

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **Claimant**

UD438/2011

against

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire BL

Members: Mr T. O'Grady
Mr P. Woods

heard these claims at Dublin on 19 June 2012

Representation:

Claimant:

Ms Kate McDermott, UNITE the Union,
15 Merrion Square, Dublin 2

Respondents:

Mr Brian O'Sullivan, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant was employed as a supervisor in the canteen operated by the respondent at a large IT company in Dublin from some time in 2001. Whilst there had been disciplinary issues during the employment the sanctions imposed were spent at the time in question and details of their nature were not opened to the Tribunal. On 30 August 2010 CM had reason to speak to the claimant seeking explanation for variances on her till. The claimant was told that the area manager (AM) would be carrying out a full investigation into the matter.

At lunch times the claimant's role was to operate one of the three tills in the canteen. On occasion

the claimant was the only till operator, at busy times a second till was opened. On 16 September 2010 this second till was being operated by another supervisor (AS). At around 1-15pm on 16 September 2010 AS told the catering manager (CM) that she had seen the claimant take paper money from the till and put it in her apron pocket and then go to the toilet. AS reminded CM that she had made a similar allegation against the claimant on 30 August 2010. A catering assistant (CA) then told CM that she had seen the claimant in the locker room to take paper money from her apron pocket and put it into her personal bag. Following these allegations made by AS and CA, CM then contacted (AM) to inform him of the allegations. As a result of her conversation with AM, CM then spoke to the claimant at around 2-00pm, informed her of the allegations and suspended the claimant with pay pending an investigation. CM then typed up her notes of her discussions with both AS and CA they then signed their respective meeting notes.

On 20 September 2010 the employee relations specialist (ER) wrote to the claimant to invite her to a formal disciplinary hearing which was held on 23 September 2010. The stated purpose of the hearing was to review the allegations that the claimant had been seen to take money from the till. She was advised that possible sanctions ranged from verbal warning to dismissal and that she could bring a fellow employee or recognised union official with her.

At the meeting the claimant was accompanied by a colleague and ER had a note-taker in attendance. Whilst the claimant was made aware of the nature of the allegations against her she was not given copies of the notes of CM's meetings with AS and CA. During the meeting the claimant suggested that money in the form of coinage had fallen into her apron and she put this back into the till. The claimant denied taking money as alleged and asked why, if similar allegations had been made about 30 August, no action had been taken at that stage. Towards the end of the meeting the identity of those who had made the allegations against her was given to the claimant. At this stage the claimant suggested that AS may have seen her payslip, which is blue, rather than paper money.

On 28 September 2010 ER met both AS and CA when both confirmed their allegations. CA added that the first note she had seen the claimant removing from her apron was a €10-00 note. On 29 September 2010 ER wrote to the claimant to convey her decision that the claimant be dismissed with immediate effect for theft of money from the till which amounted to gross misconduct.

The claimant was advised of her right of appeal to the human resource director (HR). She exercised this right in a letter to HR on 1 October 2010. In this letter she questioned if there had been a discrepancy on the till on 16 September. The appeal was heard on 20 October 2010. The claimant was unaccompanied; HR had the same note-taker as had been present at the disciplinary hearing.

During the appeal hearing the claimant told HR that, on occasion, in relation to so-called "specials" that were popular she might not always immediately put the cash into the till and close it as procedures demanded but would allow money to collect above the till so as to avoid congestion in the till area of the canteen. HR confirmed to the claimant that her till was, in fact, up on 16 September. The claimant again denied taking money from the respondent. On 3 November 2010 HR wrote to the claimant to advise of the failure of her appeal.

Determination:

Included in the documents provided to the Tribunal on behalf of the respondent were details of the

till cash variance log of the till operated by the claimant for some 24 days in April and May 2010. On nineteen of those days the till was up, it was down on four days. It is not clear if the 24th day was up or down. CM told the Tribunal that all discrepancies of more than €5-00 were investigated. Not one of the 24 days showed a discrepancy of less than €5-00, the range was from €5-69 to €60-56. No evidence was adduced of any investigation into these discrepancies. On the day that the claimant was accused of taking money from the till the question of the till variance does not appear to have been considered relevant until the claimant raised the matter in her letter of appeal to HR on 1 October 2010. Neither was evidence adduced of the size and nature of the till variance on 30 August 2010 which resulted in the claimant being “counselled” by CM. ER who was in possession of the interview notes from AS and CA during the disciplinary meeting did not reveal their identities until almost the end of the disciplinary meeting. Whilst the claimant was made aware of the allegations against her at no stage was she given a copy of the interview notes that CM took from AS and CA. ER did not speak to AS and CA until after the disciplinary hearing and the claimant was not given any opportunity to cross-examine them on their allegations. For all these reasons the Tribunal is satisfied that the respondent failed to carry out a full and fair investigation into the allegations against the claimant. Accordingly, the Tribunal finds that the claimant was unfairly dismissed.

The Tribunal found the evidence of both AS and CA to be persuasive that their observations of the events of 16 September 2010 are accurate. The claimant accepted that she had breached instructions for the operation of the till in regard to her practice of not immediately putting money taken for “specials” into the till. Accordingly, the Tribunal is satisfied that the claimant contributed to her dismissal to such an extent as to make no award under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)