

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE - *claimant*

CASE NO.  
UD1279/2009

against

EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Hennessy  
Ms S. Kelly

heard this claim at Waterford on 20th July 2010  
and 5th October 2010  
and 6th October 2010

Representation:

Claimant(s) : Ms Fiona Grogan, Hegarty & Co, Solicitors, 4 St Andrew's  
Terrace, Newtown, Waterford

Respondent(s) : Mr. Eamonn McCoy, IBEC, Confederation House, 84/86 Baggot  
Street Lower, Dublin 2

### The Claim

The written claim stated that the claimant was dismissed (from her post as sales assistant for a major footwear retailer) for alleged irregularities regarding refunds to customers. She had been working in the respondent's Waterford outlet for seven years (June 2002 to May 2009) and in all of that time there had been no complaints against her and she had never been the subject of any disciplinary process or even received a warning letter of any description.

The claimant was only shown the written system for dealing with refunds on 20 April 2009 and she had followed existing custom and practice when dealing with these matters. She was of the view that she had been dismissed unfairly over a matter that was not gross misconduct and that she had not been given the correct support and guidance and, indeed, necessary training.

The claimant also felt that her honesty and integrity were being called into question by the

allegations against her which she strongly refuted.

### **The Defence**

The respondent's defence was that the claimant was fairly dismissed for gross misconduct in accordance with well-known company disciplinary policy and substantial grounds existed which justified the dismissal in that the claimant conflicted with company procedures for the application of the company cash and stock handling procedures at the respondent's Waterford store. This resulted in substantial loss justifying dismissal.

The discrepancies in the cash and stock at the Waterford store were the subject of an investigation and an investigative meeting was held with the claimant before commencement of the disciplinary procedure. The claimant was subsequently afforded mutually agreed arrangements for both disciplinary and appeal hearings. She was afforded representation at meetings by a work colleague.

### **Opening statements at the Tribunal hearing**

The respondent's representative stated that the claimant had been guilty of gross misconduct and that she had failed to follow the respondent's procedure. A discrepancy had come to light during an annual audit of cash sales. The respondent conducted a full investigation of the matter and interviewed a number of people including the claimant. Disciplinary procedure was implemented. Impartial people heard it. The claimant had a chance to appeal and did so.

The claimant's representative stated that the claimant had begun working for the respondent in June 2002 while still a schoolgoer. After initially working school holidays and weekends she went up to working nineteen hours per week and subsequently up to thirty hours. However, it was alleged that she did not get the right training in refund procedures. There was a lack of training at the respondent's store and the respondent's refund system was a bit sloppy.

### **Respondent's Case**

Giving sworn testimony, EG (the respondent's retail auditor for Ireland) said that she had been with the respondent for many years. She would carry out stocktakes on all of the respondent's Irish stores. For Waterford it would take a day. Shoeboxes were barcoded. Refunds would be recorded on the respondent's computer system. Shoes could be stolen or go missing. Sometimes, she would find errors and adjust them.

Waterford had a good refund rate but in 2009 there was a large shortfall for this store. She found a lot of refund documentation. The respondent's refund policy was that shoes could be returned within twenty-eight days with a receipt. If a customer wanted to keep the receipt (e.g. if the receipt referred to more than one purchase) the respondent would keep a docket. If shoes were faulty the store would give a refund. Faulty shoes would not go back on sale. Non-faulty goods would go back into stock.

When audited items could not be accounted for EG checked to see if procedure had been followed but returned goods could not be found. Her practice was to confirm that sales had been made.

The Tribunal was now referred to an "odd shoes report" and a refund investigation audit report. Refunds had been done by the claimant who was identified by a sales code number. The shoes should have been back in stock because they were not faulty. Some of the refund receipts had no

addresses. Others had very vague addresses. Addresses would appear on receipts as proof of a refund. It was very odd not to have them. Some were found to have an insufficient address. The respondent was also told that there was no number twelve on a particular street.

EG got in touch with the respondent's area sales manager and had no further involvement.

Under cross-examination, EG said that the claimant had authorised nearly half of the refunds and that the goods in question had all been sent to stock. None went to the warehouse

Giving sworn testimony, JT said that she had been a sales manager for six of her nine years with the respondent and that she had done investigations in the past. The Tribunal was referred to investigation interview notes. JT stated that the claimant had had a colleague present with her and that the purpose of meeting the claimant had been so that JT could get information as to what had happened with the refunds. She asked the claimant if she could explain the refund procedure used. The claimant was very co-operative, fully familiar with the procedures regarding receipts and very aware of what should be done. She seemed to have a very good understanding of how to do refunds of all types and said that she would always check codes and dates. The claimant could give a gift voucher in the store if a gift voucher sale was at issue.

Regarding refunds over the year the claimant said that she would always take the details. JT showed the claimant where the claimant had done the refunds but not in line with procedure. The claimant admitted to the incidents saying that maybe the customer in question took the receipt too quickly and left. She said that one customer had been in a hurry.

Regarding specific incidents the claimant said that she would normally comply with procedure but had not done so in this instance. She did not say why. The claimant asked JT why she was being asked. JT replied that she had been asked to go to the store and made it clear to her that it could lead to dismissal. The claimant had not known before JT arrived that JT was coming. She agreed that she had not followed the respondent's procedure. JT encouraged her to give an explanation but she did not do so. The claimant said that she would normally take the required details. She was in no doubt about the seriousness of the matter but said that there was nothing she could do about the addresses that could not be verified and that her general practice was to put shoes back into the stockroom. JT put it to the claimant that she had done the refunds and to make the most of the chance to explain. The claimant was suspended on full pay.

The claimant and her representative sought the notes. JT posted everything to her and spoke to one of the people who had co-signed. The lady in question had left the respondent. Two signatures were needed (one as a witness). JT attempted to get confirmation regarding signatures and incidents. One signatory could not recall. Another was reluctant to speak because she was the claimant's aunt. People confirmed their signatures but could not recall refunds. One lady (HM) disputed her signature saying that she had not been on duty. JT felt that there was enough information to go to the disciplinary stage and handed everything over to a disciplinary manager.

Under cross-examination, JT confirmed that there was a store booklet. The Tribunal was told that the store manager would have it. It was put to JT that the claimant would say that she had just picked up the refund procedure from working and not from any written booklet. JT said that the claimant had given her no reason to doubt the claimant's knowledge of the refund process.

JT stated that it was not the respondent's policy to give notice of an investigation and that she had

given the claimant a chance to recollect. When it was put to her that it might be hard to recollect each incident JT accepted that the claimant had worked at the busiest times (on Fridays and Saturdays).

When it was put to JT that the claimant had got upset JT replied that she had asked the claimant if she wanted a break. When told that the claimant would say that she had felt intimidated by JT and that JT had been aggressive JT denied this saying that she did not conduct herself like that.

Asked how it had taken so long for the discrepancies to be discovered JT replied that she did not work in the Waterford store, that transactions would be checked daily but that the issue had not come to light before the autumn.

On the question of whether or not it might happen that a staff member might sign as a witness after a customer had gone JT replied that witnessing should be done when the customer was there.

JT denied that she had ever said that the claimant had forged HM's signature but admitted that there was no training course saying that much training was on-the-job. When told that the claimant would say that she had not received the booklet JT replied that she had thought that the claimant had had a good knowledge of refunds and that the refund policy had been the same since 2008.

It was not disputed that the first the claimant had known about the investigation had been when someone had approached her. JT did not think that she had given the claimant the option of adjourning the meeting.

Regarding refunds, JT told the Tribunal that she tried to encourage customers to keep the box (when they bought footwear) but that she would accept a purchase back without the box and that a member of staff would then return the shoes to stock.

Asked if she should have interviewed the claimant about the matter of HM's signature, JT replied that, in hindsight, maybe she should have done so. The claimant had just said that she did not know why she had not followed the procedure. On the subject of whether or not it would have been useful to get the claimant back in, JT said that she thought the responses would just have been that the claimant did not know.

JT admitted that she had not got to see one person (CF) who was a student away from Waterford and who had signed a statement saying that, to the best of her knowledge, she could not remember any irregularity about refunds. JT said that the store manager might have spoken to CF but admitted that the witnesses had not been offered representation. It was company policy to come on the day and investigate. The store manager (who just worked four days per week) was not interviewed. The twenty-two refunds in question were spread out over a year.

Questioned by the Tribunal, JT stated that the claimant had said that there could have been a custom of a witness signing but not being there for the return of shoes.

Giving sworn testimony, JL (the respondent's HR manager for the United Kingdom and the Republic of Ireland) said that she gave HR advice and that a handbook and contract were given at the start as were a disciplinary procedure and grievance procedure. The Tribunal was referred to a respondent document headed "resolving difficulties" which stated that, if there was a concern or

problem with an employee's performance or conduct, the employee's manager would draw this to the employee's attention and give the support and guidance needed to get the employee back on track. However, the document also stated that, when the matter could not be dealt with in this way or this approach had not improved things, the respondent would enter the disciplinary procedure (which was described as fair and consistent and upholding certain principles).

Among the principles of the respondent's disciplinary procedure was the inviting in writing of an employee to attend a disciplinary meeting. This letter would set out the reasons for the meeting. The employee would be given the opportunity to state his or her case and to call witnesses before any decision would be made. The employee could be accompanied by a work colleague or by a union representative at any disciplinary meeting or appeal.

JL stated that different store managers would be brought in for issues and that the respondent would find the most appropriate person. The area sales manager made the decision. It was the respondent's practice to start an investigation without notice but an interviewed person could ask to have the interview on another day. The process would be completed in as timely a manner as possible (within five days if possible).

There was also an appeals mechanism which would involve the next nearest senior manager. In this case it was the area sales manager.

Under cross-examination, JL confirmed that it was the respondent's policy to give its handbook but did not comment when it was put to her that the claimant would say that she had never got it.

When it was put to her that the claimant had not been given guidance JL replied that the claimant had known the respondent's disciplinary process and had come with a colleague (as a representative) rather than adjourning to request a representative.

It was put to JL that the claimant would say that she had not had the option to seek a union representative. JL replied that it could be a colleague.

JL acknowledged that the claimant had had no breaches and had not been called up for anything previously but stated that the claimant had been deemed to have been guilty of gross misconduct.

JL was asked by the Tribunal how the claimant would have known that she could adjourn. She replied that the claimant would have known that she could have somebody. Asked if it was gross misconduct not to deal with refunds correctly, she replied that it was a question of refunds and following procedure. JL said that a particular trade union (MX) represented a lot of the respondent's employees but that it was not common practice to have the union there for the dismissal of somebody.

Witness for the respondent known as (CC) gave evidence that she conducted the disciplinary hearing. She is a store manager at one of the respondent's Dublin stores and had no previous involvement in the matter. Her role was to review the investigation procedure, conduct the disciplinary hearing and make a decision at the end of that hearing. She conducted the disciplinary hearing on 6 May 2009. The hearing was attended by herself and (CB) on behalf of the respondent and the claimant and (MK) on behalf of the claimant. The witness had (JT's) notes in her

possession prior to the commencement of the disciplinary hearing. (JT) had conducted the investigation meeting.

At the meeting the witness enquired from the claimant as to her understanding of the procedures in relation to refunds made upon the return of goods with and without receipts. The claimant outlined her understanding of the procedures confirming to the witness that she understood the correct company policy and procedures. She was then asked to provide answers to questions from a selection of the 22 transactions where no goods could be found for the refunds made. The claimant could not provide an explanation to these questions. The witness then told the Tribunal that the claimant had also carried out a refund which contained the signature of (HM) as a witness to the transaction. According to the witness (HM) was not in the store when this transaction occurred and had denied that it was her signature on the refund receipt. When she put this to the claimant at the disciplinary hearing the claimant could not provide any explanation to the question.

The witness told the Tribunal that following the conclusion of the disciplinary hearing she concluded that the claimant should be dismissed for gross misconduct in accordance with company disciplinary procedure. The claimant was in breach of the respondent's stock handling procedures. She had failed to follow company cash and stock handling procedures in relation to 22 refunds to the value of €1854.00. The refunds had all been processed by the claimant without original receipts and all of the stock was missing from the store. The claimant was given the opportunity to appeal this decision. The witness had no further involvement in the matter, she had no involvement in the appeal and her notes from the disciplinary hearing were forwarded to the Human Resources department at the respondent's HQ.

Under cross examination the witness agreed that it was possible that other employees did not follow company procedures in relation to refunds. She confirmed that training in respect of refunds is completed with employees on the shop floor. Records of this type of training is not necessarily kept by the respondent. She was not provided with any evidence during the course of the disciplinary hearing that senior staff met with the claimant in relation to the refund processes. The claimant told her during the course of the disciplinary hearing that a customer who had been given a refund may leave the store prior to the 2<sup>nd</sup> signature (witness signature) being signed. The claimant explained to her that she would inform a colleague that the customer had left the store and ask that colleague to then sign the receipt as a witness. The claimant also explained to her that she may be called away during the course of such a transaction and may not always be the person to finish the transaction. The witness did not interview any other employees in this regard as part of the disciplinary hearing. She did request training records on behalf of the claimant as part of the hearing process but none were made available to her. She told the Tribunal that the claimant was not given an opportunity to question (HM) concerning her (HM's) denial of her signature on a refund receipt.

The next witness known as (MR) gave evidence that he is an area sales manager with the respondent company and he conducted the claimant's appeal hearing. He was provided with copies of notes from the investigation and disciplinary hearings prior to the appeal hearing. He used the claimant's letter of appeal as a structure for the hearing. At the hearing the claimant informed him that she was given notes on procedures in relation to refunds after the investigation meeting with (JT). These notes had been given to her by the store manager known as (MT). After studying these notes she understood the procedure but had been unsure of the procedure prior to receiving the notes. The witness did not investigate all 22 refunds in question as this ground had already been covered. He asked a number of clarification questions and went through the correct processing systems. He discussed in detail the refund where (HM) had denied it was her signature. He enquired from the claimant if she had been involved in training other employees. The claimant told him that

she had trained colleagues in relation to refund procedures. He gave the claimant the opportunity to offer any new information but she did not offer anything further and indicated to him that she had been given a fair hearing. At the end of the hearing he concluded that the original decision to dismiss the claimant should be upheld.

Under cross examination he replied that he could not comment on the level of training supplied to the claimant as that was the store manager's responsibility. He told the Tribunal that he had the original refund receipts on the day of the appeal hearing. He was satisfied that the receipt which showed (HM) as signing as a witness to a refund was not (HM's) signature.

The next witness known as (MT) gave evidence that she has worked for the respondent company for the past 20 years. She is a store manager and works in the same store where the claimant was employed. She was not involved in the disciplinary, investigation or appeal hearings. She outlined to the Tribunal the procedures involved concerning customer refunds. Refunds are made by means of cash, gift vouchers or crediting a customer's credit card depending on circumstances of payment and production of a receipt by a customer. Returned stock is returned to the store room or warehouse depending on the nature of the returned stock. If the stock is deemed to be faulty it is returned to the warehouse. Guidelines in relation to refunds are communicated to employees by on the floor training. Employees receive ongoing training in that regard. Managers also attend training courses in Dublin on a yearly basis.

The witness gave further evidence that the claimant was made team leader two years after joining the company. She received training from three assistant managers in the store. The witness had no difficulties or problems working with the claimant who showed great potential. She had every confidence in the claimant's capabilities.

Under cross examination she confirmed that the respondent company maintained records of general staff training. She could not explain why no such records were kept in respect of the claimant. She accepted that it was not always possible to have a witness present when a refund was made. She told the Tribunal that she would never start a refund procedure and not finish that procedure. She confirmed that all refunds are checked and signed off daily by a senior staff member but a physical check is not done to ensure that the returned stock is in place. She confirmed that refunds may be made in respect of goods which may not necessarily have been purchased in that particular store. These goods could have been purchased in another of the respondent's stores and these goods would be returned to warehouse. She was very upset at the decision to dismiss the claimant and has had many sleepless nights since the claimant's dismissal.

### **Claimant's Case**

The claimant gave direct evidence that she commenced working for the respondent company in 2002. She worked part-time in a permanent position. In August 2008 she was offered a full-time position by another local company but declined the offer as she was advised by (MT) that she may be offered a management position by the respondent company. She enjoyed working for the respondent and had no issues concerning her employment until April 2009. She told the Tribunal that the extent of her training in relation to procedures on refunds was confined to on the job training. She had never seen any documentation in relation to refunds and exchanges prior to 20 April 2009. On that day she was shown the document by (MT) and (HM) and asked to read through it in detail. On 24 April 2009 she was called to an investigation meeting concerning irregularities in refunds. The meeting was conducted by (JT) whom she did not know. She was accompanied by a work colleague known as (MK) at that meeting and was aware of the nature of the meeting in

advance.

She explained to (JT) her understanding of the refunds process and procedures. As far as she was aware she was doing the refunds correctly as nobody had shown her any differently. It had never been indicated to her previously that she had been doing anything wrong in the manner she had carried out the refunds. At the end of the meeting she was given a letter of suspension and escorted from the store by (JT). She later attended a disciplinary hearing and an appeal hearing. At both meetings she explained her understanding of how refunds transactions should be completed. She told the Tribunal that the appeal hearing was carried out in a fair manner but she was disappointed with the outcome. She never forged any other employee's signature while working for the respondent.

Since her dismissal she has done a course in beauty therapy and hopes to obtain employment in that area of work. She has sought alternative employment but has been unsuccessful to date. She was not provided with a reference from the respondent following her dismissal. She is currently in receipt of Social Welfare and a disability allowance.

Under cross examination she confirmed that she had received training from three store managers. She believed that the training in respect of refunds was not thorough enough and she should have received formal training. She accepted that the 22 transactions investigated showed refunds made without customer receipts. She believed that the irregularities occurred over a long period of time and accordingly could not understand how they were not discovered before the audit check. She did not believe she did anything wrong as she operated in accordance with her training. She told the Tribunal that the policies operated in the store where she was employed differed from the respondent's policies and procedures. There was no strict compliance with the respondent's procedures. She told the Tribunal that (MT) and (HM) told her on 20 April 2009 that she should be doing some things differently from what she had been doing. She confirmed that her signature appeared on the majority of the 22 refund receipts in question. She was, however unsure as to whether or not it was her signature on a small number of the receipts. She realized after she read the guidelines on 20 April 2009 that she had not always followed the correct procedures in relation to refunds and exchanges.

The next witness known as (SO'N) gave evidence that she is employed as a team leader by the respondent. She has worked for the respondent for 21 years. She told the Tribunal that refunds are checked on a daily basis by a senior staff member. She attended classroom training sessions in respect of her work. The last training session she attended was approximately 10 years ago. She gave evidence that she did not believe the claimant did anything wrong in the manner that she performed refund transactions. Employees do not always get a witness to sign off refunds. She has seen transactions involving cash refunds being completed without customer receipts.

Under cross examination she told the Tribunal that she could not recollect training the claimant but may have answered questions from the claimant from time to time. She carried out procedures in the same manner as the claimant.

The next witness known as (MC) gave evidence that she worked for the respondent from 2002 until 2007. She was a team leader and worked with the claimant. She was part of the team that checked refunds on a daily basis. She told the Tribunal that two signatures were required on refund receipts but the witness signature was not always completed when the refund was made. She, herself signed refund receipts as a witness without witnessing the refund transaction. She does not recall receiving any formal training regarding refund procedures. If a customer was persistent or difficult she made



cash refunds without a receipt. She would not do so however without consulting a senior staff member. She was never given a store handbook during her time working for the respondent.

## **Determination**

In arriving at its Determination the Tribunal considered whether the respondent acted reasonably in its investigation, in the conduct of the Disciplinary and Appeal Proceedings and in arriving at its decision to dismiss.

In particular, the Tribunal considered whether the respondent carried out a full and fair investigation. The Respondent submitted that it had reasonably arrived at the conclusion that the claimant had acted improperly and that the consequent decision to dismiss was reasonable.

E.G., the Company Auditor, found refund irregularities on conducting an audit at the Waterford Clarkes store in February 2009 and, on further investigation, found that 42% of the consequent financial loss to the company totalling €1,854 was attributable to the claimant. This was verified by reference to refunds processed under the Claimant's PIN Number which number was confidential to the claimant. The auditor established also that shoes were missing from the stock room. It was concluded by the respondent that those were the same shoes involved in the refunds the subject of the respondent's investigation and that there was no explanation as to why these shoes were not in the storeroom.

The respondent's refund policy was explained to the Tribunal and was accepted as the correct procedure by all parties, however, evidence was provided to the Tribunal by two witnesses called on behalf of the claimant that refund procedures were not always fully complied with in that the staff member countersignature on refund dockets was not always contemporaneous with the signing of the docket and that refunds to cash were sometimes made when procedure required a gift voucher to issue. CK who was one of the claimant's primary trainers and an Assistant Manager had confirmed to JT during the course of her investigation that procedure was not always strictly adhered to.

The claimant gave uncontradicted evidence of a reasonably high volume of refunds within the store numbering in or about 70 per week of which she processed a greater portion than other staff members because she tended to be on duty at weekends when the shop was busier. The refunds, the subject of the proceedings numbered 22 over the period of 12 months since the previous audit. The claimant could not recollect the specific transactions.

The refund dockets in question all appeared to be processed by the claimant when checked against the PIN Number entered on the system for each transaction, were all for cash and, on the face of the dockets, suggested that the shoes in each case were returned to stock. The refund in each case was not accompanied by an original receipt. In these circumstances strict adherence to company policy would have seen gift vouchers issue.

It was common case that these dockets would have been checked by senior staff at the end of a days trading and the claimant advised that she was not reprimanded on any of them.

As part of its investigation, the respondent issued 14 letters to those identifiable from the 22 refund dockets. No response was received to 10 of the letters sent, two were returned as a result of being insufficiently addressed, one was returned "addressee unknown" and the last indicating that the address did not exist. The Tribunal did not consider, in all of the circumstances, that a reasonable

employer could draw any conclusion from the results of this dispatch of letters alone. The non return of 10 of the 14 letters to the respondent could reasonably be interpreted as an indication that they had reached the individuals to whom they were addressed.

The Tribunal learned that, where there was more than one pair of shoes of the same colour, style and size these pairs would have an identical bar code. This precluded the respondent from establishing for a fact that the shoes in respect of which the 22 refunds were stated to have been made were missing from the storeroom though the respondent submitted that it was reasonable for it as an employer to arrive at this conclusion.

The respondent placed emphasis on the improved audit results in the year following after the claimant's dismissal, however, the Tribunal heard evidence from SON, a one-time Assistant Manager and still an employee of the Respondent, that there was considerable tightening up of the refund procedures after the claimant's departure and that this reflected in the improved results in the 2010 Audit.

JT carried out the investigation of the matter on behalf of the respondent which was fully documented with signed notes and involved an interview with the claimant who was accompanied by another staff member on the 24th of April 2009 and with other staff members who appeared to have countersigned the 22 dockets. While the latter, not unlike the claimant, could not remember the specific transactions, only one, HM, denied that she had countersigned the refund docket which purported to be witnessed by her and stated that the signature was not hers.

The Disciplinary Hearing was held by CC on the 6th of May and was documented in notes signed by the participants. The Hearing followed along the lines of the investigative meeting of the 24th of April with a discussion in relation to refund policy and procedures and further consideration of a sample of the 22 Refund Dockets. The Claimant had only learned shortly before the Disciplinary Hearing that HM claimed her signature to be a forgery and this was discussed for the first time at the Disciplinary Hearing. CC confirmed to the Tribunal that this docket stood out above the others and it was clear to the Tribunal that additional weight was given to this particular docket at the Disciplinary Hearing and at the subsequent Internal Appeal by the claimant. A decision to dismiss was made. CC relied on the notes of the earlier investigation and her own discussion with the claimant and did not seek to speak with either the store manager or any other staff member.

The claimant's appeal was heard by MT. The claimant was accompanied by the same work colleague who had accompanied her at her interview with JT and the subsequent Disciplinary Hearing. The appeal was heard on the 4th of June 2009 and the decision to dismiss upheld.

The Tribunal believes that there were shortcomings in the investigative process in this case. In circumstances where the charge was one of gross misconduct and where the claimant faced dismissal without a reference, the respondent was obliged to carry out as much investigation as was reasonable in all of the circumstances and to follow through on explanations or representations made by the claimant. The Tribunal is concerned about a number of issues surrounding the investigation and what appears to have been certain assumptions made by the respondent from the outset:

It was presumed during the investigation that company policy on refunds was strictly adhered to within the Waterford shop. The Tribunal believes that any reasonable employer could have established the reality of non-compliance and, specifically, that refunds to cash in the absence of receipts were made by different staff members and not just by the claimant which appears to have

been an impression held by those appointed to deal with the Disciplinary Hearing and Appeal. This put the claimant at an unfair disadvantage in the proceedings.

Further, the daily returns to storeroom verification was not carried out in the store as required by documented company procedure. A reasonable employer would have to entertain the possibility that, as stock takes were 12 months apart, shoes exchanged at the shop in a refund situation might well have been returned to the storeroom but subsequently removed at a later period or indeed, inadvertently returned to the company's warehouse.

Merely obtaining statements from employees was not sufficient in this case. The Tribunal believes that all pertinent information was not before the Disciplinary Hearing.

The Tribunal feels that the store manager should have been interviewed during the course of a full investigation.

The Tribunal was concerned to learn that the claimant had not at any stage being asked to confirm her signatures on the refund dockets. The evidence was that JT "flicked through" the dockets while questioning the claimant but that the claimant did not get to examine them. The position was not any different at the Appeal. When asked by the Tribunal to confirm her signatures on the dockets, the claimant questioned her signature on a number of the dockets. Indeed, the Tribunal itself noted the variation in a number of the signatures purporting to be the claimant's and is of the opinion that a reasonable employer would have explored this particular aspect further. The Tribunal believes that, had the claimant been given the opportunity to examine the refund dockets at the initial investigation meeting on the 24th of April 2009, her observations would have been such, as they were before the Tribunal that a reasonable Employer would have felt obliged to carry out further investigation.

In those circumstances, the Tribunal believes that this would have also suggested to a reasonable employer that further investigation be made as to whether a third party might have accessed the claimant's PIN Number, particularly where the claimant was being investigated for conduct which was inconsistent with her performance over a number of years in the respondent company, conduct which her Superiors had found to be exemplary.

The presence of different staff members' Identity numbers on some of the 22 dockets including that of MT, Store Manager indicated the involvement of other staff members in some of the transactions (perhaps as suggested in evidence, situations where they started but did not finish Refund transactions) would have suggested to a reasonable Employer that there was less likely to be impropriety on the part of the signatory on these particular dockets.

Considerable emphasis at all stages of the process was placed on the fact that the Claimant showed herself to have a clear understanding of the refund procedure at the initial investigative hearing and yet subsequently failed to properly implement it in respect of the 22 dockets in question.

The Tribunal accepts that the first occasion when the claimant had sight of the written refund procedures is when she met with store manager, MT on the 20th of April 2009 and the latter went through the procedure with her. No evidence was forthcoming of her previously receiving formal training on this issue and it was accepted that there was no documented training.

It concerns the Tribunal that this process of formal review of the refund policy occurred on the 20th of April at a time when the store manager, MT (but not the claimant) knew that the claimant was

under investigation so that subsequently the claimant displayed an excellent understanding of the policy at the investigative interview on the 24th of April thereby emphasising the gap between her apparent knowledge of and application of the policy in respect of the 22 dockets.

HM alleged that her signature was forged on one of the 22 refund dockets which was apparently signed by the claimant. The claimant suggested that HM's handwriting could differ on occasions and this was not followed up with the latter nor with the store manager nor, indeed, with other staff members, nor was the claimant given an opportunity to question HM. Both CC who conducted the Disciplinary Hearing and MR who conducted the appeal gave great weight to this particular docket.

A reasonable employer would have investigated this matter further. HM claimed that she could not have signed as she departed the shop at 4pm each evening (before this docket was printed) yet the staff "signing out" book was not checked to verify this assertion.

While the respondent referred to stock handling issues throughout it was clear to the Tribunal that the respondent was under the impression that there had been wrongdoing on the part of the claimant to her personal advantage.

The claimant protested her innocence of wrong doing throughout the process and before this Tribunal, was fully co-operative with her employer and attempted to profer a number of explanations as to what might have occurred in respect of the refund dockets under investigation. She resolutely denied that she had any involvement with missing stock. A reasonable employer might well have questioned, in those circumstances, whether the claimant would have so acted using her personal PIN number which could be traced to her. At the very least, the respondent should have expanded its investigation to ascertain the position in relation to the issue of access to staff PIN numbers.

Considering all matters the Tribunal concludes that the Respondent's investigation had shortcomings and fell below the standard that a reasonable employer would have applied in all of the circumstances.

The Tribunal's order is for re-instatement of the claimant.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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