

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *claimant*

UD1202/2009

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr J. Horan
Mr T. Brady

heard this claim at Naas on 14th September 2010

Representation:

Claimant(s) : Mr Gerry Burns, Burns Nowlan, Solicitors, 31 Main Street,
Newbridge, Co Kildare

Respondent(s) : Mr. Tom Mallon BL instructed by Arthur Cox, Solicitors, Earlsfort Centre,
Earlsfort Terrace, Dublin 2

Summary of Evidence

The claimant was employed as a packaging service analyst by the respondent company. The company is located on a large site of 120 acres with one million square feet of buildings space. The company employs in the region of 1200 employees. There is an ATM Bank of Ireland machine located in one of the buildings on the company's premises.

An employee hereafter known as (SK) gave evidence that she worked alongside the claimant in a portacabin on the company's site. A total of 15 employees worked in that portacabin. In early

February 2009 she gave her laser card and PIN number, which she generally held in her bag under her desk to the claimant in order for her (the claimant) to purchase some cakes for the office. The claimant purchased the cakes and returned the laser card and receipt to (SK's) desk following her return from the bakery. The laser card remained on the desk for about 20 minutes and other employees were present in the portacabin at this time. (SK) collected the card from her desk following her return to the portacabin.

Some weeks later on 25 February 2009 (SK) returned to her desk after an absence of 20 minutes and was informed that a member of security had left her laser card on her desk stating that it had been found outside of the building. Evidence was heard by the Tribunal from security officer (TW) of how the laser card had been found by two contract workers outside of the building. (SK) was unaware that her card had been missing. The following day, 26 February 2009, she checked her online banking and discovered that two withdrawals of €300 and €250 had been made from her account. Neither she nor her husband had made those withdrawals. She contacted her bank and was informed that the transactions had been made at 16.14 and 16.15 on 24 February 2009 from the ATM machine at the respondent's premises. She then contacted security within the company and reported the matter.

Following receipt of the complaint the company carried out a thorough investigation into the incident. Extensive CCTV footage of the area where the ATM machine is located was reviewed and the footage, which was shown to the Tribunal, showed the claimant using the ATM machine at the times that the unauthorized transactions occurred. The claimant was interviewed on a number of occasions as part of the investigation and was suspended on full pay on 2 March 2009. She accepted that she was present at the ATM machine for 2 minutes at 16.14 and 16.15 on 24 February 2009 but denied that she made the withdrawals from (SK's) account. She told the investigation team that she had attempted to make a withdrawal from her own bank account between 16.14 and 16.15 on 24 February 2009 but there were insufficient funds in her account to complete the transaction. She reiterated that she did not use (SK's) laser card to make unauthorized withdrawals.

As part of the investigation the company contacted Bank of Ireland and evidence was heard by the Tribunal from the bank official involved. This official told the Tribunal that there was no evidence from bank records of any attempt being made to withdraw funds from the claimant's account at 16.14 or 16.15 on 24 February 2009. Insufficient funds transactions are recorded on bank records as with other transactions. The Tribunal heard further evidence that the investigation process commenced on 2 March 2009 and the claimant was notified by way of letter dated 20 May 2009 of her dismissal. She was given 10 working days to appeal the decision but no appeal was made. Witness for the respondent (DC) who made the final decision to dismiss the claimant told the Tribunal that the company had hoped that the matter would have reached a speedier conclusion. However it was necessary to gather a lot of information, outside parties were involved and the thoroughness of the investigation was the company's priority. There was no intention on the part of the company to make life difficult for the claimant and nobody within the respondent organisation wanted the outcome to be what it was, as the claimant had been a good employee.

Determination

The Tribunal is satisfied that the respondent carried out a full and thorough investigation and came to the correct decision based on the factual evidence before it and on the claimant's inability to contradict the factual evidence from bank records and CCTV footage. The Tribunal is also satisfied

that the length of time between the event at issue and the final decision did not prejudice the claimant in any way as her suspension was on a full pay basis.

Accordingly the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

