

## **EMPLOYMENT APPEALS TRIBUNAL**

APPEAL OF:  
EMPLOYEE

CASE NO.  
UD550/2009

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

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. MacCarthy S C

Members: Mr. M. Flood  
Ms M Maher

heard this appeal at Dublin on 1st March 2010

### **Representation:**

Appellant : Mr Graham Macken, SIPTU, Liberty Hall, Dublin 1

Respondent : Ms Pauline O'Hare IBEC, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of an appeal by a former employee against a recommendation by a Right's Commissioner reference number r-066099-ud-08/TB

Both parties made lengthy opening statements that were submitted to the Tribunal.

The appellant's case was that the reason for her dismissal did not merit the offence of gross misconduct. Besides, the respondent failed to identify any intent on her part to deliberately misappropriate company funds. The appellant, however, accepted she was responsible for a clerical error, which resulted in the loss of revenue to the respondent.

The respondent insisted that the appellant behaved in a manner that amounted to gross misconduct which carried the sanction of dismissal. It no longer had the necessary trust and confidence in her as an employee.

## **Respondent's Case**

A location manager who was based at Castleblaney, county Monaghan from July 2007 instigated an investigation into the whereabouts of a modest sum of money that was paid to the company in June of that year. That money had been accounted for.

That investigation started in October 2007 when a customer complained he was still being invoiced for a sum of money that he claimed he had paid in cash to the company. That investigation showed that the appellant took in €380.00 in the form of cash from a customer but only recorded it as a lodgement of €3.80. Such discrepancies happened and would be expected to be exposed when the daily reconciliation exercise was done. The appellant was also responsible for completing reconciliation statements and this particular discrepancy was not reported. At a meeting with the witness the appellant was unable to explain the loss of the outstanding €376.20.

In the meanwhile the witness turned the local office “upside down” as part of his efforts to find this missing sum of money. He wanted to eliminate all possibilities but has yet to locate this missing amount. The witness issued results of his investigation to the appellant prior to a disciplinary hearing on this issue on 18 February 2008. He had no input into the sanction decision. However, he told the Tribunal that this was a procedural error on the part of the appellant that amounted to gross misconduct.

A former location manager who was the appellant's direct manager in June 2007 said that she never mentioned a discrepancy to him regarding that payment of €380.00. The cash balance never showed an excess of €376.20 during the reconciliation process which was the case had a genuine error occurred in its original transaction.

## **Appellant's Case**

No evidence was adduced.

## **Determination**

Having considered the evidence and the submissions the Tribunal upholds the recommendation of the Right's Commissioner in this case. It accepts the contention that the appellant's behaviour in this case was gross misconduct.

The appeal under the Unfair Dismissals Acts, 1977 to 2001 falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

