

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

UD1545/2009

claimant

against

EMPLOYER

respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr C. McHugh
Mr F. Barry

heard this claim at Dublin on 26th July 2010
and 15th December 2010

Representation:

Claimant(s): Mr. Martin Canny BL instructed by Walsh & Co., Solicitors,
51 Dublin Street, Dundalk, Co. Louth

Respondent(s): Mr. David Farrell, Ir/Hr Executive, Ibec, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case

PK told the Tribunal that he was head security manager with the respondent in Finglas for the past three years. He had worked in retail and security business for twelve years and he had worked in other stores also. He is a qualified instructor with FAS. He is an expert in retail security. His day-to-day duties included security issues in the store. He undertook retail criminal activity investigations. Footage is looked at and internal and external investigations undertaken. They work with An Garda Siochana and undertake crime analysis. They deal with the area of shoplifters. In the store there were serious issues in shrinkage and the amount of stock lost. They have to deal with internal and external theft. There has been forty-two serious attacks on security staff. The respondent use different companies for security and FS provides

external security. The main loss would be in external theft. Professional shoplifters come in with fake currency and fake credit cards are used. The abuse of privilege cards is looked at.

The claimant was contracted to work nights. The store is open twenty-four hours and is only closed at Easter and Christmas day. The claimant worked from 6p.m. until 4a.m. The claimant covered sick leave from 10p.m. to 8a.m. He had a copy of the claimant's privilege card. The privilege card was issued to staff of the respondent after one year's service and it gives a ten per cent discount. A privilege card could only be used by the named person but can be transferred by completing a form to an immediate member of the family. The named cardholder has to be present at the transaction. His girlfriend could not use the card without the witness being present. Security staff police privilege cards and they provide card reports every week for the store. A full list of transactions is given and he assigns a member of the team to sift through the date. They look at multiple transactions at high value. If anything is suspicious they look at the recent transactions. Possible breaches are escalated to him.

All staff had received training in how to deal with fraud. Multiple members of the team are trained regarding cards. They investigate complaints even if management are the security team. All staff are trained to monitor this. The claimant also received this training. Night staff did not work on days. On the 22 December the self-scan was used twice. The card number was verified. They monitored CCTV footage, which are shown on their system. The claimant's card was not used by him.

He was then meant to look at monthly transactions for more breaches. He then had further suspicions when the cardholder was not present. If there were a problem he would seek advice from a member of the respondents senior team. He could not recall whom he told. He reported to CM, personnel manager

The claimant was called to a meeting on Monday 2 February 2009. KB customer service manager was at this meeting at his request and he took notes. The claimant was given the opportunity to get a witness of his choosing. He chose AP cash office manager to attend the meeting. The claimant was due to come in on shift duty that night and was asked to come to the meeting that evening. The investigation was for non-payment of bags and privilege card abuse. No one would be more aware of the security policy more than security staff. He suspended the claimant on full pay. He gave the claimant an opportunity to respond. It was discovered that two people used the claimant's card to buy a substantial amount of alcohol for a discount of €36. Two or three cases of alcohol were not scanned and he was not saying that they were not paid for. Some were scanned and some were not.

A member of Federal security had received permission from the claimant to use his privilege card. Then the card was given back to the claimant. The acting store manager at the time took the decision to dismiss the claimant. The claimant admitted that he gave his privilege card to friends and all staff would know the policy. The second incident occurred on 22 January 2009 and he had no further involvement after this.

In cross-examination he stated that there was no allegations of non-scanning of beers.

He did not dismiss staff and he had not hear an admission regarding plastic bags. The gardai were not contacted and the respondent dealt with the matter internally. A

loss of discount was counted as a loss when someone did not have the right to use the card. He did not have issues with the claimant. The claimant had not got a verbal or a written warning from him. Staff in the security department are there to police the card and they know the terms and conditions on the back of the privilege card. All employees had been informed about the risk of dismissal and they knew. He accepted that the claimant was the only person who could use the privilege card. The claimant was in breach of the respondent policy when he was not present at the time his friends made the purchase. He was vaguely familiar with other federal security who were contract staff. Mr. S was not an employee of the respondent. The sanction for misuse of privilege card was summary dismissal. Black security staff were not treated more severely than others. His team were from different ethnic backgrounds.

PM told the Tribunal that she joined the respondent in 1998 and she is currently deputy manager. She had authority to dismiss employees and she made the decision to dismiss the claimant. She attended a meeting on 23 February 2009. Present at the meeting were the shop steward PK, DM, and the claimant. This was a follow on from the meeting of 17 February 2009. The respondent brought another statement to the meeting of 17 February 2009. The claimant's representative DM asked for a break.

At the meeting on 17 February the claimant stated that the privilege card had been taken from his wallet. The decision to dismiss the claimant was not racially motivated it was based on fact. Race was never raised at a meeting. She took all the evidence she had gathered into consideration before she made the decision to dismiss the claimant. The trust between the claimant and the respondent was gone. There was no reason that the claimant should not be familiar with the privilege card policy and failure to adhere to the requirements could lead to dismissal.

She had previously dismissed staff for misuse of the privilege card. One staff member used his privilege card for an old dear as he felt sorry for her and he was dismissed for that. In the claimant's case it was more than one incident. The value and number of times the privilege card was used were taken into account.

A security guard had possession of the privilege card and the claimant admitted that he gave his card to friends so that they could purchase alcohol for a Christmas party he was hosting in his house and that was enough to merit dismissal. The store had lost €1.3 million this year due to theft, 38% related to internal theft, 42% external theft, and 14% due to the fact that the process had fallen down and 2% suppliers shortages.

In cross-examination she stated that she did not train staff. When put to her that the absence of a privilege card could lead to dismissal she replied she could not answer that. She would summarily dismiss an employee if they gave their privilege card to another employee. If the privilege card was given to a family member to purchase goods this would justify summary dismissal.

In answer to questions from the Tribunal she could not say if the claimant was given a copy of a document with his privilege card.

SL told the Tribunal she was group personnel manager and she heard the claimant's

appeal. The claimant confirmed that he gave his privilege card to his friends. As a security officer the claimant would be fully aware of the use of the privilege card. The claimant reviewed a weekly document. At a meeting the claimant had stated that he left his wallet on the lectern and a theft occurred and his privilege card was missing. Internal theft was a big issue in the store and she would not expect a member of staff to leave a wallet in that area.

She could not recall reviewing CCTV footage. This was the first time that the issue of race was raised and race was not part of the dismissal. The claimant was aware of his role as a security guard. He admitted abuse of privilege card policy. The claimant was never under investigation prior to this. She upheld the decision to dismiss the claimant. She believed that he was in breach of the privilege card policy. The claimant was in a position where he had more responsibility than normal staff. There was a major let down in trust.

In cross-examination she stated that there was a serious breach of policy. When put to her that security guard E was asked to monitor black security staff she replied that E replaced a security guard. She could not comment on the fact that E was told to monitor black security staff.

Claimants Case

The claimant told the Tribunal he commenced employment with the respondent in August 2006 as a security guard. He was given a privilege card at the end of the first year and he signed the back of the card. He did not understand so much about the use of the card. He knew he was allowed to use it for 10% staff discount. He did not receive training in the use of the privilege card. He allowed his friends to use the card as he was hosting a party in his house and as he was in work he was unable to purchase alcohol during working hours. He did not tell his friends that they could use the card elsewhere. He had receipts that the purchases were for him as he paid for the purchases.

After this he was brought to the office, he could not get a representative and he had to get a member of staff to represent him. The first question he was asked was where was his privilege card. He had the card in his wallet. He was asked who he gave his privilege card to. He told his union representative DM that he gave his card to the respondent and not to federal security. He never gave his card to Federal security staff and he did not know how they got his card.

A new security person was appointed and the claimant stated that his floor manager told the claimant that the new security guard would monitor the claimant and his colleague who were the only night security staff. Had he been given a warning he would have acted accordingly. He loved the job and has had not obtained alternative employment since being dismissed from the respondent.

In cross-examination he stated that a member of staff gave him the privilege card. She instructed him to sign the card and he never read the letter. He agreed that any abuse of the privilege card might lead to dismissal. Had he known that a member of staff would pass his card on to a staff member he would have pulled many others in. Other employees gave their cards to colleagues.

In answer to questions from the Tribunal he stated that if he was working in the office he could not leave to purchase goods. Employees were meant to adhere to rules. At the disciplinary meeting his trade union official told him when he could raise an issue.

When a new manager was appointed he told the new security officer E what to do.

Determination

Given the responsibility of a security officer and the fact that he breached the conditions of a privilege card and as it was one of his roles to enforce all company policy in relation to fraud and theft the Tribunal find that in all the circumstances the dismissal was fair. He was aware from a contract the consequences of using a privilege card

The claimant's breach of company procedures in relation to the Privilege Card warrants summary dismissal. The Tribunal feel it would be advisable to review the level of sanction imposed for employees generally. In this case the Tribunal feel that as the claimant was a security officer dismissal was the appropriate sanction. His case under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

