

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.
UD2052/2009

EMPLOYEE -*Appellant*

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 Clonmel on 15th December 2010
 and 8th March 2011
 and 9th March 2011
 and 10th March 2011

Representation:

Claimant: Ms Cliona Cleary BL instructed by
Cleary & Cleary, Solicitors, Law Chambers,
Market Street, Clonmel, Co Tipperary

Respondent: Mr. Tom Mallon BL instructed by
XXXXXXXXXXXXXXXX

The Determination of the Tribunal was as follows:

The claim before the Tribunal relates to the dismissal of the Claimant (named claimant) from his employment with the Respondent Bank. By letter to the Claimant from **DB (named person)** the Area Director – Area South dated 21st July 2008 the grounds for dismissal were stated to be:

- The failure of the Claimant to adhere to the terms and conditions of a Letter of Loan Sanction to the Claimant dated 14th October 2006.

- That the Claimant was not honest in his Application for Loan Approval dated 16th September 2006.
- That the Claimant falsified the signature of his spouse on debit dockets dated the 11th of June 2007, 10th of July 2007, 14th August 2007 and 15th August 2007 withdrawing monies on each occasion from his spouse's Bank Account.
- That the Claimant falsified the signature of his spouse on a Guarantee and Family Home Protection Act Declaration both of which were dated 12th of February 2007.

JK Branch Manager at xxxxx Fethard and the Claimant's Manager at the Branch provided evidence to the Tribunal that in June 2006 he was contacted by the Manager of A Middleton to inform him that the Claimant's overdraft at that Branch had not been cleared as promised. JK advised the Tribunal that it was an expectation from staff members that they keep their Accounts in order. The witness spoke with the Claimant who advised him of remedial steps he was taking to include the processing of a VHI Refund and a sale of Bank Shares. Later in that summer the witness learned that the Claimant's Account in the Youghal Branch was also out of order. He and MK sat with the Claimant and it was concluded that a top up loan of €25,000 on the Claimant's house mortgage would enable the Claimant to regularise his finances. As the extra sum was beyond the normal sanction limits for staff both the witness and MK supported the Claimant's Application to ensure that it was approved.

An incident occurred in June 2006 also in relation to the drawing of funds on the Account of the Claimant's father and mother at A Youghal. A Withdrawal Form processed through the Fethard Bank was produced in respect of the said Account with the Claimant first contacting Youghal Branch to confirm that his father signature on the withdrawal docket was correct. It appears that there had not been activity on the Account for some time and the presentation of the Withdrawal Docket would have raised a query in any event. A staff member at Youghal Branch questioned the signature on the docket referring the matter to her Branch Manager who contacted the witness. The home of the claimant's parents was contacted by phone on the same date, which was a Friday. The claimant's mother indicated that she had no knowledge of the transaction, however, the claimant's father telephoned the Bank on the following Monday to confirm that it was his signature on the Docket.

The witness advised the Tribunal that this triggered a review of various documents, which led to the identification of a number of debit dockets (four in all) drawn on an Account of the Claimant's spouse the signatures on which were highly questionable. During subsequent discussions with the Claimant he accepted that the dockets were signed by him using his wife's name. It was agreed that the funds withdrawn in the main went into other Accounts in the spouse's name at the Bank.

On cross examination it was put to the witness that, notwithstanding the verification received from the claimant's father, he "jumped to the worst possible conclusion" in relation to the transaction.

The witness and MK met the Claimant in July 2007 as a shortfall arose on the drawdown of the top up loan to the extent that it proved insufficient to clear a temporary bridging facility that had been granted to tidy up the Claimant's out of order Accounts and other liabilities of his and his spouse. The witness and MK were very concerned about the shortfall and sought to explore how this might be dealt with.

The witness advised that he and MK were shocked at this meeting to learn for the first time that the

Claimant was undertaking significant building works by way of an extension to his dwellinghouse particularly given the Claimant's struggle to put his existing financial position in order. The witness advised that the Claimant informed him that the works were being paid for with the benefit of an advance 'Inheritance' from his father but indicated at a later date that there was a loan aspect to the arrangement.

An issue arose on the drawdown of the Top Up Loan in July 2007. It appears that the Claimant sent photocopies only of the Guarantee and Family Home Declaration to the Cheques Issue Department of the Bank after a long delay and the loan was issued in error at the time by a Junior Staff Member in the absence of the original documents. This led to subsequent difficulties in the Cheques Issue Department. The witness located the original Guarantee and Family Home Declaration in the Claimant's Office and dispatched these to Cheques Issue. He felt, that however, the voracity of the Claimant's spouse's signature on both documents was questionable. The Witness was not aware until days before the Tribunal Hearing that the Claimant's spouse had offered to re-sign the Guarantee and Family Home Declaration if requested to do so and if the Bank had any concerns in relation to same.

After three meetings on the 4th of July, 6th of July and 16th of August attended by the Claimant, the witness and MK, the Claimant was suspended (at the last of those meetings) and the matter was referred to the Line Manager. The witness indicated that this concluded his involvement. At the time he did feel that there had been a complete loss of trust.

The Claimant had informed the witness that his wife had experienced Post Natal Depression, had back problems and was overspending and he was left to carry a heavy burden. He had further advised him that his wife had threatened suicide and that there were mounting medical bills in relation to his son. The witness stated that he found it difficult to get explanations for a lot of matters. The Claimant never gave any indication that he was physically or mentally ill himself.

On cross-examination the witness agreed that the Claimant cried at one of the meetings with him and that there had been periods of silence. He couldn't recollect if MK recommended Staff Counselling. He agreed that, after his suspension, the Claimant submitted sick Certificates reciting "mental stress".

A number of e-mails written to and by JK after the Claimant's suspension were put to the witness. Specifically, the witness was questioned about his reference to a rumour involving a claim of financial impropriety on the part of the Claimant in his Voluntary role with the Musical Society. The witness confirmed that he was fully aware of the rumour. He saw an anonymous letter sent to the Bank in reference but he never discussed this with the Claimant. The witness advised that the rumour contained in the anonymous letter was not pursued and that it was not a factor in his decision to suspend.

The witness was questioned on his Memo of the 20th day of November 2007 which suggested that he carried out a preliminary investigation on this matter going so far as to check an entry in the Claimant's father's Account. It was put to the witness, but not accepted, that the Musical Society issue was central to the entire Disciplinary process and that it was to the forefront of the minds of those involved with the matter in the Bank. It was further put to the witness that his Memo of the 20th of November 2007 contained the true reason for dismissal and that it was a foregone conclusion that the Claimant would either have to resign or be dismissed from the outset and that, as his immediate Manager, the witness had formed the view of the Claimant from an early stage in the process. The Tribunal heard evidence that the anonymous letter was

received on the 14th of August 2007 and the Claimant was suspended on the 16th of August 2007.

Further it was put to the witness that he had indicated that he did not want the Claimant back at his Branch as the Bank would not be best served having the Claimant still working there. It was suggested to him that the whole tenor of his e-mail communication to MK was that he considered the Claimant to be a liar with he and his colleague MK even going so far as to contact Ardkeen Hospital to check the truth of a statement made by the Claimant that his son had been admitted as a patient there.

The witness was questioned about his references to lies about a Credit Union Account in the Claimant's spouse's name and about the Claimant's Bank Shareholding. Counsel for the Claimant put it in strong terms to the witness that there was no evidence that the Claimant had lied in relation to these matters. The witness advised that the facts did not support the representations and statements made by the Claimant.

The witness was questioned as to whether he had noticed a worrying weight loss on the part of the Claimant on the lead up to his suspension. The witness denied that he saw evidence of any such weight loss.

On further cross examination the witness stated that he would not say that spouses never signed their husband's or wife's signatures on documents.

MK who was Regional HR Manager at the time of the Claimant's dismissal gave evidence along similar lines to that given by JK. She confirmed that she recalled the Claimant being upset during one of their meetings but did not recall him crying. The witness confirmed that she told him about the Staff Counselling Service to help him to manage 'what was going on at home'. At none of the meetings did the Claimant raise any personal health issues. At one point he did advise that he was having marital difficulties and that he and his wife had split up. The witness advised that the Claimant accepted that he had applied his wife's signature to the debit dockets but that she had signed the Guarantee and Family Home Declaration.

The witness advised that she never got the sense that the Claimant was telling her the truth. She confirmed that she did contact Ardkeen Hospital to check a representation from the Claimant that his son had been admitted there on one occasion as she didn't trust statements made by the Claimant in that regard.

Having discussed the issues with Mr. ND, the Regional Director and Ms. MC the Human Resource person, she and JK suspended the Claimant.

On cross examination it was put to the witness that the Claimant had, from the outset, indicated that he was under pressure because of his wife's Post Natal Depression and over spending and that there was no basis for the suggestion that the Claimant was not offering any explanation leading to the "puzzlement" expressed in the e-mails exchanged between the witness and JK after the Claimant's suspension.

The witness advised that her concerns were for the Claimant and that he told her that he had availed of Staff Counselling and got great relief from it.

The Tribunal heard from Ms. EB an employee at the Fethard Branch. She witnessed the disputed Guarantee document. She had no specific recollection of the occasion but surmised that she would

have witnessed it on trust if presented to her by the Claimant. She advised that situations like this would arise occasionally. The witness indicated that, if a Customer of long standing that she knew asked her to witness a document in similar circumstances, she would probably do so as she never made a decision to make a distinction in this regard as between a staff member customer and a non staff customer. The witness did not believe she was doing anything wrong.

The Disciplinary Process was conducted by Mr. DB. The latter appointed MP and AOH to carry out the investigation. The first interview with the Claimant was held on the 3rd September 2007.

Mr. DB the General Manager Area Sales at the time, gave evidence that he made the decision to dismiss in the first instance. He advised that Ms MC of HR was consulted by him about the “appropriate thing to do in certain circumstances”. He essentially “bounced” questions and views off Ms. MC. He also consulted in Mr. PO'D Main Management Team for the same purpose.

The witness indicated that he was very conscious of the far reaching implications for the Claimant and his family. He initiated an enquiry by the Management Support Unit. He got a report of the investigation on the 7th of September with a copy of the notes of the meeting of the 3rd September 2007. By letter dated the 18th of January to the Claimant DB sets out the charges against him.

During the course of the process he had to satisfy himself that the Claimant was fit to continue in the process and that his medical condition was not a significant factor. As the Claimant’s position was that the Guarantee and Family Home Declaration bore his wife’s signatures, he retained the services of a handwriting expert following consultation with the claimant who did not object.

The witness expressed the view that a “forgery is a forgery” and that it alone might well lead to dismissal. In this regard he was referring to the debit dockets, Guarantee and Family Home Declaration. If the only issue had been the claimant’s difficulties in keeping his Accounts in order this would not have resulted in dismissal. The witness denied that there was a “lesser standard” with the execution and processing of documents relating to staff transactions or that this lesser standard was tolerated by the Bank. The witness indicated that the Bank had one operating procedure for all.

The witness met with the Claimant on the 6th of February 2008. The latter was fully aware of the seriousness of the matter. Ms. TO’S Area HR Manager and Ms. MC were present. Neither had any role in the decision making process. The Claimant was asked if he wished to have a representative present. He was happy to go ahead though he had hoped that his father would accompany him, however, was not available to attend. The witness went through the allegations with the Claimant. The latter had already accepted that he had signed the debit dockets but was still of the view that his wife had signed the Guarantee and Family Home Declaration based on her own recollection of doing so. At the meeting the Claimant presented a letter from his wife to state that she had signed both the Guarantee and Family Home Declaration. For the witness there were two issues arising out of the initial meeting:

- The Claimant’s fitness to continue with the process.
- The signatures on the Guarantee and Family Home Declaration

On the 11th of February the witness wrote to the Claimant to advise that he intended to have the Guarantee and Family Home Declaration forensically examined by a Handwriting Expert and invited him to indicate any objection he might have. The report received from the late Mr. XX Handwriting Expert confirmed the views of the Bank Auditors, Senior Management and the witness that the signatures on both documents were not those of the claimant’s wife. A copy of the report

was sent to the Claimant and he was invited to make further submissions if he so wished.

The witness also arranged to have the Claimant seen by Dr. R on behalf of the Bank. Two Reports were secured which indicated that the Claimant was fit to continue with the process.

A further meeting was held at Cork Airport on 22nd May 2008. The witness found the Claimant to be calm, articulate and fully understanding of the process and its implications. He offered “nothing new”.

The Claimant put his behaviour generally down to a lot of things going on at home and financial pressures but was generally a bit vague.

The witness advised that the claimant’s wife offer to re-sign was not relevant. The issue was forgery. The potential loss to the Bank was not the primary consideration for the witness in arriving at his decision.

The witness indicated that he did consider the issue of the debit executed on the Account of the claimant’s parents and the Musical Society rumour but on Legal Advice did not pursue the latter.

He also discounted pursuing the issue of the debit signed on the Account of the claimant’s parents once satisfied that the claimant’s father had confirmed that it was in order.

The witness informed the Tribunal that he never spoke to JK and was not aware of the views he expressed in e-mail correspondence to MK to the effect that the Claimant should not return to his Branch.

He summarised his rationale for Dismissing the Claimant as follows:

- Legal documents had been forged.
- The Claimant’s Accounts were inappropriately operated.
- The Claimant compromised colleagues
- The trust that was absolutely vital in Banking had been shattered by the Claimant’s actions.

On cross-examination the witness confirmed that Ms. TO’S Area HR Manager at the time was the primary liaison with both the Claimant and Dr. R acting for the Bank. The witness recalled a Memo of June 2008 which made mention of the possibility of the Claimant resigning. Asked if the Claimant had decided to resign how this would have affected the process the witness indicated that he did not know. In February 2008 when TO’S arranged for the Claimant to see Dr. R, the witness believed that dismissal was a possibility the way things were shaping up.

The witness recollected TO’S advising that the Claimant’s wife had telephoned her but did not recollect being advised that Mrs. XX had asked if she could attend the next Disciplinary meeting.

It was put to the witness in cross examination that the seriousness of applying another’s signature to a document could not be divorced from the commercial risk, if any, consequent upon such an act and that such an issue could never be “black and white”. It was further put to him that there must be a sense of proportionality in the measuring of the appropriate sanction. The witness was challenged that, irrespective of the surrounding circumstances, his position was that, forgery being unacceptable, there was nothing the Claimant could have said to the witness that would have seen him apply a sanction other than dismissal. The witness advised that, in the circumstances, he did not consider any other sanctions save dismissal.

The witness indicated that he did consider forgery to be a “black and white” issue leading to dismissal, however, when asked to clarify this view by the Tribunal indicated that he would have taken issues such as mental deficiency into account had they arisen and, in such circumstances, might have considered an alternative sanction in spite of his views on forgery. He felt that, notwithstanding his position on forgery of signatures, he did feel that he could be objective in the process.

An internal appeal to Mr. B followed on the 31st October 2008. The latter did not give evidence before the Tribunal as he was no longer with the Bank. A note of the Appeal meeting was, however, provided to the Tribunal. The Appeal by the Claimant was on two grounds, namely that weight had not been given to his service record with the Bank or his medical history. The Appeal was confined to consideration of these two grounds. The Appeal was unsuccessful.

A second level of appeal to an external person followed on the 24th February 2009. Mr. R F Independent HR Consultant dealt with this appeal. In evidence, Mr. Flaherty listed the documents provided to him for the purpose of the appeal which included the notes of MP’s interview with the Claimant on the 3rd September 2007 with Appendices 1-17 attached to the Investigative Report of MP dated 7th September 2007. He met with the Claimant in person to hear his Appeal and ultimately concluded that the Dismissal was warranted preparing a full report on the Appeal for the Bank. He was satisfied that the Claimant fully engaged with the Appeal process.

Ms. TO’S Area HR Manager at the time gave evidence before the Tribunal. She advised the Tribunal that her role in the process had been to support Mr. D B. She had been “kept in the loop” by MK Local HR Manager but her involvement was more so when it arrived at Mr. B’s level. She confirmed that she referred the Claimant to Dr. R and was the liaison with the latter. She sat in at the two Disciplinary Hearings on 6th February 2008 and 22nd of May 2008. She spoke once or twice with the Claimant to advise him of his appointment with Dr. R and, at a later date, to advise him that Mr. B’s letter was issuing to him.

The witness confirmed that the Claimant’s wife rang her looking for an “understanding” as to what was going on. The witness advised her that she couldn’t really divulge anything. She didn’t recall Claimant’s wife asking about a future meeting or the possibility of her attendance.

Because the Claimant mentioned attending a Psychiatrist during the course of the process a second Report was sought from to ensure that the Claimant was well enough to receive the Letter of Dismissal from Mr. D B. Dr. R confirmed that he was. It was put to the witness that Dr. R, on raising the option of resignation with the Claimant, knew that dismissal was coming down the line. The witness could not recall if she asked Dr. R to explore the possibility of resignation with the Claimant. It was also put to the witness that, in his second letter, Dr. R was still indicating that the Claimant was not appreciating the seriousness of his situation. The witness felt that there was nothing more they could do in that regard.

Dr. RH Consultant Psychiatrist was called to give evidence on behalf of the Claimant. He described a type of depressive condition that could creep up on a person with the individual himself often failing to recognise the early symptoms.

The witness indicated that some of the long pauses which occurred at the early meetings between the Claimant, JK and MK could be indicative of a depressive condition. The Doctor could not say one way or the other if it would have been apparent to the Respondent that the Claimant was

depressed if he was actually suffering from such a condition. A GP could be expected to identify symptoms of depression where these might not be evident to a lay person.

From the history taken by him the witness felt that the Claimant might have experienced depressive episodes in 1990 and 2007. Without contemporaneous clinical evidence he could not be definitive on this. The witness advised that depression is complex and has a “certain independence of what is going on around a person” and that “cause and effect” are not clear. The poor judgement caused by depression could lead to a person doing wrong things.

The witness advised that, were the Claimant suffering the illness in 2007, this might have led to him forging his wife’s signatures on the Guarantee and Family Home Declaration. The Doctor felt that, while the Claimant’s behaviour could have been secondary to his condition, the Doctor had no way of knowing how long back from his examination of the Claimant after his dismissal the depression extended.

The Claimant gave evidence on his own behalf.

He wasn’t in a Union and did not seek representation at any point during the process. He believed that he was in a “confused place” in his life at the time. He had always been loyal to the Bank and hoped, at the time, that this would be recognised. He wasn’t thinking straight and he was in a “dark place”. He probably didn’t appreciate the implications of not being represented.

In September 2007 the Claimant’s father rang JK to discuss the Claimant’s suspension. At JK’s request the Claimant provided written authority for JK to speak with his father but JK then told his father that he was precluded from discussing issues with him.

After his suspension he was “fobbing off” his wife, telling her he was on sick leave. He was frightened and bewildered and contemplated suicide. His world was collapsing and he regretted that he did not involve his wife and Family. In 2006/2007 and on into 2008 he was having marital difficulties.

He informed the Tribunal that he believed at the time that his wife had signed both the Guarantee and Family Home Declaration on the basis of her own recollection of having done so. He now accepted the factual position and feels that it was a stupid thing for him to sign his wife’s name and he would have not done so if he had been in control of himself at the time.

The witness was unsure as to whether he told his wife the specifics of the “top up loan” arrangement and could offer no explanation as to why he simply didn’t get his wife to sign the Guarantee and Family Home Declaration save that he was shielding her to an extent given her own difficulties. Pressed on this by Counsel for the Respondent the Claimant responded “I can’t tell you why I signed them”. He was, however, adamant that he had discussed the top up loan with his wife and she understood that he was carrying out a financial restructuring for them.

At one of the meetings with JK and MK he confirmed that he paused for up to ten minutes before confirming that he had signed the debit dockets on his wife’s account. He was trying to get his “head together” as he was “bewildered”.

He was questioned on those dockets only and the performance of his Accounts before he was suspended.

The witness indicated that he knew the issue of the Guarantee and Family Home Declaration to be the most serious.

At the investigative meeting with MP at the Granville Hotel on the 3rd of September 2007 it was apparent to the witness that much was now revolving around the anonymous letter in relation to the alleged impropriety in his role as Treasurer of the Musical Society. He was adamant that he had not been guilty of any wrong doing and gave the contact details of a number of Committee Members to MP but none of the latter were contacted. He got a subsequent letter from the Bank to say that this matter was not being pursued any further.

The witness was upset that the Bank had, at one point, contacted Ardkeen Hospital to check the truth of an indication by him that his sick son was being admitted there.

The witness did not feel that the Respondent had made the 'potentially disastrous consequences' of the Disciplinary process clear to him.

He accepted that it was clearly wrong to sign his wife's name on the documents but that this was reflective of what happened "on the ground" in the Branch. In the case of the debit dockets, the monies withdrawn from his wife's Accounts were in three out of the four occasions lodged to other Accounts in his wife's name in the Bank.

It was put to the witness on cross-examination that if, as accepted by him, his alleged illness did not affect his ability to understand that his wife should sign various documents, how then did it influence his decision to forge her signature.

The witness did believe that he was exhibiting signs of a depressive illness that should have been picked up by the Bank to include poor time keeping, difficulty finishing work, and him breaking down in tears at one of the meetings with JK and MK.

It was put to the witness that he was consistent in his dealings with the Bank in blaming his financial difficulties on his wife's illness and overspending and not his own illness and that the Respondent could not have been expected to be alert to an illness that the Claimant himself did not know he was suffering from.

The Claimant accepted that he had a complete rational understanding of the "top up loan" process and the conditions of the Loan Approval. It was further put to him that he was an active participant in the decision making process referable to the building of an extension to his home.

The Claimant accepted that it was a possibility that he didn't disclose the full details of the "Top up Loan" transaction to his wife. Finance in the house was his remit.

On further cross examination the Claimant asserted that he had not realised the enormity of what was going on.

It was put to the Claimant that the first time he accepted that he had signed the Guarantee and Family Home Declaration was at the Tribunal Hearing and not at the Disciplinary Hearings with Mr. DB. He replied that he had recently felt he was coming back to himself and beginning to "see certain things".

The witness informed the Tribunal that he remains unfit for work at the present time and is still on

full medication.

The Claimant's wife had explained that he was arranging a "Top Up Loan". The Claimant dealt with the financial side of the household so she left it to him to sort it out. She knew it was a process of tidying up their various accounts. The witness was not aware that following the drawn down of the "Top Up Loan" there was still an undischarged balance due to the Bank.

Things had been difficult at home since their son's birth. Both Mrs. XX and the baby were unwell. The baby developed severe eczema and the witness herself became very distressed. She was putting huge pressure on the Claimant at the time which she would regret for the rest of her life. Medical Bills were mounting.

The house renovation project was undertaken with the financial assistance of the Claimant's parents it became a project for her to focus on.

After his suspension the Claimant initially advised her that he was on sick leave. By September 2007 she had become very anxious about his well being. It was 19th September when he eventually disclosed the situation to her. She asked JK to confirm the situation and he did.

The Claimant's weight had plummeted in the preceding period and the witness, at this point, rang Dr. D's Surgery to arrange for the Claimant to be seen.

The witness advised that she spoke with XX before the second Disciplinary Meeting and informed her that the Claimant was seeing a psychiatrist. She had enquired about the possibility of her attending the meeting also.

It was July 2009 before she learned that the Claimant had actually been dismissed on the 22nd of May 2008.

The witness wrote to the Bank in February 2008 at a time when she genuinely believed that she had signed the Guarantee and Family Home Declaration. She recalls signing forms on the dining room table. There was no response to her offer to re-sign the documents.

It was suggested to the witness on cross examination that the Claimant had asked her to write and sign the letter of 5th February 2008 confirming that she had signed the Letter of Guarantee and Family Home Declaration. She denied this and stated that she had offered to provide the letter. She accepted that, had she seen copies of the disputed documents, she would have recognised that the signatures were not hers. Asked as to why she didn't request copies of same from her husband the Claimant, she indicated that she trusted the Claimant.

The witness advised that there was a very "blasé" discussion between herself and the Claimant about the "Top Up Loan".

The witness informed the Tribunal that there was no reason for the Claimant not to have asked her to sign the Guarantee and Family Home Declaration. She had no problems signing anything for him and probably wouldn't even had read them.

The witness advised that there was no discussion on the details of the intended Application of the Top Up funds.

Mr. JB an Independent Financial Consultant also gave evidence before the Tribunal. The witness had considerable experience in the banking sector and had been involved in Disciplinary Proceedings in the past. He professed himself to be “flabbergasted” that the Claimant was allowed to go through the process without representation.

Provided the debit dockets were signed with the knowledge of the Claimant’s spouse he would not have considered the Claimant signing them to be a serious issue. Routinely funds are transferred from one account to another quite informally, even in response to phone calls.

The witness felt that the non-compliance with the details of Letters of Loan Sanction occurred often in Banking and such non compliance is waived.

The witness felt that, in arriving at a decision, the Bank should have looked at all of the circumstances and given weight to the likelihood that no loss occurred. It was put to the witness, however, that the issue was one of loss of trust and confidence and not the correcting of the defective security.

Closing Submissions were made to the Tribunal by Counsel for both parties as follows:-

The Claimant

- That the Respondent acted unfairly in treating “forgery” in a categorical manner. It was submitted that no issue is black and white and that an Employer cannot simply declare that a particular offence automatically carries a particular penalty.
- That the circumstances around any particular wrongdoing must be taken into account.
- That the following matters should have been taken into account on this occasion.
 - the identity of the person whose signature was falsified.
 - that person’s relationship with the signatory.
 - the amount involved
 - the consequences for the Bank.
- That as the Bank, having known since April 2008 (Mr. XX’s Report) that its security was questionable, did nothing to remedy this nor to accept the Claimant’s wife’s offer to resign, it clearly had no real concerns for its security.
- That Mr. B who conducted the Disciplinary Hearing didn’t think anything other than dismissal was an option.
- That it was unfair for the Bank to allow the Claimant to go through the process without support when it was foremost in the Bank’s mind to see if he was fit to stay involved in the process (Dr. R’s Report). Consequently there was a significant “imbalance” in the proceedings.
- That the matter was not fully investigated in that Statements were not taken from the Claimant’s wife or father.
- That there was a relaxed attitude to formalities within the Bank itself.

The Respondent

- That the entire case is about trust and confidence with the signatures on documents lying on

the very heart of banking. The sanctity of such signatures must be unquestionable.

- That actions like the Claimants put a big question mark over the Official involved.
- That the Claimant accepted the possibility that his spouse was not fully “in the frame” as regards the Top Up Loan which made her the classical vulnerable spouse intended to be protected by the Family Home Protection Act 1976.
- That the only case the Claimant could advance was the Medical Case which simply did not stand up. The Respondent could not be expected to diagnose an illness that neither the Claimant himself nor his wife were aware of.
- That the Claimant was seeking to retrospectively rely on a post-suspension illness.
- That would be nonsensical to suggest that an Employer could or should compel an Employee to be represented.

The Tribunal finds that the Disciplinary Process fell below the appropriate standard that should apply in that those involved in both the Disciplinary and Appeal process were on notice of the issues of the debit docket on the claimant’s parents, Youghal Account and the rumoured impropriety on the part of the Claimant in his dealings with the Musical Society. Neither matter was relevant to the Disciplinary Process and the inclusion of details in relation to both in the paperwork provided to DB and on the Appeals to MB and RF raises the strong possibility of a bias in the process which concerns the Tribunal. The Tribunal believes that the Disciplinary Process should have been conducted by an individual who had no knowledge of those matters.

In this regard issues arise as to the fairness of the procedure and compliance with principles of Natural Justice.

Notwithstanding this finding, the Tribunal by Majority Decision believes that the decision to dismiss was reasonable in all of the circumstances and was the only appropriate sanction to be applied. The Claimant has not demonstrated to the satisfaction of the Majority of the Members that the departure from accepted procedures actually impacted on the overall fairness of the decision to dismiss.

The dissenting Member expresses the Opinion that all of the circumstances and only matters relevant to the Disciplinary Process should have been taken into account in deciding the level of sanction. No such assessment occurred in this instance. DB was clear in his evidence that Dismissal was the only sanction considered by him. The Member believes that a reasonable Employer would approach the entire matter from a neutral perspective and fully assess the range of sanctions available to it. The Member believes that the failure to consider alternative remedies cannot be divorced from the fact that the Disciplinary Process was tainted and possibly influenced by extraneous matter and, in particular, by rumours of impropriety on the Claimant’s part pertaining to his involvement with the Musical Society.

The Majority, however, is of the view that the Claimant was not unfairly dismissed. The Claimant agreed that he had forged his wife’s signatures on four debit dockets and it was entirely reasonable for the Respondent to conclude that he had also forged her signature on both the Guarantee and Family Home Protection Act Declaration.

There had been a total breakdown of trust for which the Claimant was solely responsible. A Bank Official in the Claimant's position owed a high degree of trust and confidence to his employer. He could not have doubted that his actions could jeopardise his future employment with the Bank. It was reasonable for the Respondent in all of the circumstances to take the decision to dismiss.

Accordingly the Claimant's case fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This: _____

Chairman