

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

UD2416/2010

CASE NO.

MN2356/2010

Against

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 P. McGrath B.L.

Members: Mr. L. Tobin
Mr A. Butler

heard this claim at Wicklow on 24th July 2012.

Representation:

Claimant: In person.

Respondent: Mr. David O'Riordan, Sherwin O'Riordan, Solicitors, 74 Pembroke
Road, Dublin 4

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent owns many fuel stations throughout the country. The claimant worked in a fuel station in Co. Wicklow.

AD is Area Manager since 2010. TM, the Manager of the station wherein the claimant worked brought an issue concerning refunds to his attention.

AD and TM initially invited AA, a colleague of the claimant, and shortly afterwards the claimant to have an informal chat in the office on 8th October 2010. The informal chat was conducted in a calm and dignified manner.

AD asked AA if he knew anything about a refund done the previous evening to the value of €225.00. AA said he had done the refund. He admitted that he had taken the money out of the till and split it with the claimant. The claimant had shown him how to do the refund. Both the claimant and AA began speaking in their native language. AD asked the claimant if it was

true. The claimant did not deny it. He was in a state of shock. AA contended that everybody was doing refunds in the station.

AD said they could go down the official disciplinary route which would result in the claimant being suspended pending investigation as this was gross misconduct or he could resign with immediate effect.

The claimant took a break of about ten to fifteen minutes and when he returned he said he wanted to resign. The claimant tendered his resignation that day.

Claimant's Case:

The claimant was employed as a shop assistant. His colleague AA was asked to have an informal chat with AD and TM in the afternoon of 8th October 2010. The claimant enquired from TM's wife as to what was going on. She told him that the new Area Manager AD wanted to talk to him.

He was subsequently invited to the office. TM accused the claimant of taking money. The claimant denied taking money and asked to see CCTV footage. TM contended that he had given instructions to AA to take money from the till.

The claimant subsequently contended that AA gave him €100 that he owed him.

TM told him to sign a resignation letter which had been prepared or that he would be suspended for six months. The claimant then tried to phone his solicitor but was unable to make contact with him. He contended that he did not have a choice but to sign a letter of resignation.

The claimant has not secured alternative employment since the termination of his employment.

Determination:

The Tribunal has carefully considered the evidence adduced. The claimant was brought into a meeting wherein he was accused of a theft in cohort with a fellow colleague. The claimant was presented with an option to resign or face the full rigors of an internal investigation. The claimant opted to resign.

There was no evidence of a constructive dismissal and the resignation therefore stands.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)