EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:	**CASE NO.**
EMPLOYEE – *claimant*	UD1672/2009

against

EMPLOYER - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. T. O'Sullivan
Mr. N. Dowling

heard this claim at Drogheda on 9th November 2010 and 23rd & 24th March 2011

Representation:

Claimant: Ms Tracey Reilly BL instructed by:
Ms Emma Coffey, Smyth & Son, Solicitors, Rope Walk, Drogheda, Co Louth

Respondent: Mr Brendan Kirwan BL instructed by:
Matheson Ormsby Prentice, Solicitors, 70 Sir John Rogerson's Quay, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case:

The Commercial Manager (HR) located in the respondent's premises in England gave evidence. He explained the workings of the respondent company, which was to distribute a brand of crisps nationally. The Irish branch of the company had taken over the operation in July 2008 acting as agent for a Drogheda based company (BV).

He received a call in February / March 2009 after the Irish sales team had discovered a

serious amount of stock discrepancies in the van sales in Ireland. This analysis was carried out between July 2008 and March 2009 when "significant stock shortfalls" were found. Staff not employed in the sales department carried out an impartial count.

Sales Representatives were called to a meeting in Maynooth on March 11th 2009. He received the information of the extent of the cost of the shortfalls on vans. In the claimant's case it was a stock discrepancy to the value of between € 35,000 to €41,000. He told the Tribunal that the stock discrepancies discovered were "so large that I'd nevercome across it in my experience". A number of staff members were suspended, includingthe claimant. The witness said he carried out a full and comprehensive stock analysis involving looking at all transactions carried on, loads and invoices c ompleted. He gavethe results of his analysis to the Irish sales team and they decided how to approach thematter.

On cross-examination he stated that a National Fields Manager (NME) carried out the investigation into the claimants van. When asked he said that he did not know if the respondent company had done a stock take when they had taken over the operation of van sales in July 2008. When asked he said that had been a variance of stock on every van but it was normal to see minor variances. He told the Tribunal that he asked the Human Resources Manager (BOD) to be the Disciplinary Manager in this case. The disciplinary meeting was held on April 27th 2009. The claimant, his representative (JK), BOD, and the respondent's note taker (CD) were present.

At this meeting the issue of the discrepancy in stock was discussed. Company procedure regarding manual dockets, scanning stack into the hand held device and the discrepancy of a missing € 10 note were discussed. The claimant explained how the process of manual dockets worked and that he could use up to five different docket books at a time. In respect of the € 10 he explained that he had used it to pay for a van wash but later saidit was to buy his lunch.

The claimant explained the process of ordering, picking up stock and selling stock to customers. He told HR that JR had told him to give free stock away to keep customers happy, JR gave him "carte blanche" to do it. HR told the Tribunal that he was not happy with the responses given by the claimant during the meeting and felt he was being given "very mixed messages" with no proper explanation. He decided to adjourn the meeting overnight as he felt it was a case of gross misconduct and wanted to reflect on it. He did try to think of an alternative to dismissal but could not. He informed the claimant the next day he was dismissed and a letter explaining the decision was sent to him.

The claimant wrote a letter to appeal the decision under a number of points of clarification including requesting copies of the alleged allegations, which were never produced of the breakdown of the stock discrepancies.

When asked if a copy of his analysis was available for the hearing he replied he did not know whether it was available or not. He confirmed that he did not have a copy of it at the hearing. When asked he said that he did not know if a stock audit was carried out

when the respondent company took over the business. He explained that that there had been minor stock discrepancies on other vans but on two of them (the claimants and a colleague (MH) it was extreme. It was normal to see minor variances.

When asked why he had not supplied the data of the stock discrepancies to the claimant he explained that the respondent company acted as an agent for BV so the data could not be shared.

The Regional Sales Manager (JR) for the input division gave evidence. When the claimant commenced employment he was given a sales manual and on the job training with an experienced Representative before getting his own route.

The claimant was employed as a Sales Representative selling the products directly into various stores in his allocated region. Each van carried 80-100 cases of product. Each case contained 48 items. Each case of product sold for €15. JR explained to the Tribunalthe details of how the Sales Representative would call in his order for stock which waspicked by a nother member of warehouse staff and left in the warehouse forRepresentative to pick it up later that day. All stock was inputted into a hand heldelectronic device and all deliveries were recorded on it. If this hand held device were notworking the Representative would complete a three-page delivery docket. One page wasgiven to the customer, the Representative retained the second page and the third left in thedocket book.

The company had a "free of charge" system where customers would be given free stock, which was recorded on the hand held device. A number of boxes a week could be given away. The Sales Representative on their van preformed a weekly stock take. When a Sales Representative went on annual leave a relief driver would take over the run. A stock take would be carried on the Sales Representative before and after they had taken their leave. All staff was aware of the company process, including the claimant.

JR explained that in 2008 up to 200 cases were being given away free nationwide. It was decided in January 2009 that an overview of the running of the Drogheda branch would be completed. An email dated January 9th 2009 was sent to all Regional Sales Managers. One of the main items in the email stated that from then on each Regional Sales Manager was given an allocation of 30 cases of free stock to be allocated by their Sales Representatives weekly, this was also to be recorded on their hand held devices.

On cross-examination he stated that he was not aware if the administration department picked up on any discrepancies in stock. He told that Tribunal that he had not been involved in the claimant's end of year stock take. When put to him that stock had been moved from one warehouse to another with the claimants name on it, which he had not signed for, he replied he knew nothing of it. He also admitted that the respondent never did a stock spot check.

JR explained that an experienced Representative – NF, had trained the claimant. He explained that all Sales Representatives were informed by text or call regarding free stock

being authorised and the amount that could be given out weekly. When put to him that NF had admitted to giving unrecorded free stock to customers and was still an employee he replied that he had not seen NF's statement. When put to him he denied telling his staff to "do what they had to do to keep customers and say nothing".

When asked by the Chairman did he furnish details of the stock discrepancies to the claimant he said couldn't as it was the property of BV and to disclose same would be a breach of the Date Protection Act. When asked by the chairman did he ask BV for permission to release the information concerning the stock variances to the claimant he said that he had not asked them.

The National Fields Manager (NME) gave evidence that he had commenced employment with the respondent in March 2009. He had been asked by management to carry out an investigation into the stock discrepancies. This was on the day of the meeting in Maynooth on March 11th 2009.

On April 6th 2009 the claimant was invited to an investigation meeting on April 8th as the witness felt the claimant was in breach of the terms and conditions of his employment. He was informed who would be in attendance at the meeting – the witness as Investigation Manager, BOD and CD as note taker. He was also informed that he couldbring a representative with him, "for example a Colleague, Family Member or Friend".

On April 8th 2009 the claimant attended the meeting with DS. BOD opened the meeting stating it was an investigation and not disciplinary. He also stated that the respondent company did not recognise unions and for the purpose of the meeting DS would act as a personal representative for the claimant and not as his union representative. However DS did take part in the meeting. He told the claimant that six people were involved in thewhole investigation and in the claimant's case there was a stock variation of € 41,000.

They discussed how the claimant carried out his duties. The claimant explained how he ordered stock daily, how it was picked for him, how he counted it and imputed it onto his hand held device. He also explained the use of the manual docket book and how he did a stock take. He said that he worked off two docket books. The witness told the Tribunal that he had found five in the claimant's van with sheets missing.

NME gave evidence that the claimant queried could the shortfall have happened when he was on leave when a relief driver covered for him. He explained that when he went on leave he simply handed over the van and hand held device to the relief driver. He admitted giving unrecorded free stock to customers - about 10 to 12 cases per week. JR had told him to do it in order to keep customers happy. The claimant denied he had sold the stock for himself. He was asked about his understanding of handling cash. The meeting ended with the claimant informing them again when had been on leave between July 2008 and March 2009.

The witness went away from the meeting to decipher the situation and establish if there

had been unrecorded free stock distributed and if JR had authorised it. He went through all the statements taken from the Sales Representatives and found JR had not authorised in most cases. Since NF had stated at his interview that he had given away free stock he was re-interviewed and it transpired NF was giving unrecorded free stock while he was employed with BV. He checked period the clamant had been on leave and stated that amount of stock could not go missing in those periods of time.

On cross-examination he said he did not think the claimant took 35 days leave. When asked why the claimant had not been given a copy of the statements taken from other unnamed staff, he replied it was to protect their confidentiality. He explained, when asked, that he did not know why the statements were undated, as he had not taken them. When asked why NF had not been disciplined following his admission of giving away unrecorded free stock he replied that this had occurred when he worked for BV. NF had said it was the practice of that company to give away free stock. The claimant had been dismissed as he had admitted giving away unrecorded free stock and could not explain the extreme stock discrepancies on his van.

This witness told the Tribunal that the claimant had told him his hand held device had not being working over time and he investigated the matter. He explained that the company had noticed some problems in October / November 2008. Staff members were informed in January 2009 concerning the amount of recorded free stock that could be distributed weekly to customers. When asked why did it take until March 2009 to inform staff of the issues, he replied that a full audit had to be done and staff had changed over time. He explained that each Sales Representative was the only person to control the stock on his van. Any variation could not be seen on the respondent's computer system.

When asked why the stock variation information had not been given to the claimant, he replied that it was not the respondent's data to share. He stated that he felt he had investigated the matter fully. He told the Tribunal that there had been an audited stock take in 2008 but he had not checked that information, as he was not employed with the respondent at that time. At the time of the investigation four members of staff had been suspended, two were dismissed, one left because his contract was up and the fourth returned to work. When asked he said he had not read the claimant's contract of employment.

When asked why the claimant was only offered to bring a Colleague, Family Member or Friend to the meeting and another colleague (MK) who was also dismissed was allowed to bring a union representative, he replied that BOD had written the letters. When put to him that the claimant had not received the letter to inform him of the meeting on April 8th , he replied that BOD had telephoned the claimant. The claimant knew what the meeting was about. When put by a member of the Tribunal that there was no evidence produced to show the manual docket book had been used for private sales, he replied that a customer could have paid cash for the cases. He told the Tribunal that the claimant only had a small number of cash customers.

The Trading Controller for Ireland (GR) gave evidence. He managed the customer accounts teams but had no direct relationship with the claimant.

He had sent the email dated January 6th 2009 to the Field Sales Team. He raised the concerns of the company in relation to the current situation of the company including the amount of free stock (200 cases) a week that was being given to customers. He outlined the company's action plan, promotional activity, the amount of free stock (4 cases) to be distributed weekly and how it was to be recorded.

GR gave evidence that the claimant was dismissed for gross misconduct. On May 6th 2009 the claimant wrote to the witness appealing the decision. The claimant stated eight points on which he was appealing the decision. These being:

> "- I acted at all times on authority from his RSM (Regional Sales Manager)
> - On the severity of the punishment
> - None of my letters were answered properly
> - Records of alleged allegations were never produced including the breakdown of figures and dates.
> - No stock procedures in place
> - No manual docket procedure in place
> - No cash procedures in place
> - Extract of notes taken from another employee where they state that he gave away free stock and was not subject to disciplinary procedures"

BOD wrote to the claimant on May 26th 2009 to an appeals hearing on July 2nd 2009 and was informed he was entitled to bring a representative. The witness was to act as Appeals Manager and BOD as note taker and a member of Human Resources. The claimant attended the meeting with his union representative (JK). Before the meeting the witness read all the notes available and spoke to BOD.

JK went through the grounds which were set out in the claimant's letter of appeal. These were:
He (the claimant) had been acting on the direction of his RSM – JR and that the decision to dismiss was wholly unfair.
The claimant's letters had not been answered appropriately;
no information of the stock variations had been given to the claimant and therefore he was unable to answer the allegation without them. There were no proper procedures in place and none given to the claimant at his induction.

The witness adjourned the meeting for 15-20 minutes and spoke to BOD about the matter.

The meeting reconvened and the witness told the claimant and JK and informed why the decision to dismiss was upheld. On June 8th 2009 a letter of outcome of the appeal hearing was sent to the claimant. It stated that on consideration of the facts the decision was made to uphold the decision of dismissal. The reasons being:

" – acting alone, and without authority, in your decision to release company assets to customers and;

- misleading the company in relation to the authority that you had for the release of company assets to customers"

The witness told the Tribunal that he had considered alternatives to dismissal but could not as it was gross misconduct. This was the end of his involvement in the matter.

On cross-examination he stated that he had dealt with the matter of the manual docket procedure but not in the letter of June 8th 2009. When asked he said he was aware of another colleague's (MH) case.

Claimant's Case:

One of the claimant's union representatives (DS) gave evidence. He had attended the investigation meeting with the claimant on April 8th 2009 but not in his capacity as unionrepresentative. He stated that, in general, the notes of the meeting were accurate. He hadattended meetings on behalf of staff in the past.

He said the claimant had not been afforded his legal right under S.I. 146 of 2000 of representation, as the respondent would not recognise the union. A request was made by the claimant's side for copies of the stock variations but were denied them and told they, the respondent, could not get them.

On cross-examination he said that he had tried to ask questions on a number of occasions but was interrupted. He agreed that the claimant had admitted to giving away free stock, 10-12 cases a week.

Another of the claimant's union representatives (JK) gave evidence. He attended the disciplinary meeting on April 27th 2009 with the claimant. He asked why they were thereand what the claimant was guilty of. BOD said they were looking into the issues of manual dockets, free stock and the irregularities in cash. Company procedures had beenbreached. The witness referred to S.I. 146 of 2000 and the right to representation. Thewitness told the Tribunal that he felt the respondent as going on a "fishing expedition". He said he couldn't deal with the case properly as he did not have the figures containingthe alleged stock in front of him whereas the respondent had. He felt at a considerable disadvantage.

He told HR and BOD that there had been a lack of policies and procedures outlined to the claimant and he had not been given any induction when the respondent company took over the business. He told them that the company were culpable. The respondent

company only put new procedures in place three days after the claimant, and others, had been suspended. He asked if there was any other sanction that could be applied under the circumstances as he felt the decision to dismiss the claimant was too severe.

On cross-examination he stated he did recall being "shot down" at the meeting. He stated that "broadly speaking" the notes of the meeting were accurate.

A former Regional Sales Manager for BV (MB) gave evidence. He had originally employed the claimant. On the claimant's first day he was given a 1-1 ½ hour health and safety induction course and spent a full day training in the van with an instructor. He then spent a further one and half days on the road with one of the supervisors (NF). This on the road training involved stock, stocktaking, and the hand held device, dealing with cash amongst other things. He told the Tribunal that training was to take place in the details of the van sales procedures manual but it was never implemented.

He explained that an incident regarding stock had occurred in October /November 2007 but the claimant had not been involved. He said the claimant had been a hardworking and honest employee. BV distributed free stock when they ran the business. It was an unwritten rule and managed through the Van Sales Supervisor.

On cross-examination he stated that he was unaware if a stock take had taken place on the claimant's van when the respondent took over the business in July 2008 as he had already left the business. When asked by the Tribunal what happened to out of date stock, he replied that it was disposed of. Free stock was recorded on the hand held device. One case was given free with every ten boxes purchased but it was at the discretion of the Sales Representative and recorded on the hand held device. When put to him that NF had recorded free stock as out-of-date on the hand held device, he replied that was up to him how he recorded it.

The claimant gave evidence. He commenced employment with BV On April 14th 2006. MB had interviewed and hired him. He received one day's training with one of the Area Managers and put in a van with NF for a couple of days. He also received a one-hour induction course with MB and they briefly went through the "fast forward" procedure. Two days later he went out on the road with a route of 70-80 shops. He detailed how hepreformed his daily duties. He explained no customer had a set order they would tell himwhat they wanted. There was no pre-ordering of stock for customers.

He would phone in his orders daily, pick them up that evening, enter the data onto the hand held device and the information was then sent to the office. When making deliveries the sales information was entered into the hand held device. If this was not working the manual docket book was used. When he took leave no stock take was done when he handed the keys, hand held device, and route list to the relief driver. No stock take was done on his return handover.

Stock takes on the van took place on a Thursday. It was very rare for an independent person to do a stock take on the vans. However around two weeks before April 24th 2009

an independent auditor took a stock take.

In January 2009 the staff were informed only 4 free cases could be given to customers. It became an issue with the respondent's customers. JR was aware of it. A customer would not order any stock as there were no more free cases being given away. He told JR who told him to "give to them to keep them quiet".

On March 11th 2009 he arrived at the premises in Drogheda and left his van. He was made aware of a team meeting being held in Maynooth. NF drove him there at 3.00 p.m. At 3.30 pm JR and NME came into the room, and asked four of the employees, including him, to come out of the room. He went to a meeting with NME where HR was present. He was told there were discrepancies in the stock on his van and it was to be investigated. He was also told he was suspended and to hand over the keys to the van.

He received a lift back to the Drogheda premises where a stock take was taken on his van. He informed one of the stocktakers (WM) that his float was € 10 short as he had got the van washed and bought a sandwich. The claimant said that he put it in the float and that he would pay it back. The full amount of his float was lodged in the office. He was then suspended.

BOD contacted him a few days before April 8th to inform him there was a letter on the way to him. He received the letter on the day of the hearing. At the investigatory meeting he as told about the € 41,000 stock discrepancy on his van and was asked to talkthrough the procedures he carried out. He felt he had not been listened to at the meetingand the answers he gave did not make a difference. He asked DS to draft a letter datedApril 22nd 2009 again requesting documentation, which included:

1 All stock scanned onto the van
2 All stock scanned off the van
1 All stock takes
1 End of year stock take
1 All BV invoices in his name
1 All Baldonnell invoices in his name which would have been collected by the relief driver
1 All manual dockets which should have been processed by the office

The claimant explained that stock had been ordered previously in his name but he had signed for it. A relief driver had collected it. He explained that you would know your order, as your name and number would be on it. He wrote several letters requesting the information but never received it. He was dismissed and appealed the decision but the decision to dismiss was upheld.

The claimant gave evidence of loss.

On cross-examination he stated he had made notes on the typed minutes of the meeting

on April 8th as he felt there were discrepancies in them. He felt he had not been offered the right to proper representation at the meetings. He agreed he had briefly gone through the "fast forward" procedure with MB. He had never been sat down and formally gone through the Van Sales Representative Manual and he had not sat down and read it himself.

He explained that it was common practice for a Sales Representative to work off a couple of different manual docket books. He had never been told to return them to the office when they were completed. He agreed he had said that he had given away free stock and did not deny it was given unauthorised. He agreed he gave away 10-12 cases on top of the allowed 4. He explained that if he ordered 100 cases and only scanned 80 the respondent would know about the missing 20. The ordering system never changed when the respondent took over the business. He told the Tribunal that if he had been stealing stock it would have come to light.

He explained there had been a stock take carried out on the van on March 11th 2009, he had just returned from a week's holiday. He agreed he had given varying answers for the use of € 10 out of his float. He stated he had instructed JK to plea his case at the appeals meeting. He told the Tribunal that at the meeting of April 8th he raised an issue concerning a colleague (NF) admitting at his meeting that he gave away free stock but the witness was told they were not there to speak about it. NF was not dismissed he said.

He agreed that some of his former colleagues statements did not back up the issue of JR telling them to give away more free stock. When asked he stated that the first time he heard of the value of the stock discrepancies was at the meeting with NME. He was shocked and he explained that would mean giving The Tribunal n away 70 cases a week.

A former colleague (MH) gave evidence. He was also dismissed from the respondent for an alleged discrepancy in stock.
He stated that he had first commenced employment with the respondent as a merchandiser and was later given the role of Van Sales Representative. He said that he was not given any formal training. He attended the meeting in Maynooth and was suspended pending investigation. He was invited to attend an investigation meeting and was told he could bring a union representative with him.

He stated that JR had told him to give extra free stock if needed to keep the customers happy and not to record it.

On cross-examination he stated there was no stock take carried out when he first took over the truck.

A former colleague and relief driver gave evidence. He confirmed the statement he had given to the respondent but could not recall when it was taken. He had driven the claimant's van in December 2008 and had done a stock take on it. No queries had been raised with him. He stated there had been no proper procedures in BV.

Determination:

The Tribunal considered all the evidence adduced. The Tribunal is not required to decide whether the claimant was responsible for the respondent's stock shortfall but only to consider whether the respondent had reasonable grounds for coming to this view.

The Tribunal must also consider if the employer complied with Section 5 of the Unfair Dismissals (Amendment) Act 1993 which provides that the reasonableness of the employer's conduct is now an essential factor to be considered in the context of all dismissals. Section 5 , inter alia, stipulates that:
".....in determining if a dismissal is an unfair dismissal, regard may be had……to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal"

Following a stock take and an analysis of the records the NME was recruited to investigate a substantial stock shortfall. The claimant was suspended with pay on 26th May 2009 pending an investigation. An investigatory meeting was held on the 8th of April 2009 and the claimant attended accompanied by his union representative DS. BOD opened the meeting stating it was an investigatory and not disciplinary. He also stated that the respondent company did not recognise trade unions and for the purpose of the meeting DS would act as a personal representative for the claimant and not as his union representative. A disciplinary meeting was held on the 27th April 2009 (reconvened on the 28 the April) following which the claimant was dismissed. The claimant appealed the dismissal and his appeal was heard on the hearing on the 6th June 2009. The decision to dismiss the claimant was upheld.

The Tribunal finds that the respondent acted counter to fair procedures in that details of stock discrepancies, which were alleged against the claimant, were not given to him. Without this information the claimant was not in a position to formulate an adequate explanation for the discrepancy. An employee is entitled to fair procedures but what fair procedures will depend on the circumstances of the proposed dismissal. At a minimum the employee is entitled to be informed of the charges against him and to be given an opportunity to answer these and make submissions. This is clear from **Gunn V Bord An Cholaiste Naisiunta Ealaine is Deartha 1990 2 IR 168.**

While the Supreme Court case of **Charles Mooney (plaintiff/appellant) V An Post (defendant/respondent) 1994 No 132** found that the employee in that case was not entitled to the investigating officer's report it goes on to state, per Griffin J, that:
"Dismissal from ones employment for alleged misconduct with possible loss of pension rights and damage to one's good name , may in modern society, be disastrous for any citizen. There are circumstances in which any citizen, however humble may be entitled to the protection of natural and constitutional justice. The terms natural and constitutional justice are broad terms and what the justice of a particular case will require will vary with the circumstances of the case. Indeed two of the precepts of natural and constitutional justice may not be applicable at all in certain cases. The principle of nemo iudex in sua causa seldom applies in relation to a contract of

employment where the employer judges the matter and is an interested party. Likewise it is difficult to apply the principle of audi alteram partem which implies the existence of an independent judge who listens first to one side and then the other". Where there is departure from these precepts, (where the employer is acting as accuser/investigator and "judge") the employer must take extra care to ensure that the employee is furnished with proper and appropriate documentation so that the employee can deal with the allegations against him and be in a position to answer the allegations and make submissions.

Applying the legal principles set out in the **Gunn** and **Mooney** cases to the claimant's appeal the Tribunal finds that employer did not act as a reasonable employer would have acted in the circumstances for the following reasons:

* the claimant should have been given copies of the stock loses or at the very least a summary of how these figures were arrived at? Evidence was given by the claimant, and his union representative, that at the investigatory and disciplinary meetings the respondent representatives were reading from the figures in front of them and asking for explanations from the claimant who did not have these figures or the basis of how they were calculated. This was hardly a level playing field. The Tribunal distinguishes the present case from that part of the Mooney case which stated that the employee was not entitled to the investigating officer's report and relies on the Judgement of Griffin J which stated, inter alia, that "....At a minimum the employee is entitled is entitled to be informed of the charges against him and to be given an opportunity to answer them and make submissions". The claimant could not make submissions when he was denied access to how the discrepancy figures were arrived at. The "minimum" the claimant was entitled was to was how the losses were arrived at in the view of this Tribunal. The respondent's reason for not giving these figures to the claimant was that it was not its information to furnish; that it belonged to BV. The respondent confirmed to the Tribunal that it never even asked BV,s permission to release the data to the claimant. This is not satisfactory.
* the claimant did not receive sufficient prior notification of the investigatory meeting which was held on the 8th April 2009 to enable him to prepare properly for it. Being furnished with a letter on the morning of the hearing setting out the charges he would have to answer on the morning is not sufficient notice even if it was indicated to the claimant previously, by telephone, what was going to be dealt with;
* he was denied union representation at the investigatory meeting which was a clear breach of his contract of employment which entitled him to such representation in any disciplinary meeting; The contract states: "At all stages of the disciplinary procedure the employee has the right to be represented. Such representative may include a colleague or a registered trade union official.." The Tribunal determines that that the investigatory meeting involved making findings of fact. The courts have accepted that where an investigation involves the making of findings of fact then the rules of fair procedure apply to that investigation. This is clear from the judgements of **Minnock V Irish casing Company Ltd and Stewart 2007 ELR**

229 and O'Brien V AON Insurances Managers (Dublin) Limited 2005 IEHC. As such the rules of fair procedures apply to that investigation as a fact finding formed part of the disciplinary procedure. (This denial of the claimant's right to union representation is curious considering that another employee who was subject to similar and separate disciplinary investigation was allowed trade union representation). The Tribunal notes that the claimant was allowed union representation at the disciplinary meeting (JK) but this was rendered somewhat ineffective because they he did not have details of the stock discrepancy or how the figure was arrived at;

* GR heard the claimant's appeal but consulted BOD during the appeal. GR's evidence to the Tribunal was that he adjourned the appeal hearing so that "we {BOD and himself} considered alternative disciplinary sanctions". This again was a breach of fair procedures in that BOD took part in the investigatory meeting and disciplinary meeting and was now consulted at the appeal stage. Indeed HR's letter of the 29th April 20009 confirmed that BOD represented HR [Human Resources] at the disciplinary meetings held on the 28th and 29th of April 2009.

The Tribunal is of the view that the level of stock procedures manual docket procedures and cash procedures of the respondent were inadequate.

The claimant must bear some responsibility for his circumstances. In particular that the claimant was using 5 different docket books at the same time. This is hardly ideal or desirable.

The Tribunal determines that the respondent's treatment of the claimant was not how a reasonable employer would treat an employee in the circumstances and therefore the respondent has not complied with Section 5 of the Unfair Dismissals (Amendment) Act1993. There was a lack of fair procedures and having regard to all the circumstances ofthe case the Tribunal finds that the claimant was unfairly dismissed. The respondent hasnot established to the satisfaction of the Tribunal that it had reasonable grounds for coming to the conclusion that the claimant was responsible for the respondent's stock shortfall. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds.

The Tribunal determines that the most appropriate remedy is compensation is the most appropriate remedy and awards the claimant €20,000.

Sealed with the Seal of the.

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)