

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD1503/2009

- *claimant*

Against

EMPLOYER

- *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms K. T. O'Mahony B.L.

Members: Mr. G. Andrews  
Ms S. Kelly

heard this claim at Limerick on 25 November 2010  
and 09 February 2011

#### **Representation:**

Claimant: Ms Karen Wall, Mandate Trade Union, Killoran House, Catherine Place, Limerick

Respondent: Byrne Wallace, Solicitors, 2 Grand Canal Square,  
Dublin 2

#### **Summary of the Evidence**

The claimant commenced employment in the respondent's supermarket in 1999. At the time of the incidents herein she was a checkout operator on the customer service desk, which is a position of some responsibility dealing, *inter alia*, with the sale of tobacco and lottery tickets, till floats, foreign exchange and staff sales. It is company policy that checkout staff do not serve family members.

On 9 February 2009, while doing a routine review of the CCTV footage for the previous day, 8 February, the security manager (SM) observed the claimant serving her husband and not scanning/charging him for a cauliflower. On examining the audit roll for the claimant's till SM confirmed that the cauliflower as well as a plastic bag had not been scanned and further discovered that the claimant's privilege card had been used for the transaction. The privilege card allows the owner 20% discount on purchases.

SM passed the information to the store manager (the manager) who instructed her to monitor the

claimant. The manager decided to monitor the claimant going forward as the CCTV system does not go back more than 14 days.

On 19 February the claimant was observed on CCTV serving her sister, who also works for the respondent. On examining the audit roll for the claimant's till for that day SM established that an apple pie had not been scanned when she served her sister. The claimant was also observed leaving the building without clocking out and returning with cigarettes in her hand, both of which are prohibited under the respondent's policy. SM passed the matter over to the manager. The relevant CCTV still images were adduced in evidence. At the relevant times the claimant could have made her purchases at another till and/or the kiosk.

The respondent's policies are contained in the staff handbook and displayed on a notice board in the store. It is provided that serving friends or relations and having money or mobile phones with them while working are offences leading to disciplinary action up to and including dismissal (*clauses 4.8 & 4.10*). The respondent has a specific and detailed policy covering staff purchases which prohibits usage of the privilege cards by anyone other than the owner. Failure to comply with the staff purchase policy constitutes gross misconduct. The claimant received induction training and signed for a copy of the handbook in both 2000 and 2004. The respondent's position was that the claimant had received on-going training in Grocery Sales Procedures. The claimant's position was that she last received this training on 26 November 2007.

The claimant was invited to a meeting on 14 March 2009. On seeing the head of security in the office with the manager she felt it was serious and asked if she needed someone to be present with her but was told it was just an investigation. The claimant confirmed at the meeting that she was aware of the company's policies on register procedures, employee purchases, use of the employee discount card and breaks policy. The claimant declined the respondent's offer to view the CCTV footage of the purchases made by her husband and sister. Receipts of the sales on 8 February and 19 February were shown to her but she could not recall these sales. She had no explanation for serving her husband or sister, for using her privilege card while serving her husband or for failing to charge them for the items. The claimant confirmed that she had both her mobile phone and cigarettes with her while clocked in for work. The manager was not satisfied with the claimant's responses and considered thereby suspending the claimant on full pay pending a disciplinary hearing on 16 March. The claimant was advised that the consequences of her actions could lead to serious disciplinary action up to and including dismissal. The manager followed the respondent's procedures and was not aware of SI 146/2000 (Code of Practice on Grievance and Disciplinary Procedures).

The claimant's trade union representative accompanied her to the disciplinary meeting on 16 March. She was informed that company policy was that she could have a work colleague with her. The claimant did not wish to attend without her union representative so the meeting did not proceed. The respondent's case was that following this the claimant had been absent on sick leave for a number of weeks.

The manager wrote to the claimant on 20 March 2009 seeking to reschedule the disciplinary meeting, if the claimant so wished. In the letter he confirmed that the CCTV footage would be available for viewing and that she could bring a work colleague with her and further informed her that her suspension and the disciplinary process would continue when she would be certified fit for work.

A meeting scheduled for 12 May did not go ahead because of the same impasse between the parties

on the issue of representation.

The manager wrote to the claimant on 15 May informing her that the respondent would now make a decision and offered her the opportunity to submit any relevant information by 20 May that she wished to have considered. The claimant responded on 19 May stating that the meetings had not taken place on either 16 March or 12 May because she was not allowed a representative of her choice and that as a result she had been denied the opportunity to defend herself with a representative of her choice in accordance with S.I. 146/2000 (Code of Practice on Grievance and Disciplinary Procedures). In this letter she also indicated that she was available with her trade union official to attend an oral hearing to respond to the allegations.

The manager viewed the claimant's failure to charge family members for goods as serious offences warranting dismissal. The decision to dismiss was appealed. The Regional Manager conducted the appeal. He considered all the documentation generated throughout the earlier process, including the register receipts. He was satisfied that the claimant had received induction training as well as ongoing training. He regarded her conduct in serving her husband and sister, not scanning items and abuse of her employee discount card to be serious offences and upheld the decision to dismiss. His decision was not based on the value of the items but on the breaches committed and the resulting loss of trust in the claimant.

At the hearing before the Tribunal the claimant was able to recall 8 February 2009 because it was the month's mind mass for her nephew who had died tragically. She could not get time off to attend the mass. When she clocked in for work that day she collected food items and brought them to the customer services desk so that her husband could purchase them later. She served her husband and used her staff discount card. She did not think that using the discount card would be "a big deal" as the items were for her and her family. Her position was that it was common practice for staff to serve their families: on numerous occasions she had served her husband in the presence of the manager and she served her sister, who also works for the respondent, almost on a daily basis. She could not recall not scanning a plastic bag or a cauliflower. She would not have jeopardised ten years employment for a cauliflower and a plastic bag. She could not recall not scanning a boxed apple pie when serving her sister on 19 February and maintained that it must have been a genuine mistake and that she had just "let her guard down". The manager denied the claimant's allegation that he had seen her serving family members and raised no issue about it. He was not aware that members of staff leave items aside and purchase them later. The claimant maintained that the company rules should have been reissued to her after the 8 February incident.

### **Determination:**

The claimant contended that the respondent breached her right to fair procedures in that she was not allowed to have her trade union official to represent her at the disciplinary meetings arranged for 16 March or 12 May in accordance with S.I. 146/2000 (Code of Practice on Grievance and Disciplinary Procedures) and that she had not been afforded an opportunity to answer the allegations against her. The Tribunal rejects these contentions. The respondent has a Disciplinary and Dismissal policy in place which is in general conformity with the guidelines in S.I 146/2000 – Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures). In affording the claimant the opportunity to bring a colleague of her choice with her to the scheduled disciplinary meetings the respondent was in compliance with its own policy and indeed with clause 4 of S.I 146/2000, which defines "employee representative" as including, *inter alia*, a colleague of the employee's choice. A clear lines of authorities emanating from the superior courts establish that

an employee facing disciplinary action is entitled to the benefit of fair procedures and that what these demand will depend on the employee's terms of employment and the circumstances surrounding the disciplinary action (See Barrington J. in *Mooney v An Post* [1998] 4 I R 288 at 289 and Laffoy J in *Shortt v Royal Liver Assurance Limited* [2009] E.L.R. 240 at 251 where the earlier code under the Industrial Relations Act, 1990 was before the Court)

As regards the claimant's second ground of complaint the Tribunal finds that the respondent, in accordance with the principles of natural justice and fair procedures afforded the claimant the opportunity to answer the allegations against her at the meetings of 16 March and 12 May but she chose not to avail of these opportunities. Nor did she avail of the invitation made by the manager in his letter of 15 May to submit any information she wished to have considered by the respondent, prior to making its decision on a disciplinary sanction. Accordingly the Tribunal finds that the dismissal was not procedurally unfair.

The claimant was dismissed for breaches of a number of the respondent's policies and in particular for breaching procedures and abusing her privilege card. In cases such as this it is well established that it is not the amount of the loss to the respondent that grounds the reasonableness of the decision to dismiss but the loss of trust in the employee resulting from the breach or breaches of those procedures. The respondent's policy provides that any breach of register procedures can lead to disciplinary action up to and including dismissal. The claimant signed up to this policy. The Tribunal is satisfied that in all the circumstances the respondent's decision to dismiss the claimant was reasonable. Accordingly, the Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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