the counter's most senior person and the witness did not know if he was a qualified butcher. He dealt with a senior manager and he relied on the information he was given. The issue of the meat that was obtained from the supplier was not raised at the meeting. A few changes have been made in the store regarding the manner in which meat is delivered. The claimant was not replaced and EC is now the butcher and as far as he was aware he is trained.

In answer to Tribunal questions he stated that he was not happy with the answers the claimant furnished at the meetings. At the first meeting it was difficult to get an answer and the claimant did not have any evidence to backup his answers. The responses were alien to him in his limited experience. He decided to suspend the claimant on full pay so that he could get some clarification. At the second meeting the claimant gave more detailed answers. The Personnel Manager spoke to the Employment Relations Department and he dealt with the facts of the case. He previously dealt with gross misconduct and the disciplinary process. His conscience was clear and he attended the

meeting with an open mind. He had the statements and spoke to staff before he made the decision to dismiss the claimant.

The alleged wrongdoing on the claimant's part was selling meat that should be minced and he sold it at a lower price. It was not the case that the meat was to be minced as round steak. If a product was going to be sold at a lower rate the manager should be kept in the loop. He was not aware of any major difficulties with suppliers. At the appeal hearing no new information was forthcoming and the decision to dismiss the claimant was upheld. The witness did not have an involvement in the Appeal process.

JD told the Tribunal that he was the manager in the meat department in one of the respondent stores. He was a qualified butcher for thirty years and was familiar with the process. Orders were completed seven days a week. All meat was vacuum packed. Staff were not responsible for profit and the respondent purchased the product and sold it. If meat was bought as round steak it was sold as round steak mince and if it was bought as rib steak it was sold as rib steak. Staff were duty bound to contact the line manager if they had a problem.

In cross-examination he stated that he was employed with the respondent for twelve years. Round steak was of superior quality than steak mince. He only sold round steak mince. He did not recall lean trim being referred to as round steak and it was supposed to be lean steak. If it was sold as steak mince he would have an issue with that and was surprised to hear this. He could only sell what he was given to sell. If he was unsure about a product he would contact the line manager for a second opinion or an employee from another counter.

In re-examination he stated that steak trimmings were sold at the counter. It was not appropriate to re label and sell it as rib steak; it was sold as steak trim.

In answer to questions from the Tribunal he stated that the respondent had two meat suppliers it had one hundred and five stores and not all had meat counters. He ordered his own meat in store. It was frowned upon if the respondent purchased five cartons of steak trim and sold it as round steak trim. This would show a stock surplus. If product came in as X he could not change it to Y. Meat that came in was bought for sale and he could not sell it as something else. It was not possible that round steak should be marked down to a lower price rib steak. Rib steak was stewing meat and steak trim could only be sold as trim. He was never instructed to do anything dishonest.

MG told the Tribunal that she was the section manager for six years and worked with the respondent for ten years in total. She managed the meat counter and non-food hardware. She managed and controlled waste. If a product was damaged the policy was to report it to the manager especially if a large quantity was involved. She was of the opinion that staff did not have the authority to reduce product. If she removed product she would process this on a computer, which she sent to HQ. She became aware of an issue when CG reported for work on Friday. She told him not to reduce any more meat that day and she felt it was a serious matter. She obtained clarification from the Personnel Manager and she did not discuss the matter from Friday to Monday.

A meeting was convened which the claimant and the Personnel Manager attended. They spoke to the claimant about meat labelling and bags of meat, the claimant informed them that this was normal procedure and there was no written protocol regarding reductions. The procedure regarding reductions was 30% a.m, 45/55% p.m. and 75% later that evening. The full allegations that the claimant put a label on rib steak and reduced it by a further 45% were put to the claimant.

The claimant was asked if he wanted representation and he declined. The claimant was informed of the procedure and he was told that another meeting would take place. The claimant was asked why he labelled meat as rib steak and sold meat to his wife.

The respondent conducted a freshness check on the meat and if it was not of good quality it was sold at a reduced rate to a customer. She never once spoke to the claimant about the reduction in the price of meat. It could not be traced if it was changed from one product to another and it was traced in store by written reports. If stock was missing from a delivery it was written off as a loss.

Meat was purchased as steak trim and it was labelled as rib steak. Copies of notes were provided to the claimant at the meetings.

In cross examination she stated that she was in charge of the fish, meat, deli and bakery counters and she was responsible for fifteen staff. She ordered product and managed staff. Initially this was a new role, which she had to familiarise her with. She relied on the butchers and she accepted what the butcher told her. CG counter assistant informed her on 22 February that the claimant had a substantial proportion of meat reduced and it was rib steak. She made the decision not to reduce any more meat that day. She did not go to the claimant right away, as she had never dealt with this matter before. She felt it was a serious issue and she did not know which avenue to pursue. The product may not have been able to be returned to the supplier. She could not recall if she spoke to two employees who worked in the meat/fish department. She did not work on Sundays. She received an instruction from the Personnel Manager to wait until the claimant returned to work on Monday

She did not have great experience regarding counter meat. CG told her what had happened and she could not understand why the claimant did not report the matter to her. She stated that she was not aware of the procedure regarding meat of inferior quality. When asked that she did not tell the claimant that he was not to serve family, friends and people he knew. When asked that she did not tell the claimant that he was not to serve family, friends and people he knew she replied she would not serve any of her family. The claimant should have approached her regarding the issue and he made the decision to label the met as rib steak.

WIBI “would I buy it” was used as part of training. All butchers would have been told about procedures. She agreed that the butchers had huge discretion regarding reductions on the meat counter and she accepted that items were reduced. She was not aware that the claimant had the discretion to reduce prices. At the second meeting the claimant stated that it was normal practice not to report to a manager. Some years ago a waste book was in use but this was not a reduction book. When asked if she was concerned that the claimant did not go to her regarding reductions she replied that the Personnel Manager chaired the meeting and she took notes. She did not have an issue with the claimant at the time and if she was unsure about a matter she would seek advice from management. When she was asked if she thought that the claimant was going to be dismissed she replied that she did not know and she considered the matter to be a serious offence.

In answer to questions from the Tribunal she stated that meat had a sell by date. The respondent would have a list of reductions on one to three trolleys. Product was logged in the system. The label was only changed once. At the first meeting she was not happy with the claimant’s answers. She could not remember the total amount of product reduced. She thought that CG told her that the claimant had sold stewing meat to a family member. She worked with the claimant for over a year and she had no reason to suspect him of anything. CG told her that the claimant had labelled meat as rib steak.

DMcC told the Tribunal he was production manager for ten years in total. He was employed in Artane for two years and he was counter manager in November 2007. In November/December 2007 the claimant asked him could he cut up rib steak. He told the claimant he would revert to him and he spoke to the general manager and he said, as it was mince steak there was no need to cut it up. He did not authorise reductions. He had previous experience in different stores. EC ordered steak trimmings and he presumed that they were the only ones they used. The store used to make mince. He did not ask anyone to reduce meat and the claimant asked him about it. If meat was of inferior quality it was not going to be given to a customer. The Personnel Manager asked him to make a statement and to recall if he remembered what happened that day.

In cross-examination he stated that his training was ongoing. He was asked to furnish a statement and he agreed. He was in work and the claimant asked him if he could cut rib steak and the claimant obviously had a reason. He was asked if the claimant came to him regarding cutting and he said he told the claimant that the meat was to be minced. Round steak was one type of meat that was minced by a butcher. He made a decision to have the claimant mince it. The policy was that the mince was round steak.

In answer to questions from the Tribunal he stated that he spoke to the store manager about issues on a regular basis. He could not remember the reason that the claimant asked him about meat. The claimant asked him if he could cut the meat. He was under pressure to give a straight answer and he told the claimant to wait until he reverted to him.

A butcher (EC) who worked with the claimant gave evidence that he commenced employment with the respondent in 1990. He became an apprentice butcher in 1991 and qualified in 1995. EC checked the condition of the counter meat every morning and decided if any needed to be reduced and put on the reduced shelves. Usually counter meat received a reduction of 30%. Ordering of meat was standard and only small changes were made from week to week.

According to EC there were occasional problems with the meat delivered, such as it being too fatty or a vacuum pack bag having burst. If it was a small problem, such as too fatty, it would be trimmed and the fat wasted. If it was a larger problem the counter manager should be contacted to seek re-imburement for the product. Only large amounts would receive a re-imburement. Only Irish Angus meat is sold on the counter in the supermarket, other meat is sold pre-packed from the fridges.

EC made mince once a week, on the claimant's day off, using the product from a vacuum pack bag entitled 'lean steak trimmings'. There were occasional problems with the meat for mince being too fatty.

EC returned from lunch on, 22nd February 2008, and noticed two pieces of double-bagged meat on the counter. EC found it unusual as the bags were labelled 'rib steak', which the meat counter did not sell. EC asked CG about it and was told it belonged to the claimant. He also asked CG if the claimant had told him to reduce the price on the meat, which he had, and other packages, which were also, labelled rib steak. EC didn't raise the issue with anyone until the Personnel Manager asked him the following Monday if he was willing to put down on paper what he saw on Friday. EC believed that GK, the fishmonger, was also in on the Friday.

EC gave evidence that he wouldn't serve family or friends from the counter. EC didn't recall being told not to serve family or friends but he just wouldn't. EC had seen the claimant serving his wife on occasion.

During cross-examination EC agreed that the claimant was the most senior butcher on the counter

since others had taken a redundancy package. EC stated that he wouldn't go to the claimant for advice as he knew what needed to be done and he felt intimidated by the claimant and didn't get on with him. The relationship had broken down over years, but EC did not report it as he felt there was nothing that could be done and it might only make things worse. EC did not seek managerial approval to reduce counter meat, as he had the authority to do so. The claimant also had discretion.

EC didn't recall saying, when the bags of meat were opened that morning that 'we'd lose money here'. EC didn't say anything to anyone, as he didn't want to get involved, as he felt intimidated by the claimant. He didn't feel he could go over and ask the claimant about the bags of meat. EC wouldn't use the label 'rib steak' and hadn't done so on a previous occasion. EC claimed that the claimant did not tell him that the steak trimmings bag had contained rib steak that morning.

The then store manager gave evidence that he was on holidays at the time of the incident and that two investigatory meetings had occurred by the time he returned. He did not get involved in the disciplinary process after that as the personnel manager was already handling the situation. The letter of dismissal had the store manager's name at the bottom with the signature of the personnel manager. The store manager read the staff statements and the notes from the meetings and liaised with employee relations in HQ.

The store manager stated that there was a policy of not serving family and friends at the checkout, but that there was no rule about not serving at the counters, though this was frowned upon.

During cross-examination the store manager stated that he was unaware that the claimant wished for two other employees be spoken to. He believed that one of the employees (Mr M) did not want to give a statement. The store manager had been approached once by the production manager regarding the quality of a delivery of meat and had asked if the meat should be minced. On this occasion the store manager had instructed that the meat should be trimmed and minced. The store manager didn't follow up and agreed that the butchers have discretion on these issues.

The store manager made the decision to dismiss in conjunction with employee relations. The store manager took the opinion of EC that the meat was incorrectly labelled with a product they did not sell. There was also the question of why the meat was reduced in price and two packages given to his wife. The store manager found that the claimant was guilty of serious misconduct.

Claimant's Case

A general assistant (WMcK) gave evidence that he attended the appeal hearing with the claimant. A SIPTU representative was present on behalf of the claimant and (MM) one member of management was present on behalf of the company. The witness stated that the company representative did not listen to what the claimant had to say, and said, 'don't talk to me about meat, I know nothing about meat.' The witness did not take notes at the meeting and could not recall exactly what questions were asked. The SIPTU representative asked questions. The meeting lasted approximately 25 minutes.

A second general assistant gave evidence that the claimant came to her when he was suspended and asked her to come to the next meeting, the third meeting, as there was no SIPTU representative in the shop. The witness came to the meeting as a witness and not a representative. Present at the meeting were Personnel Manager, a staff member to take notes, the claimant and the witness. The claimant gave full and coherent answers and explained fully about the different types of meat. The witness could not recall the claimant being unable to answer any questions. There was a reasonable atmosphere at the meeting according to the witness.

The witness stated that the policy of not serving family members was only where a cash transaction was taking place. The witness had on occasion to serve family members when she was alone at the service desk and there was no one to relieve her. The previous company had given staff a

handbook and this had stipulated not serving family members, but she believed this related to cash transactions. The new company had not issued a staff handbook.

A further general assistant gave evidence that he worked in the meat department with the claimant. He had no previous butchering experience. His responsibilities were marking the reductions and cleaning. The witness marked down products in the morning from a list that was prepared the previous evening and placed them on the reduced shelves. Further reductions were made at 3pm. One of the butchers decided what reductions were made.

The witness recalled that in December, possibly on the 14th December, a bag of meat labelled as beef trimmings actually contained rib steak. The claimant asked the production manager what to do with it. The production manager told the witness to bag the meat and label as rib steak. The witness did not recall another occasion that this happened.

The witness was asked for his statement on Monday 25th February 2008 BD who told he that he didn't have to give a statement so he didn't. He didn't want bad blood between himself and the managers. He contended that he told the Personnel Manager that the incident of rib steak arriving had happened before.

During cross-examination the witness explained that the reduction sheet was for the pre pack meat and that the counter meat was given to him in a crate averaging 10-20 bags. The witness confirmed that he was not a qualified butcher but saw that the meat from the bag was a full joint and took the word of two senior managers. The witness occasionally made mince on Sundays using the bag labelled 'lean steak trims'.

The claimant gave evidence that he commenced his employment, as a qualified butcher, with the previous company in 1983. The respondent took over in 1997. The butchers were offered voluntary redundancy and those that took it weren't replaced as they left. Five or six butchers left in 2005. The claimant was the only fully qualified butcher working for the respondent in the store when he was dismissed. The claimant had intended to remain with the company until his retirement age of 65. The claimant began working with EC in 2005, when EC began working on the meat counter. He had previously worked on the pre-packed section.

The claimant made the mince every morning he was in. No duties were assigned to the claimant regarding tasks to be carried out during the day; he knew what needed to be done and went about his work. The meat counter only sold round steak mince, made from steak trimmings which were delivered in vacuum packed bags.

On 14th December 2007 the claimant opened a bag of steak trimmings and found that it contained two large joints of rib steak. The claimant contended that this had happened on two or three occasions. On a previous occasion, as rib steak is not suitable for making round steak mince the claimant decided to portion the meat and sell it as rib steak at the counter even though it wasn't Angus beef. EC said it couldn't be sold at the counter as it wasn't Angus beef and had the meat reduced and put on the reduced shelves.

On 14th December 2007 the claimant asked the production manager if he could mince the rib steak that had arrived and sell it as rib steak mince. The claimant contended that EC was nearby when the production manager told him to reduce it and sell it on the reduced shelves.

The same problem occurred in February 2008. The claimant set about preparing the meat for bagging and putting on the reduced shelves. The counter was busy so the claimant was trying to prepare the meat while serving at the counter. The claimant contended that EC knew the problem had arisen again as he was cutting the meat before EC went on his break. The claimant gave the meat approximately six bags to CG for bagging and reducing, and explained why the meat was to be reduced, before going on his break and put two bags aside for his wife when she came in to do

the shopping. He double bagged it for freezing and put it on the counter. He gave the meat to his wife before going on his lunch break. The claimant stated that it was the first time he had purchased reduced meat.

The claimant cut the rest after lunch when he could and put it in the fridge. When the claimant returned from his evening break the meat was still in the fridge. He asked CG why it hadn't been done as it was 6.45pm and all the reductions were supposed to be done by then.

At the resumed hearing on 28 September 2009 the claimant told the Tribunal that on 22 February 2008 he bagged five to six bags of meat, he put two aside and the remainder was to be reduced by CG (general assistant) before lunch. GK who worked in the fish counter was present. He told CG why it was being reduced for rib steak mince, it was meat of a lesser quality. He put the remainder of the meat in the fridge. He went to lunch at 2.30p.m. and returned at 3.45p.m. From 4 to 6 p.m. he continued to work and CG worked with him as well. He noticed the rest of the meat in the fridge and he asked CG if he was not putting the rest of the meat for sale. CG told him that he did not have the reduction gun for doing this and one of the employees in the Deli was using it. CG could have got the reduction gun at approx 7.30 pm. He did not like leaving reduction until the next day. He felt it was his responsibility to ask to have this done. CG told him that he was not doing any more reductions, the claimant asked him why and he said that MG counter manager had instructed him not to do any more reductions of bags that were left. He did not know what happened to the meat. By 7.15p.m. he did not know if any of the meat had been placed for reduction and any reductions for CG would be together in a trolley. He assumed that the meat was reduced and junior staff did any reductions.

He did not know what happened after Friday. Saturday was a very busy day and CG worked with him all day. The claimant's wife usually did her shopping on Friday between 12.30 to 1p.m. He wrapped meat and gave it to CG to reduce and he gave it to his wife. A supervisor did not approach him in work on Saturday. He reported for work on the following Monday at 8a.m. He organised the counter for the day, the store opened twenty-four hours. When he commenced no mincing was done. If there was a problem with meat he used his discretion. Staff in the meat department were experienced and made decisions on meat based on their knowledge. Meat should not be on the counter for more than three days. If the meat was not up to the required standard it was either wasted or reduced. The counter could not have meat stock backed up and stock control was part of the job. A logbook was in place up to the time he was suspended.

On 25 February 2008 while he was setting up his counter MG, counter manager told him that he was requested to attend a meeting and to bring a union representative. He asked her where would he obtain a union representative in the morning. He was not told what the meeting was about. Present at the meeting were the Personnel Manager and MG. The Personnel Manager told him that he had reduced round steak and he told him that he had not. The meat was rib steak trim, which was rib steak or stewing meat. He told him that if he checked the computer files that was the case. The Personnel Manager then asked him if it was normal practice to reduce meat on the sell by date and he replied it was. The Personnel Manager asked him did he know he was not allowed to serve family members. During the meeting the claimant was informed there was going to be a break and he was called in again. The claimant was suspended and was told he would be called to a disciplinary hearing. The claimant was bewildered; he did not know what was going on. He volunteered an explanation straight away. The Personnel Manager had never approached him before and he did not have any dealings regarding stock loss. He asked why management did not approach him when they became aware of the matter but he did not get a response. If the Personnel Manager felt that there was something irregular he could have approached him. He told him of a previous occasion when trim was priced as rib steak. He told the Personnel Manager that he was

very upset and that he was being accused of something he did not do. After the meeting he went home and he made a note of what occurred at the meeting. Prior to going home he went to BD, shop steward and informed her of what had happened. BD contacted the union representative PN.

The next meeting was convened for Thursday 6 March 2008 and PN his union representative informed him of this. The respondent gave him two days notice of the meeting. In attendance were the Personnel Manager, the counter manager, claimant's union and BD shop steward. The claimant stated that he did not mince the meat, as it was not proper meat. If staff would not mince it, it was not the right product and he told the Personnel Manager this. The Personnel Manager asked him if he was different to everyone else. The Personnel Manager reiterated that other staff members would have minced it and sold it to the public. The issue of informing the counter manager was not raised on the day that he was suspended or at any time during the two meetings he attended. He explained that he went to the counter manager. He was not given witness statements at the meeting and he asked for statements at the end of the meeting. The Personnel Manager told him that the photocopier was broken. He was given no documents prior to the meeting.

The claimant told the Personnel Manager that the information on his club card was confidential. Management did not know the rule regarding serving family members. He could not understand why the Personnel Manager spoke to the most junior staff members and not the senior staff. He stated that there was no code on the scales to indicate that it was stewing beef; the code was for rib steak. All staff purchased reductions in store. Reduced goods were put on sale for staff and customers. The date was not an issue. At the end of the second meeting they went over the same issues that were discussed at the first meeting. As far as he could recall he thought that the Personnel Manager said that he would review the situation. Anything that the claimant said the Personnel Manager assured him that he would check it out. There was no mention at a second meeting of what the Personnel Manager raised with the production manager DMcC.

The Personnel Manager told him that he would consider all the evidence and facts and would be in touch with him and let him know. Prior to the second meeting he went in to work to collect his wages, he met the Personnel Manager who told him that there was a meeting on Thursday and that they would be able to get on with the job.

He was notified about another meeting on the afternoon of Thursday 13 March 2008 when a member of staff arrived at his house and gave him a letter. The meeting was scheduled for 3p.m. He requested documents from the meeting on 6 March 2008 and was informed that the photocopier was broken, he did not accept that and he was shown statements at the conclusion of the meeting. The Personnel Manager told him that WM was not willing to give a statement. When the meeting concluded the Personnel Manager told him that all the facts would be considered and that he would be in contact regarding a decision.

The next correspondence he received from the respondent was a letter of dismissal on 1 April 2008.

He contacted his union representative regarding an appeal hearing, which was heard on 25 April 2008. He asked for another staff member to be in attendance. Present at the appeal hearing was his union representative, W McK (general assistant) and M M from the respondent. MM was concerned that there were three people in attendance and she was there solely as a witness. The claimant wanted to put forward his case and wanted to have the opportunity to be heard but he was not allowed to do so. He had no idea of the procedure involved in the appeal hearing. If there was an ongoing problem he referred to his colleague GK. GK was willing to make a statement but he was not requested to do so.

He received his P45 in the post and he was shocked. He assumed the matter would be fully investigated and that all staff would be spoken to and that the ongoing problem with the supplier would be resolved. Had this been rectified with the supplier this situation would not have arisen.

The WIBI (Would I Buy IT) was not in operation in his store. No guidelines were laid out regarding a situation occurring out of the ordinary. A member of staff was responsible for the ordering of meat. GK was responsible for the fish, which was a small part of the business. CG told him that he was not willing to mince it (rib steak and sell it as round steak) WM told him if it was rib steak he could not sell it either. If the claimant minced it he would be selling to a customer for a higher price and bring the company into disrepute. Cutting meat was always done to the highest standard and the business was built on trust. He was in the business for forty years and he had built up a rapport with customers who went to him for advice on meat. He was committed to undertaking his job properly.

The claimant was dismissed for breach of honesty policy. He did not receive a reference and has not found alternative employment since. His son was a senior sales executive with a company in the North Leinster area and he endeavoured to obtain employment for the claimant. Jobs in butcher shops have declined and a number have closed down. The dismissal was devastating for him as he had lived in the locality for years and he knew everyone in the area. It had a terrible effect on his wife who shopped in the store for twenty-five years. She now shops elsewhere. He had a very good pension scheme with the respondent and he contributed 2 ½% of his wages. He took out AVC to top up his pension. He received a letter the week after he was dismissed and his pension scheme was discontinued and he requested that he continue contributing to it. He bought a taxi licence plate some years ago with a view to doing part time work. His earnings and overtime were still well below the national industrial wage. He could not manage on his earnings and he drove a taxi at weekends.

He was offered a good redundancy package four years ago but he had no interest in redundancy. He received a Christmas bonus when he was employed with the respondent. His case was not about money, it was about his reputation.

In cross-examination he stated he always worked on the butcher counter and he was the primary person on the counter. He was considered to be the most suitable person to deal with the public. EC served apprenticeship and his cutting skills were not up to the same standard as the claimant's.

EC did not serve time in a butcher's shop. EC was a bacon hand and dealt with pork and bacon. A qualified beef butcher dealt with beef, pork and lamb. Fish was a small part of the business and a fishmonger had extra qualifications. The turnover in the meat department was much higher than the fish department. A problem arose previously with incorrect meat coming in. When this occurred it was not dealt with by the counter manager MG and not addressed with the supplier. He reported it to AMcC and told that his had occurred before. The claimant was told to keep a note and he kept the date. He always retained a note of issues of a health and safety nature and the respondent had a health and safety book, which was a standard checklist of health and safety issues. He spoke to the counter manager regarding issues and they were never addressed. She had no way of identifying what type of meat came in to the store and once meat was vacuum packed it did not have a particular shape to it.

Round steak beef was sold on the counter. Beef trimming should not be sold as round steak mince. It was standard practice that steak trimmings were used as round steak mince. Reductions that were done on the meat counter were recorded in a waste book, which was in place until he was suspended. He did not know when waste was taken off the counter. He suggested that round steak

mince, which came in, should be used for rib steak mince.

DMcC production manager told him not to mince it that he would have to check it. Put to him that WM stated that the claimant refused to mince it he replied this was the first he had heard about this.

He was told not to mince it and WM passed a comment that round steak mince was not steak. The direct instruction from the production manager was to use bags out of the fridge. He made no comment that fresh meat was going to be sold off. WM went to the production manager and told him that there was a large amount of rib steak in the fridge. The claimant cut the meat up and put it on a tray in the fridge. He went to lunch and WM was the general assistant on duty. The claimant was not in a position of authority. WM told the claimant that he approached the production manager and asked what was he to do with the meat. It was not within the claimant's remit to issue an instruction, his job was butchering. His first task in the morning was to mince. If he had a problem he always referred the matter to a supervisor and the custom and practice in place was to discuss issues.

When he was summoned to the meeting the first thing he was asked was if he reduced round steak.

His wife shopped in the store for twenty-five years, he often served her and never had issues and he was never asked about serving her. Traceability sheets, which were in place, contained the batch number, EEC number, and date. When he was asked in relation to changing a label on meat he stated that reductions were documented in the waste book. The claimant knew that he had discretion regarding meat and if he had a problem he went to the production manager. Staff served family members but in the hardware department staff did not have the opportunity for discretion. All waste was checked by management and supervisors on a weekly basis. On the traceability sheet there was no way to distinguish rib steak and round steak mince. If there was an issue with the mince it was a problem for the supplier. When he was asked if he could trace a product from a customer's bag to delivery date and labelling he replied the information would be on the traceability sheet. If there was a problem he raised it with his colleagues. He would always discuss it with GK who worked with him for many years and was very experienced. GK had not been spoken to in the matter. If there was a problem with a supplier EC would address it with the supplier. If he had a problem with meat he went to a supervisor. When he was asked regarding the labelling of the meat he replied that all reductions were recorded in a waste book. A problem should not be allowed recur.

After his dismissal he left it in his son's hands to find alternative employment for him.

In re examination he stated that the details of the label were entered in the traceability sheet. The respondent used two meat suppliers. Only beef could be traced and not pork. There were no issues with someone buying meat, as there was a traceability sheet in place. The respondent did not sell rib steak on the counter. If there was a high level of waste on a product the respondent sought an explanation as to how it occurred. If the issue was not the fault of the shop it was raised with the supplier. He thought it important to keep notes relating to health and safety issues. EC was not qualified to work in a butcher's shop and he had not worked on carcasses. In February/March 2008 the waste book was always on the counter.

In answer to questions from the Tribunal he stated that when the meat was weighed it recorded the item but the product could not be traced on the ticket. There was no way of tracking sirloin once it was opened. Vacuum packed could be traced. If he had issues on health and safety they were documented in a manual. If there were a problem with the temperature of the fridge he would bring it to the attention of management. Staff in the department would be aware of this and the claimant had emptied the contents of the fridge. If there was an issue regarding hot water he would

tell a supervisor about it. He gave EC all the training he could. He told EC he would have to use sharp knives and EC used a steel glove. He did not know what EC meant when he stated that he felt intimidated by him, he approached EC about health and safety regarding selling of meat. The second time that he had a problem with meat he went to DMcC.

After he was dismissed he undertook some taxi work for which he received €250 at the weekend. He now works more hours on Sundays. At the time of the redundancies he was the last man standing and he did not accept redundancy, he was only asked on one occasion to go.

When he was summoned to a meeting on 25 February 2008 his first reaction was could he obtain a union representative. He did not know what the meeting was about. He was furnished with statements at the end of the second meeting. The union representative did not seek a discussion on the situation.

A witness on behalf of the claimant GK told the Tribunal that he was head of the fish department and was employed for thirty years with the respondent. He worked as an assistant charge hand in the deli provisions in the late 90's. He could do everything that the claimant could do. He worked as a pork butcher up until the late 1980s. He finished his fish displays at 9.30a.m. and he worked on fish mostly on Fridays. He reported to managers but they knew little.

He is now responsible for the meat counter on a daily basis and he would know what meat was needed. He nominated the meat to be reduced and it was based on expertise and judgment. He checked the meat for discoloration and the refrigerator could cause discoloration. A computer replaced a waste book, which was previously used by the respondent. He recalled an occasion where he opened a bag of trimmings and sliced it and put it on the counter as rib steak. Prior to February 2008 there were problems with meat being reduced as rib steak. The claimant showed him a bag of meat, he told the claimant it lacked quality and he thought it was quite shabby. The claimant told him that he would have to use it as rib steak. At the counter he heard EC tell MG that they were going to lose money on this meat and that it was not fit to sell as round steak mince and that the label was false. He told EC there and then what the claimant did was right. MG gave no direction and he told MG at the counter what the situation was and that EC had explained the situation to him in passing. At that stage he assumed that the meat was back in the fridge. The way to deal with it was to sell it as rib steak and the claimant told him it was round steak and not Angus beef. There was no button on the labelling machine for a stewing beef label. The respondent did not ask him to make a statement. He stated that the claimant may have reprimanded EC regarding lamb. The claimant was a little bit more rigid than other staff and the claimant was not intimidating. If there was a problem with meat staff discussed it.

In cross-examination he stated that a number of staff did not have any experience in raw foods, as they had never worked there. His obligation started when he opened the bags of meat. He served customers as certain people wanted him to serve them. When the claimant showed him the bag of meat on 22 February 2008 he told him that it was not up to its usual standard. He reiterated that EC said that they were going to lose money on the meat. He told MG that they were not going to lose money on this. He made it clear to MG that the meat went from rib to reduction and she could not have taken any other meaning from this. He expected the claimant's trade union representative to talk to him in relation to the incident. He was not offered redundancy.

Determination

Based on the evidence adduced at the hearing the Tribunal are of the view that the meat counter governance procedures were unclear at the time of the dismissal. In addition there was inconsistency in the interpretation of the rules regarding the treatment of meat of a quality, which was different to that which was on the label. Also, given the nature of the alleged offence and the possible consequences for the claimant, the Tribunal does not accept that the investigation process was sufficiently thorough and focussed in either its methodology or its deliberation. The Tribunal note that GK who was responsible for the fish counter was not spoken to during the course of the investigation. There was a lack of clarity regarding the procedures in place for serving family members. The evidence adduced with regard to the appeal would suggest it was cursory in nature.

The Tribunal found the claimant's evidence as to what happened on the day to be somewhat confusing and is not satisfied that he made sufficient efforts to mitigate the loss. Having regard to all the circumstances however the Tribunal is of the view that the dismissal of the claimant was unfair. The Tribunal believe compensation to be the appropriate remedy and award the claimant compensation of €23,000 under the Unfair Dismissals Acts, 1977 to 2007. The claimant is entitled to compensation in lieu of notice in the amount of €5040 00 which is equivalent to eight weeks pay at €630 per week under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claims under the Organisation of Working Time Act, 1997 and the Redundancy Payments Acts 1967 to 2007 were withdrawn and the parties agreed that they would resolve the issues of any holiday pay outstanding between them.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)