

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1637/2009

against  
EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Ms A. Gaule  
Mr T. Brady

heard this claim at Dublin on 8th September 2010 and 26th January 2011 and 27th January 2011 and 28th January 2011

Representation:

Claimant: Murray Flynn Maguire, Solicitors, 4-6 Pembroke Road, Dublin 4

Respondent: Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

#### **Respondent's case**

The respondent stated that the claimant had been dismissed due to gross misconduct. The claimant deliberately mislabelled receipts as customer entertainment when they were in fact on foot of staff entertainment.

Witnesses for the respondent outlined their involvement in the various stages of the disciplinary procedure, which was in accordance with the company's written disciplinary procedure. The process began with an investigation. The findings of this investigation were then forwarded to a Human Resources Manager and a disciplinary meeting took place. The HR Manager decided to dismiss the claimant and the claimant appealed this decision. The appeal was then heard and decided upon by another person and the decision to dismiss was upheld. The claimant then appealed for the second time and this appeal was referred to a board within the company. The board also decided to uphold the decision to dismiss the claimant.

The respondent held that this was a case of gross misconduct on the part of the claimant and that trust in him had been fractured. Therefore the respondent had no option but to dismiss the claimant.

#### **Claimant's case**

The claimant agreed that he had mislabelled receipts and claimed refunds for these under an inappropriate heading. However he also stated that he was never properly made aware of a policy in relation to claiming expenses. Furthermore the claimant contented that he had prior approval, from his Line Manager, for each staff event for which he submitted these mislabelled receipts.

The claimant stated that up until the first appeal hearing the matter was not being dealt with as fraud and that the use of this word only arose in the context of the decision on that appeal. According to the claimant he never intended to defraud the respondent and disputed that the respondent suffered any loss as a result of his actions. Therefore the claimant held that the decision to dismiss him was unfair as it was unreasonable and disproportionate.

**Majority decision**

The Tribunal by majority decision with Ms. Mc Govern dissenting allows the appeal under the Unfair Dismissals Acts, 1967 to 2007.

**The following is the dissenting opinion of Ms. Mc Govern**

The facts of this case are not materially in dispute. The ultimate issue for the Tribunal is whether or not the claimant was unfairly dismissed for mislabelling receipts and submitting them as customer expenses rather than staff expenses. The test to be applied is whether or not the employer acted reasonably in all the circumstances.

The claimant came to the attention of the respondent in the context of a large-scale investigation into expense claims by all staff in a particular department. The claimant put customer names on receipts that were incurred on foot of staff entertainment and submitted those receipts as customer entertainment expenses. While the claimant gave evidence that he was unaware of an expenses policy he did actively input those staff incurred expenses as customer entertainment in a deliberate fashion over a period of time. Evidence was given by the claimant that he had prior approval from his Line Manager for each staff event in question and therefore I am at a loss as to why then, the receipts had to be mislabelled as customer expenses. He further gave evidence acknowledging that the various incidents complained of but at no stage explained or justified his actions.

Based on the evidence tendered by both parties and applying the relevant test, I believe that the respondent's trust and confidence in the claimant was damaged irreparably and that the respondent acted reasonably, in all the circumstances, in dismissing the claimant.

**Determination**

The Tribunal finds that the claimant was unfairly dismissed. While procedure was followed the introduction of the word fraud at the first appeal elevated the tone of the process. The expenses policy was never clearly outlined to the claimant and from his perspective the expenses claimed for were in order to motivate, incentivise and thank his team and not for personal gain. The claimant co-operated fully with the investigation and there never was an intention to defraud the company.

The Tribunal is satisfied that the decision to dismiss the claimant was unreasonable and disproportionate and therefore finds that he was unfairly dismissed. The Tribunal awards the claimant €25,000.00 under the Unfair Dismissals Acts, 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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