

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD958/2009

**claimant**

against

EMPLOYER

**respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms V. Gates BL

Members: Ms J. Winters  
Mr G. Whyte

heard this claim at Dublin on 23rd March 2010

Representation:  
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Claimant(s): Mr. Donal O Sullivan BL instructed by  
Mr Michael Quinlan, Frank Buttimer & Co, Solicitors, 19  
Washington Street, Cork

Respondent(s): Mr David Keane, IBEC, Confederation House, 84/86 Lower  
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

**Respondent's Case**

DT told the Tribunal she was employed as a sales manager with the respondent in Southern Ireland and managed five sales people. She is in her current position since 18 March 2008 and has been employed with the respondent for seven and a half years. She knew the claimant and spoke to her daily on the telephone. She outlined to the Tribunal the work that the respondent undertook. The claimant's role was in commercial sales and she looked after accounts in Cork City and developed new business. Employees were given guidelines on codes of conduct and how employees were to

behave in undertaking business. The claimant was given a copy of this document. The respondent had a zero tolerance policy regarding falsification of documents. If there were allegations against an employee they would be subject to an investigation. A complaint was made by a customer Mr. H that his signature was on a document, which he claimed that he had not signed. He did not agree that he had accepted a bindomatic machine. Mr. H had dealings with the respondent for twenty years. Mr. H informed the respondent that he would not have signed a document unless it was his full signature and his full title did not appear on the leasing agreement and the signature itself was not his.

A contract agreement regarding machinery was signed by a specific level of customer and the details on the document had to be accurate before signing. The claimant was suspended on 24 September 2008, as it was believed she had falsified a contract. By letter dated 25 September 2008 the claimant was invited to attend a meeting on 3 October 2008. The witness undertook an investigation in line with the respondent procedures. Present at the meeting were the claimant, her representative J McG, and RP from HR. The respondent received a letter from Mr. H and they discussed the bindomatic machine, which the claimant said Mr. H. had. They discussed the signature on the document. It was an open meeting, the next step was considered and the outcome of the investigate meeting was that the matter needed further investigation as documents were falsified. Help was available to the claimant through the Employment Assistance Programme and HR was available if she needed to speak to anyone. The claimant stated that she did not sign the document and she did not know who signed it. The witness felt that the reason for a false signature could have been due to pressure of business.

In cross-examination she stated that she was the claimant's immediate supervisor. The customer Mr. H e-mailed a complaint to the respondent on 10 September 2008. Nothing like this had been alleged previously and a meeting was arranged. She did not make the decision on the outcome of the investigation. She spoke to RP, HR and to Mr. H who had made the complaint. No decision was made at the investigative meeting. She did not know if the letter from Mr. H to the respondent was given to the claimant. She would have thought that the claimant had the documents. She did not know the exact date that a franking machine was delivered to Mr. H. Mr. H had stated that he had not signed for a Bindomatic machine. If she had a complaint she always referred it to HR. At the meeting on 3 October 2008 they endeavoured to keep the atmosphere as pleasant as possible.

In relation to the documents that the customer Mr. H signed she would have asked him to furnish her with details of the documents, which he did and did not sign. She did not write any further letters to the claimant. She never considered engaging the services of a handwriting expert.

In re-examination she stated that Mr. H had ordered a franking machine. Mr. H had no need for a bindomatic machine

In answer to questions from the Tribunal she stated that a copy of the lease agreement was sent in the post to Mr. H. The bindomatic machine was not used and Mr. H had the machine for a few days at that stage. The box that contained this machine may have been opened but it was never used. She agreed that every opportunity had to be utilised to promote a product. Guidelines were issued to all signatories.

AQ told the Tribunal that he was field service manager and had been employed with the respondent for twenty years. He held his current position for under seven years. He was asked to chair a disciplinary hearing on 23 October 2008 as a result of an investigatory meeting. He had a HR representative who guided him through the meeting. JMcG represented the claimant and the reason for the meeting was that a company document was falsified and it had not been ascertained how

this had occurred. The claimant's representative stated that the claimant did not sign anything and she did not know who would have signed it. The meeting was adjourned as the claimant's representative raised a number of questions. He could not come to a decision and it was a very serious matter. There was confusion regarding Mr. H's signature. He then reverted to HR, as he needed clarification regarding documents. He discussed with HR the number of questions the claimant's representative had raised.

The claimant was invited to a disciplinary meeting on 19 November 2008 by letter dated 13 November 2008. Present at the meeting were the claimant, her representative J. McG, the witness and CD Regional HR consultant. He clarified with the claimant that she had read the additional document. He gave the claimant the opportunity to go through the topics that her representative had raised. The different signatories on the paperwork were discussed. Her representative brought the box, which contained the bindomatic machine to the meeting. The claimant had signed that she witnessed Mr. H's signature and he felt that he had no option but to dismiss her for falsification of company records. Mr. H was very aggrieved that someone would have signed his name on a document. This was the first time that the witness was aware of a signature being falsified on a document.

In cross-examination he stated that he had very little dealings with the claimant. The purpose of the meeting on Thursday 23 October 2008 was to deal with the allegation against the claimant falsifying documents. In the letter sent to the claimant on 16 October 2008 inviting her to a meeting on Thursday, 23 October 2008 an accusation against the claimant was not made. The first time that a charge of gross misconduct was mentioned to the claimant was in a letter dated Friday 21 November 2008. He agreed that he did not tell the claimant of the specific complaint made against her. He did not consider getting a handwriting expert. At all times he presumed that the claimant told the truth.

In re-examination he stated that other equipment was referred to in the lease that was prepared for the franking machine. The claimant was on suspension and attended a second disciplinary hearing. Mr. H stated that it was not his signature on the document and the claimant was told of the consequences.

MK told the Tribunal he was regional service manager for the respondent in the UK and had been employed with the respondent for twenty-one years. He sent the claimant a letter on Friday 12 December 2008 inviting her to an appeal hearing on Wednesday 17 December 2008. Present at the meeting were the claimant, the witness and the claimant's representative J McG. He asked her questions regarding the letter the customer Mr. H wrote. At the meeting he pointed out to the claimant and her representative the discrepancies in the signature. He questioned the claimant regarding the forged document and there was no financial gain to be made from this. He determined that the claimant was aware of why she was coming to the appeal hearing and he believed that the claimant was aware of why she was dismissed.

In cross-examination he stated that he was not a handwriting expert and he did not believe that it was reasonable to obtain a handwriting expert. He agreed that if the matter were not dealt with there would be ramifications for the respondent. He believed that the claimant was dismissed for falsification of company documents. He believed that the customer Mr. H stated that someone in the respondent had forged a signature.

In answer to questions from the Tribunal he stated that the claimant was dismissed for being in possession of a forged document. He did not feel that the claimant brought anything to the meeting

and that she was not really bothered.

In re-examination he stated that the claimant did not ask for a handwriting expert. He was asked if he was a handwriting expert and he said no.

### **Claimant's Case**

The claimant told the Tribunal that she commenced work with the respondent in 2006. She dealt with new and existing clients regarding office machinery. She had met Mr. H when she upgraded a lease on his franking machine. The documents that were signed by him would have been correct. She never left paperwork in an office. She installed the franking machine and she did not see the other machine. The only time that she saw the other machine was when her representative brought it to a meeting. She first became aware of an allegation against her in September 2008. A customer Mr. H said he did not sign his name to a document and she was suspended. At the first investigative meeting J McG represented her and he attended all the meetings with her. It moved from an investigative to a disciplinary hearing. It was never said to her that she was accused of signing Mr. H's name to a document. She did not forge a signature.

She has not obtained a job since she was dismissed. She registered with recruitment agencies and she was told that she was ideal for the job and when a reference was sought she was not called back. She telephoned DT once regarding a reference and she told her that she could not give her a reference. She has discontinued attending for interviews, as it is pointless. She started college in January 2010.

In cross-examination she stated that any document that Mr. H signed she would have been present. If there were only one bindomatic document she would have witnessed Mr. H sign it. When she was asked that she was not aware of the allegations against her and if she was aware that it was a serious situation she replied initially no and the respondent had to investigate a customer complaint. At the investigative meeting she knew that it was a serious issue but no one had accused her of anything. She was not told directly that she was being accused. Mr. H did not say that she falsified his name. At the Appeal hearing she knew what people were trying to say and of course she was being accused but Mr. H did not accuse her directly of doing anything. She did not ask for a handwritten expert.

Her representative was not present at the hearing as the respondent employs him. Since her dismissal she undertook some work for a charity, which was based on commission. She got paid for lines sold, it was for a few months and she did not have a basic salary. She could have done this as often as she wished but not on Sundays. She did not have a reference from the respondent and she was aware that the respondent had received one or two telephone calls from prospective employers regarding a reference.

### **Determination**

On the evidence adduced the Tribunal finds that the respondent failed to prove that the claimant, or someone on her behalf, signed the allegedly forged documents. The respondent did not act fairly in dismissing the claimant on the grounds that she, or someone on her behalf had forged the signature of Mr. H. It was not fair or reasonable to conclude that the signatures were forged in the opinion of persons who are not handwriting experts. Further, it is inconsistent of the respondent to continue to rely on allegedly forged signatures associated with the lease and maintenance of the franking machine, a machine required by the customer, and on the other hand accept the return of

the bindomatic machine on the basis that it was not required and the signature allegedly forged.

Whilst the claimant did not furnish the Tribunal with supporting documentation, the Tribunal accepts the claimant's evidence that she made efforts to secure alternative employment. In the circumstances the Tribunal awards the claimant compensation in the sum of €20,000 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

