

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD327/2009

- **claimant**

against

Employer

- **respondent**

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. J. Hennessy  
Mr. D. McEvoy

heard this claim at Waterford on 9th September 2009 and 13th October 2009

#### **Representation:**

Claimant: Dr. John Flynn, Granite Mews, Abbeyside, Dungarvan, Co. Waterford

Respondent: Mr. Conor Kearney B.L. instructed by BCM Hanby Wallace, Solicitors,  
88 Harcourt Street, Dublin 2

#### **The determination of the Tribunal was as follows:**

The claimant's representative was given leave by the Tribunal to represent the claimant under regulation 12 of S.I. No. 24 of 1968.

#### **Respondent's Case:**

The Human Resources Manager (hereinafter HRM) for the respondent's Dungarvan store gave evidence that the claimant was employed in February 2006 as a Sales Assistant within the textiles department. The claimant's knowledge of the English language was of a good standard. The claimant received a copy of the company handbook during her induction. At the induction HRM read each page of the company handbook and the claimant was provided with an opportunity to ask questions. The employee purchase policy is also displayed on a notice board for staff. The claimant signed the terms and conditions provided to her.

The respondent operates a value club card scheme for customers. Customers receive points on purchases and the points are subsequently converted to vouchers for customers. On different occasions the respondent operates promotions on the scheme. An example of such is when the respondent returns 25% of the value of the purchase to the customer. Employees are entitled to have a valueclub card but any transactions made by an employee must be processed by a colleague and not by the employee themselves.

The respondent's procedures and training document for valueclub cards was opened to the Tribunal. The procedures state that an employee is not permitted to personally register any transaction that results in points being added to their personal valueclub card or linked card. The respondent's disciplinary procedures outline that valueclub card fraud or abuse of the scheme is considered serious misconduct for which an employee can be summarily dismissed.

In May 2008 Head Office contacted HRM regarding valueclub card activity within the store. HRM investigated this matter and an employee was subsequently dismissed following the investigation. During May 2008 Head Office again contacted HRM concerning increased activity on staff valueclub cards within the store during the bank holiday promotion. The activity was linked to five members of staff including the claimant and the employee who had been dismissed.

The Security Manager prepared a document for HRM detailing valueclub card numbers, the date and time of transactions, the points generated by the purchase and the monetary value the points equated to. The times and dates of the transactions on the claimant's card matched the times the claimant was working. The transactions were also linked to the terminal at which she worked. A password and number is assigned to each employee to allow them to sign into a terminal.

The last three digits on the card registered to the claimant's name and address were 212 and this was used in transactions. An unregistered card ending in the digits 600 was linked to the claimant as she had signed onto the terminal at which the valueclub card was used. There were further transactions on this card over the bank holiday weekend. There were no transactions on the 4<sup>th</sup> May 2008, which was a day the claimant was not working. A further card ending in the digits 041 was registered to another individual. The claimant later informed HRM this individual was her boyfriend. This card was used in six transactions on the 6<sup>th</sup> May 2008. It was also used on the 4<sup>th</sup> May 2008 (the claimant's day off) for a lesser amount. A card ending in the digits 816 was registered to a similar spelling of the claimant's name. HRM was not aware of this at the time she met with the claimant. Excluding the card ending in the digits 816, the claimant would have received €370.00 from the use of the other three cards.

HRM held a meeting with the claimant on the 30<sup>th</sup> May 2008. The claimant was invited to bring a representative to the meeting and she brought Ms. F. The minutes of this meeting were opened to the Tribunal. HRM wrote the minutes after the meeting had ended. HRM informed the claimant that it was an investigatory meeting concerning a serious breach of company procedures within the store. HRM asked the claimant if she had used her own valueclub card on her till while at work. At first the claimant denied it but later admitted she had. The details concerning the card ending in the digits 816 were not put to the claimant, as this card was not linked to the claimant at the time of meeting with her. The claimant was suspended with pay until the 31<sup>st</sup> May 2008.

At the meeting on the 31<sup>st</sup> May 2008 the claimant brought a different individual to accompany her. HRM showed the claimant the Security Manager's document and the claimant admitted to the use of a number of cards on the document. HRM made a decision to dismiss the claimant immediately

for gross misconduct. A letter issued to the claimant on the 11<sup>th</sup> December 2008 outlining her dismissal in writing. HRM acknowledged that a delay had occurred in writing this letter.

The Assistant Textiles Manager gave evidence that he did not have a difficulty communicating with the claimant during her employment. He was present at the meeting on the 30<sup>th</sup> May 2008 at which Ms. F was also present. The Assistant Textiles Manager was satisfied that the claimant understood the issue put to her at this meeting. He was not present at the meeting on the 31<sup>st</sup> May 2008.

The Textiles Manager gave evidence that the claimant had a very good standard of English and she did not experience any difficulties communicating with the claimant during her employment. The Textiles Manager was present at the meeting on the 31<sup>st</sup> May 2008. Ms. F was not present at this meeting but the claimant had another representative in attendance. The Textiles Manager subsequently wrote the letter dated 11<sup>th</sup> December 2008 to the claimant to confirm the meeting of the 31<sup>st</sup> May 2008. The letter stated:

*“This meeting was held following a previous meeting on 30<sup>th</sup> May when you admitted to using your own value club card to obtain customers points for your own gain, the result of this meeting was that you were suspended with pay pending further investigation until Saturday 31<sup>st</sup> May. You also admitted that you were aware of the correct procedure, but had no reasonable explanation for your actions.*

*..after careful consideration, the company feel that this was a serious breach of company procedures and were left with no alternative, but to dismiss you from the company’s employment with immediate effect.”*

### **Claimant’s Case**

The Tribunal heard evidence from a former employee of the respondent. She confirmed that the claimant was a very good worker. She stated that the first time she met the claimant she had very poor English. The claimant asked the witness about the use of the Store’s valueclub card and if the card could be used by a family member and her response was that it could. In relation to the disciplinary procedures, the claimant told her that she did not understand and the witness felt that she was in a state of shock. The witness confirmed that on a regular basis customers did offer to transfer their accumulated points onto her valueclub card. She also confirmed that members of her family still worked for the respondent and she held no grudge against her former employer.

In cross examination, when the claimant asked the witness about the use of valueclub cards, she felt that because of her poor English that she misunderstood the rules concerning the use of the Cards in the store.

The claimant told the Tribunal that she came to Ireland in 2005 and that she had never had formal English lessons. Towards the end of 2008 her representative began to give her lessons in English. At her induction with the respondent she was given some literature and shown a materials handling video. She did not understand the content of the literature. At the day of the test the claimant admitted that she copied from another employee. Initially her fellow employees assisted her greatly but she said she did not understand anything during this time and was unable to differentiate between items and bar codes. She felt this made her slower than other employees. She said that she had planned to stay in Ireland, had taken out a mortgage in January 2008 and that her job was very important. On occasions when she worked on the checkout it was common practice to ask the

customer if he/she had a club card. Most times, she said, the customer would say they did not and offer her the points. She had asked the previous witness if it was okay to use her own valueclub card in this manner and she was told that there was no problem.

At the time of the first meeting, the claimant was unaware that she could have a witness accompany her. She was asked about the use of the valueclub card but she did not understand. She claimed that she showed the respondent the 5/6 cards in her possession. While she did not understand what the allegation was, she knew that there was a big problem. At the second meeting, she was told that she had broken the rules but she confirmed that she had signed the rulebook. The conclusion of this meeting was that her employment was terminated. The claimant said that had she been aware of the seriousness of the inappropriate use of the valueclub card she would not have participated as she was anxious to keep the job. The claimant asked her manager for a letter to explain her dismissal and her representative confirmed that she had received this letter six months later. She did not want the respondent to think that she was a thief. She confirmed that she could not read the rulebook at that time, but that now her English has improved through tuition.

In cross-examination the witness was asked why she had five/six separate club cards and witness said that if she had vouchers a family member could use them and that she could also give presents to her family. She was also asked why different cards were used on the same day and she had no explanation.

When asked by counsel for the respondent if she had lied out of fear, she stated that she had not lied.

**Determination**

The Tribunal has very carefully considered the oral and documentary evidence presented during the course of this hearing. The Tribunal is of the view that the claimant was aware of the use of loyalty cards by employees. The evidence as presented clearly showed that the misuse of the loyalty card was the cause of her dismissal.

Accordingly, the dismissal is deemed fair in all the circumstances. The Claim under the Unfair Dismissals Acts 1977 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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