

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.

MN994/2010
UD1016/2010
WT424/2010

against
EMPLOYER
- *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr. T. O'Sullivan
Mr F. Keoghan

heard this claim at Trim on 1st December 2011

Representation:

Claimant(s) : Mr. Darach MacNamara BL instructed by Mr. Mark Dillon, Dillon Geraghty & Co, Solicitors, "Belmont", O'Growney Street, Athboy, Co Meath

Respondent(s) : Director of respondent company

Respondent's Case

Witness for the respondent company (SN) gave evidence that the company trades as a supermarket. The claimant was employed as a sales assistant working on a permanent basis on the checkouts of the supermarket. The respondent operates a real rewards card which is a loyalty card for its customers. When a customer makes a purchase the card, which is bar coded is scanned by the checkout operator at the till checkout. This allows customers money off shopping or discounts based on points collected. The claimant, along with all checkout operators had been provided with training in how to record points on customers' cards.

On 1 December 2009 it came to the respondent's attention that one loyalty card had been scanned

on twenty four occasions on one particular day the previous week. It transpired that the loyalty card in question belonged to the claimant's sister. The claimant was asked to attend a meeting on 1 December 2009 and questioned about the matter. The claimant immediately admitted that she had brought her sisters loyalty card to work and had transferred points onto the card from purchases made by other customers. She did not offer any explanation for her actions.

On 4 December 2009 the claimant was asked to attend a disciplinary meeting. She was offered the opportunity of having a colleague represent her at that meeting. She asked that a colleague, (MON) be present at that meeting and the company acceded to this request. The witness and the Human Resources Manager, (JOR) represented the company. The claimant did not offer any further explanation for her actions and the claimant did not state that she had received permission from customers to transfer points onto her sister's card. This was never mentioned at the meeting. The meeting adjourned and the respondent considered the matter. The respondent concluded that the claimant had stolen real reward points. The claimant was then invited back to the meeting and she was informed that she was dismissed with immediate effect on the grounds of gross misconduct. She was given her letter of dismissal at the meeting. She was not provided in writing with a right to appeal the decision as the witness is the sole owner of the business and as such the appeal would have been futile as it would have been dealt with by him. He accepted that he did not notify the claimant in writing in advance of the meetings on 1 December and 4 December 2009. This was an oversight on his part. He also accepted that he did not notify her writing that she could bring a representative with her and, again this was an oversight on his part.

(MON) gave evidence that she was asked to attend the meeting on 4 December 2009. She did not know the nature of the meeting in advance. She was told that it was a disciplinary meeting when she attended the meeting. She observed what was being said at the meeting which was a question and answer meeting. She did not intervene at the meeting as there was no reason to intervene. She viewed her presence at the meeting as the claimant's representative. She could not remember the claimant stating that she had received permission from customers to transfer points onto her sister's card.

Claimant's Case

The claimant gave evidence that she was asked to attend a meeting on 1 December 2009. (SN) was very stern and very annoyed at the meeting. He asked her if she knew if her sister had visited the store and used her loyalty card on 24 occasions on one particular day. She told him that she had not. She admitted that she had brought her sister's card to work with a view to getting a few extra points on it. She did not realize that she had done anything wrong as she was only transferring points from one customer to another. She would have asked each customer if they wanted points put on their loyalty card. If they did not she would seek their consent to transfer the points onto the card of the next customer. If there were no customers in the queue she would seek consent from the customer to transfer the points onto her sister's card. She could not recall if she explained this to (SN) at the meetings on 1 December and 4 December 2009. She accepted that she had received training in respect of the loyalty card.

She was asked to attend a further meeting on 4 December 2009. She was not given written notice of this meeting and was not told in advance that it was a disciplinary meeting. She was told that she could have a representative and she asked for a colleague, (MON) to be in attendance. She expected to be chastised and was very nervous and upset at that meeting. She was never told that the meeting could lead to her dismissal. She felt devastated after being informed that she was dismissed. She was not afforded any right of appeal. She was unemployed for approximately 7 months after her

dismissal and secured alternative work in June 2010.

Determination

The Tribunal is of the view in all the circumstances that the claimant's actions did not amount to "gross misconduct". While having regard for the importance of cash management and the trust which must reside in staff who deal with cash the Tribunal finds that the dismissal of the claimant was disproportionate to the offence. We therefore find the dismissal unfair but the claimant's admitted actions made a substantial contribution to decision to dismiss.

In our view a modest award would be "just and equitable having regard to all the circumstances".

Section 7 (1) (c) of the Unfair Dismissals Act 1977 provides "payment by the employer to the employee of such compensation (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under section 17 of this Act) in respect of any financial loss incurred by him and attributable to the dismissal as is just and equitable having regard to all the circumstances".

We assess that amount as €2,500.00 and make an award in this amount under the Unfair Dismissals Acts 1977 to 2007.

The claims under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Organisation of Working Act 1997 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

