

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – *claimant*

UD1198/2010
MN1157/2010
WT495/2010

against

EMPLOYER – *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. W. O'Carroll
Ms. H. Henry

heard this claim at Tullamore on 21st March 2012 and 5th June 2012

Representation:

Claimant: Mr. Gerry Meagher, Rollestons, Solicitors, Church Street,
Portlaoise, Co Laois

Respondent: Ms Judy McNamara, Peninsula Business Services (Ireland) Limited,
Unit 3 Ground Floor, Block S, East Point Business Park, Dublin 3

Respondents Case

The respondent company is a bookmaker. LM is the accountant for the respondent; the claimant was dismissed for gross misconduct for giving out free bets.

The claimant worked in a betting shop in Offaly. On Monday 18th April 2010, the security staff noticed something wrong with the free bets. Free bets are given by means of a draw of losing docketts. Each Saturday, ten people are given free bets drawn from losing docketts. The losing docket draw happens every week and there can also be a 'free bet' promotion which only occurs on instruction from head office. The free bets are entered as €0.01 on the system.

The security staff noticed that 413 free bets were issued over a five week period. This resulted in a loss for the respondent. The free bet system was not checked all of the time and

it was only during a general review that the staff noticed a problem.

The claimant was contacted by a director of the respondent (POC) who dismissed her on the spot. The accountant was not involved in the claimant's dismissal or the disciplinary process. She said the claimant was entitled to one week's notice which was not given.

During cross-examination LM said the claimant had given out an additional 12 free bets over the five weeks. This amounted to €40 out of €3,300. There is a direct link from each terminal to head office and they know who is sitting in a particular seat.

POC is a Director of the respondent. The security staff told him there was an irregularity going on in one of the shops in Offaly. The staff began looking at the bets entered over the previous weeks and at the CCTV. The CCTV showed the claimant writing docketts when there was no one in the shop.

He went to the shop on the Monday morning and dismissed the other teller in the shop. He then telephoned the claimant who had already been informed by the other teller that she was dismissed. The claimant said she didn't write all of the free bets, only 50%. He told her she could possibly move to another shop with a different manager. The claimant told him she did not want to come back.

A manager in one of the shops arranged to meet with the claimant regarding the position. When POC discovered the extent of what she had done, he knew that he could not allow the claimant to come back to work therefore she could not be offered the position in the other shop.

During cross examination POC said he attends the shops on a regular basis. He would call to the shops twice a week but would not talk to the customers. There is a losing docket draw each Saturday for a free bet. No direction was given to staff for extra bets. The only free bets are the draw. It used to be five bets of €20, and that was made into ten bets of €10. Each free bet is recorded as €0.01 on the docket. It is scanned and each teller has a till. If only one person was working, they would log onto the managers till.

The claimant was sent a dismissal letter on the 20th April 2010. POC rang the claimant to meet with her. He thinks it was before the 20th but cannot be sure. On the day he was talking to the claimant he told her he might give her a job in X but that she could not return to the shop in Offaly. He did not have all of the docketts at that time.

To his knowledge the claimant was off on the Monday, and when he met her on the Tuesday he told her to take a week's annual leave. The letter of dismissal was typed on his instructions. The date of the 20th of April on the letter may be wrong.

The Operations Manager (KD) gave evidence. KD was informed on Monday the 19th of April that there was a problem with over issuing of free bets. POC asked KD to attend a meeting with the claimant and the other teller to find out if there was an explanation as to why there were so many free bets issued. KD reported back to POC that they said 'they had lost the run of themselves and hoped they wouldn't be fired.' KD told the claimant and the other teller that POC would be making a decision on the matter. KD did not make any accusations and disputing saying, 'there's life after (the respondent); leave with your dignity.' KD was not aware there had been a dismissal therefore not aware that this was intended as an appeal meeting.

A further meeting took place with the claimant and POC but KD was not present. Extensive evidence was given on the free bet system and procedures in place. During the period in question there was no free bet promotion on, only the standard losing docket draw which was 10 free bets on a Saturday. There was no discretionary bet system. POC informed KD that he had offered the claimant a job in a different location.

Claimant's Case

The claimant commenced employment in September 2008. She was a teller in the respondent bookmaker. The claimant gave evidence of the losing ticket draw, the promotional free bets and the discretionary free bets. The discretionary free bets arose if a customer complained or was unhappy a free bet could be issued. The free bets are logged on the system and head office knows that night how many were issued and which teller issued them.

On the 18th of April the claimant received a phone call from POC asking how many free bets were issued the previous Saturday. She responded that she did not know and POC hung up. He rang back again and said 42 were given out; the claimant said she gave out 1-2 discretionary bets and a portion of the 10 free bets from the losing docket draw. On discovery that 413 free bets were issued over the 5 week period the claimant was shocked as that is excessive. The claimant's portion of the 413 was 12 which included the losing docket draw. The respondent can, at all times, find out how many and which teller issued the free bets.

On Tuesday the 21st of April POC asked the claimant to meet him as he had something to show her. The other teller had informed the claimant that she had been dismissed so the claimant was aware of what could happen to her. She met POC in the car park where he handed her a dismissal letter and told her to read it. POC said she had cost the company money and she was basically accused of theft. POC instructed the claimant to contact KD to arrange an appeal and to bring the other teller with her.

The other teller has always taken full responsibility for the volume of free bets issued which can be confirmed by records in head office. At that 'appeal' meeting KD said that *'there is life after (the respondent); leave with your dignity.'* Again the other teller took full responsibility for issuing excessive free bets. The claimant received her P45 in the post the following week dated the 18th of April even though she had worked Monday the 19th of April. Three weeks later POC rang the claimant asking for a 'chat'; she believes this was motivated by the claimant's solicitor having contacted the respondent. The claimant met with POC and KD where she was offered a position a 1 hour drive from her home; she declined the offer.

The other teller gave evidence of the meetings she attended with the claimant and the policies in place for free bets. She also gave evidence of how she took full responsibility for the excessive free bets issued from the beginning.

Determination

In coming to its conclusion, the Tribunal find that no procedures whatsoever were used in effecting the claimant's dismissal. The respondent acted with undue and indiscriminate haste and effectively his conduct went to the root of the employment relationship.

In the circumstances the respondent did not act in any way fairly or reasonably therefore the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The claimant is awarded €17,500.00 in compensation under the Act.

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 succeeds and the Tribunal award €467.00 being the equivalent to one week's pay in lieu of notice.

As there was no evidence adduced the claim under the Organisation of Working Time Act, 1997 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)