

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE
(*claimant*)

UD2627/2009
MN2459/2009

against

EMPLOYER
and
EMPLOYER (*respondent*)

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan

Members: Mr J. Goulding
Mr C. Ryan

heard this claim at Dublin on 29th April 2011

Representation:

Claimant:

Mr. Frank Drumm BL instructed by McKenna Durcan, Solicitors, 66 Lower Leeson Street, Dublin 2

Respondent:

There was no appearance by or on behalf of the Respondent

The determination of the Tribunal was as follows:

It was noted by the Tribunal that a letter had been received from A.C. Forde & Co. Solicitors acting on behalf of Pearse Farrell of FGS Partnership who was appointed Receiver Manager of XXX Limited on 11th December 2009. The letter stated that the Receiver would not be attending the hearing as the claim relates to a termination of employment which occurred before their client was appointed as Receiver.

At the outset, it was requested by the claimant's representative that re-instatement is a strong preference for the claimant. This was noted by the Tribunal.

The claimant stated in evidence that he was the General Manager in the XXXX . He received a letter dated 13th August 2009 from the Financial Controller of XXX Limited stating that a safe check had been carried out which uncovered a cash anomaly. The letter stated that on inspection of the safe book it appeared that €1,100 in cash had been appropriated from the safe on August 5th. A personal cheque from the claimant for €1,100 was also found in the safe dated 10th August. The claimant was also informed in the letter that he was suspended from work with pay until further notice.

The claimant stated that the money was for a rental deposit for an apartment. He had cashed dozens of cheques before this incident. A letter dated 9th October 2009 from the claimant's representative to the respondent outlining events was read into the records. It was custom and practice to cash cheques and there were no procedures afforded. The claimant stated that he was told to get a representative. The respondent then refused to engage with the representative. The claimant was never clearly told the allegations against him.

The claimant is not employed at the moment and is available for work.

The claimant confirmed to the Tribunal that he replaced the cash with a personal cheque and that the cheque would have been lodged. There were no cash handling procedures that he was aware of. The claimant also confirmed that the float consisted of both cheques and cash. This was the first incident of this nature. Counsel for the claimant stated that all previous management staff are no longer employed by the company and therefore re-instatement would not be an issue.

Determination

The Tribunal has carefully considered the evidence adduced at the hearing and considers that the claimant was unfairly dismissed from his employment. The Tribunal having considered all the available remedies, determines that re-instatement is the appropriate remedy in all of the circumstances of this case. The claim for Minimum Notice is no longer relevant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

