

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE - *claimant*

CASE NOS.  
UD1646/2010  
MN1565/2010  
WT696/2010

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr D. Moore  
Mr J. Moore

heard this claim at Drogheda on 5<sup>th</sup> April and 4<sup>th</sup> July 2012

Representation:

Claimant: Mr Kevin Callan BL instructed by:  
Ms Shona Marry, Solicitor  
Dorothy J. Walsh & Company Solicitors,  
44 Laurence Street, Drogheda, Co. Louth

Respondent: Ms Cathy McGrady BL instructed by:  
Ms Mairéad Sweeney, Solicitor  
McGrady Sweeney & Co Solicitors,  
28 Drogheda Street, Balbriggan, Co. Dublin

The determination of the Tribunal is as follows:

#### **Respondent's Case:**

The owner gave evidence. The respondent's business is a convenience supermarket. The owner has known the claimant since 1990 when they both worked part-time in a supermarket. When they moved on they stayed in contact. In 1998 they formed a partnership and opened a supermarket. They employed a manager to run their partnership supermarket while both continued to work elsewhere. Their partnership supermarket continued until 2009.

When the owner set up the respondent supermarket in 2004 he asked the claimant to be the manager. The owner had a good relationship with the claimant and knew that he was a hard worker.

The owner dismissed the claimant in June 2010 because of financial irregularities. On Saturday 8<sup>th</sup> May 2010 he was making enquiries into shorts and overs on the till receipts. The staff supervisor informed him that the claimant had an IOU for €500.00 that was not recorded. The staff supervisor told him there were no other IOUs.

The owner then phoned the cash officer even though it was her day off and she was at home. The claimant had told her not to record the IOU. She was surprised because that resulted in an inaccurate daily float sheet. She did carry the amount over and put it on the float cash sheet.

The owner contacted a security consultant and sought his advice. The owner and the security consultant met all members of staff who handled cash. These meetings were held on 19<sup>th</sup> May 2010. Any relevant members of staff who were not on the work roster for that day were phoned and asked to come in. Each relevant member of staff was asked if they wanted a representative to attend the meeting with them. The reason for the meetings was concerns about cash handling.

The meeting with the claimant was at about 12.00pm. On 10<sup>th</sup> May 2010 the cash officer informed the owner that the claimant had paid back the €500.00. When the owner asked the claimant if he wanted a representative at the meeting the claimant replied by asking if he needed one. The owner asked the claimant if he had an IOU and if he had paid it back. The claimant said yes. The claimant accepted that he had asked the cash officer to give him money. He also admitted that there had been other unrecorded IOUs. The claimant also agreed that he had given €140.00 for advertising sponsorship to a local sports club despite being instructed not to by the owner. The owner suspended the claimant on full pay and took his keys to the store from him. The claimant was not asked to sign the owner's note of the meeting. The owner did not investigate the matters further.

When the owner and the security consultant met the cash officer she confirmed that she had given €500.00 to the claimant and that he had asked her not to record it. The staff supervisor also confirmed that he was aware of €500.00 outstanding and that there was no note of it.

The owner contacted a HR consultant and discussed what had happened with her. The owner phoned the claimant to invite him to a disciplinary meeting the following Monday. The meeting was rescheduled to enable the claimant to be accompanied by his solicitor. At the first meeting the claimant's legal representative objected to the HR consultant being present. The claimant and his legal representative walked out. The owner felt that the claimant should not be disadvantaged so he wrote to him and requested that he be accompanied by his legal representative at a further meeting.

At the second meeting the claimant's legal representative did not object to the HR consultant. The claimant made three submissions to the owner: 1) the €500.00 was repaid in full and the claimant had used the money to pay a bill outstanding from their partnership, 2) the claimant offered to pay back the money he had given to the sports club, 3) the claimant had no recollection of an IOU for €800.00. The claimant also asked if there would be an appeal process. The owner told him that there would be an appeal process.

The owner thought carefully before making the difficult decision to dismiss the claimant. The claimant appealed the decision but his appeal was unsuccessful. The claimant's three colleagues

who knew about the unrecorded IOU were not disciplined for their inaction.

The HR consultant gave evidence. She was present when the owner met the claimant and his legal representative on 9<sup>th</sup> June 2010 and she agrees with the owner's evidence to the Tribunal.

The security consultant gave evidence. He does work for the owner's supplier. He works with shops, filling stations and a charity advising them on cash security. The owner was anxious to find out what went on in his cash office.

On 19<sup>th</sup> May 2010 the security consultant went to the store to meet with some staff members. There were a number of important matters to consider; recording of monies, procedure with IOUs and any bad procedure for cash handling. The cash officer is in a trusted position. She became upset during her meeting. She thought that she was in trouble. She counted out the money. The security consultant said that the cash officer had reason to be worried.

During the meeting with the claimant it became apparent to the security consultant that the matter was not a criminal one. It was important but it was a managerial matter. You cannot have a manager who creates a false trail for cash. He excused himself from the meeting and took no further part.

The staff supervisor gave evidence. He was in the shop when the owner asked him about money going missing. He told him about the IOU for €500.00 and how he falsified the report sheets on the claimant's instructions. He accepted that it had not been a mature thing to do.

A director of the respondent company gave evidence. He had no day to day involvement with the company. The owner asked him to hear the claimant's appeal. He agreed on the condition that he had HR assistance. The owner organised for a HR consultant to be available (a second HR consultant). A week before the hearing the owner gave him and the HR consultant an outline of the situation. The HR consultant asked to keep the owner's handwritten note of events for reference.

The owner wrote to the claimant's solicitor on June 18<sup>th</sup> to advise that the appeal would be heard on 23<sup>rd</sup> June 2010 by the director. The director and the HR consultant met the claimant and his solicitor and counsel on that day. The claimant was appealing the severity of the sanction and the disciplinary process and procedures. Two days after the meeting he phoned the claimant's solicitor to inform him that the appeal was unsuccessful. He wrote to the owner to inform him of the outcome. He made his decision alone. He referred to documents during the meeting and took few notes.

The director considered that the sanction was correct. It was not disputed that the money had been taken. The business had cash flow problems and so the sum of €500.00 was significant. It was a significant breach of trust and the money was taken for his personal use.

During cross-examination the director accepted that the claimant's letter of appeal was opened at the store and that the reply was sent by the owner and not by the director. He felt that this was a minor incident in the whole process. He did not see the envelope the appeal letter arrived in.

The second HR consultant gave evidence. She had no prior involvement with the case. She asked the owner to provide her with a timeline of events. She retained the handwritten notes

provided by the owner. She took the notes at the appeal. She later made available a typed copy of the owner's notes to the claimant's solicitor. She kept the handwritten copy as she had made her own notes on them. She was not involved in the decision making process. The director informed her of his decision two days after the appeal hearing.

### **Claimant's Case**

The then cash officer gave evidence. She worked with the claimant for three years. He ran the shop. On Saturday 8<sup>th</sup> May 2010 the owner phoned her at home and asked if she knew what the claimant's IOU was for. She found out later that it was for the claimant and the owner's previous shop. The IOU was outstanding for three or four months. She was requested to attend two meetings on May 19<sup>th</sup> and 28<sup>th</sup> 2010. On the first occasion the owner was accompanied by another person. She was offered to have someone with her and was told that no allegations were being made against her. She was asked about the claimant's IOU. Others knew of the IOU. At the second meeting she was asked to check the float. It was over by €1,200. The owner said that there was a further €800 outstanding from the claimant.

The cash officer supervised the cash office. There was no set procedures document in relation to cash handling at that time. She no longer works with the company.

During cross-examination the cash officer confirmed that she had not been disciplined over the IOU. The IOU was taken in February 2010. The claimant said to her that if anything arose in relation to the IOU she should refer it to him. She was not aware of the franchiser's cash handling document. Asked if she needed a document to state that unauthorised IOUs were not allowed she stated that she knew the claimant. She knew he would pay back the money. She stated that the float sheets were done correctly from a cash office point of view but did not transparently reflect the existence of the claimant's IOU. Other staff members who dealt with the cash knew about the IOU. The owner did not know about it. She could not answer why the owner did not know about it.

The claimant's partner gave evidence. She worked at the store as a supervisor in a part-time role from October 2004 until July 2011. She knew another employee who took an IOU and was not sanctioned. That person was still an employee. She met the owner and the security advisor on 19<sup>th</sup> May 2012. She was told the meeting was about cash office procedures. They also asked her about the IOU of the other employee.

During cross-examination the witness stated that she had not been the subject of any disciplinary procedure. She completed float sheets for the tills. The IOU was not recorded. This was the same with the other employee's IOU. She was not aware of the background of the other IOU.

The claimant gave evidence. He was the store/general manager from August 2004 until June 2010. On Monday 10<sup>th</sup> May 2010 the owner asked the claimant if he owed €500.00 to the cash office. He said that he did, that it was for a bill from their joint business, and that he had paid it back. The owner said they would speak about it again. The claimant worked as normal until he was summonsed to a meeting on 19<sup>th</sup> May 2010. He didn't know what the meeting was to be about. The security consultant and the owner were present. He declined to have someone with him. He was not told that it was a formal meeting. He was told that it was just a few questions.

The claimant paid back the IOU on 10<sup>th</sup> May 2010. He took €500.00 to pay a bill he was responsible for from their joint business. He couldn't afford to pay it at the time. He

had agreed a payment plan with the creditor. He was told that there was CCTV footage on one occasion of him entering voids in different tills for a total of €140.00. He said that was to pay the sponsorship money to the pitch and putt course which he had agreed to give. The security consultant stated that he was satisfied that his questions had been answered and said he would leave so that the claimant and the owner could arrange a 'parting of the ways'. The claimant understood from this comment that he would be leaving the business.

The owner asked him if the claimant had taken IOUs before. The claimant explained that once before he had taken a sum of money overnight, €100-200.00, because he had a problem with his car. He contended that the IOU taken by the other member of staff was not recorded, but he was not involved with this situation. The owner suspended the claimant on full pay. He was asked to hand in his keys and void card. He wasn't aware of any formal disciplinary or appeals process. He didn't think there was any way he would remain in his job.

In regard to the pitch and putt course donation he explained that he had gotten free stock worth €200.00 and he considered this to have covered the cost of the donation. They had sponsored this business for the previous two years and they were good customers. He felt it was good for business. The owner later contended that he had taken another €800. He believed this had been suggested by a part-time member of staff to whom he had refused extra hours. This accusation was later withdrawn.

There were no specific cash handling procedures. He believed that there was a precedent set by the previous employee who took an IOU. He approached the cash officer to borrow the money for the outstanding debt he was responsible for. He made sure everyone who handled cash knew about his IOU. He told them that if ever there was an external audit and questions were asked about the money they were to say it was an IOU to him. He set up a direct debit to pay off the debt. The claimant felt that the sanction of dismissal was excessive.

After the disciplinary meetings he asked for an appeal. The owner said there would be an appeals process. He thought that he would be dealing directly with the director who was hearing the appeal, but he received the correspondence from the owner. This made him believe that the appeals process would be unfair. During the appeal the director kept referring to a large document. He asked for a copy of it but did not receive one.

Prior to the claimant's cross-examination the owner was permitted to give further evidence in regard to the IOU taken by the other member of staff. He explained that in 2005/6 a trainee manager gave a staff member a loan of €600 which he recorded with a note in the petty cash. When the owner found out he asked the claimant if he knew about it. The claimant said that he did. The owner admonished him and the trainee manager and made it clear that no IOUs were to be handed out.

During cross examination on this matter the owner agreed that this IOU was not recorded in the cash handling process. There was an actual note in petty cash. He did not feel that a policy was warranted. The loan was out for six-eight weeks.

The claimant's evidence resumed. In regard to the owner's evidence he remembered the owner mentioning the IOU to him after a weekend off.

During cross-examination he agreed that he reported to the owner. The previous partnership they had was dissolved. They split the debts of that business between them. At an earlier time

he told the owner that he had difficulty paying his debts, but he did not mention this when being questioned about the IOU.

He took the €500 in February to pay the debt. The respondent's representative produced the payment details provided by the creditor. It showed that the claimant had paid the debt in seven instalments from March 3<sup>rd</sup> 2010 to June 6<sup>th</sup> 2010. The claimant stated that he put the money in his account to meet the direct debit. He did not pay it all off in one go as he had agreed an instalment plan with the creditor.

In regard to taking money from the tills for the pitch and putt course the claimant explained that he took €90 from one till and €50 from a different till using voids so that the till would not be short. He used two tills as possibly there wasn't enough in them as it was early. He wasn't hiding anything as he knew he could be seen on CCTV. The tills were signed on in two other people's names. He did not sign on to the tills. He thought that maybe he was signed on elsewhere.

He agreed that he had right of representation at all times during the disciplinary process. He was given an opportunity for a second meeting after leaving the first meeting. He was offered the opportunity to provide a written submission. In regard to the appeal he was unhappy with his letter having been opened in the shop, but everything else was alright. He had repaid the money on May 10<sup>th</sup> 2010 as he had been off that weekend and remembered then that it had to be paid.

The claimant gave evidence of his loss.

### **Determination**

The Tribunal, having considered the weight of all the evidence finds that the dismissal was procedurally fair and reasonable in the circumstances. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, was withdrawn during the hearing.

There was no evidence adduced under the Organisation of Working Time Act, 1997, and accordingly the claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)