

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE *-claimant*

CASE NO.
UD1158/2010
MN1125/2010
WT484/2010

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 L. Ó Catháin

Members: Mr G. Andrews
Mr F. Dorgan

heard this claim at Limerick on 12th January 2012
and 19th July 2012

Representation:

Claimant: Ms. Michelle O'Riordan, Holmes O'Malley Sexton, Solicitors,
Bishopsgate, Henry Street, Limerick

Respondent: Mr Michael McGrath, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The claim under the Organisation of Working Time Act was withdrawn at the outset.

Respondent's Case

The respondent is a large retail operation with 120 stores around the country. All of the respondent's staff received induction training where they were given the company's grievance and disciplinary procedures which includes an honesty policy. The claimant commenced employment in 1994 and signed for the handbook in 2001. All the policies are also displayed in the store.

The Store Manager (BM) of the claimant's branch at the time of dismissal gave evidence. An incident occurred involving the claimant in November 2009. As a result of this incident she was dismissed for serious misconduct and breach of the company's honesty policy.

The claimant was employed as a systems checker; this entailed ensuring the price displayed matched the system, looking after goods that were on promotion and looking after any product recalls. This is a position of trust even though it is a general assistant role. All direction on promotions is received from the respondents head office. If the systems checker finds an error in pricing they report it directly to the 'helpdesk' and then inform the manager on duty so the product can be immediately removed from the shelves. The 'helpdesk' sends an email via an internal system to all the managers regarding the error.

On the 7th of November 2009 it was brought to BM's attention that the claimant purchased products on promotion at 2.05pm that were incorrectly priced. This was unusual as the product should have been removed as the issue was spotted that morning at 9.07am by the claimant. The claimant was upset as she had discovered BM was looking into the issue so he had a meeting with her to 'put her at ease'; the disciplinary process was not mentioned and the claimant was not offered representation.

A meeting was held the following Thursday the 12th of November with the claimant and her representative. This was part of the formal disciplinary process. The claimant was suspended with pay until a disciplinary meeting was held. Following an investigation the disciplinary meeting was held on the 23rd of November 2009.

An error was noticed that 2 bottles of washing powder at €9.50 each totalling €19.00 were scanning as 2 bottles of fabric softener on promotion as 2 for €4.00 saving €15.00. This error was noticed by the claimant at 9.07am, she purchased the goods at the incorrect price at 2.05pm and served another staff member the goods at the wrong price at 6.08pm. Neither the claimant nor her representative disputed the allegations. The claimant took advantage of a pricing error in head office when it was her responsibility as systems checker to report/rectify the error as soon as it is discovered. This constituted Serious Misconduct. The claimant was dismissed, confirmed in writing on the 3rd of December 2009.

The employee relations manager (TH) at the time of the claimant's dismissal gave evidence. The claimant appealed the decision to dismiss her by letter of the 18th of December 2009. The grounds of appeal were; that proper procedures were not adhered to at the first meeting, the proportionality of the sanction, that the claimant's length of service was not given sufficient weight and the distress the situation had caused the claimant. The appeal took place on the 13th of January 2010 with the claimant and her representative. The claimant's representative stated that advantage had been taken of a head office error before but he gave no further information. TH upheld the decision to dismiss the claimant as the bond of trust that needs to be held had been broken; she was in a position of trust as a systems checker, the breach of trust is more important than the level of financial loss. TH maintains that 'by not bringing the error to the company's attention in the first instance was wrong and then it was further compounded by her taking advantage of that error in the afternoon.'

Claimant's Case

The claimant commenced employment on the 10th of November 1994 as a sales assistant. The claimant had been in the role of systems checker for the previous 10 years, her duties included price changes and emergency withdrawal of products if an error was discovered. The claimant disputes ever having seen the disciplinary or honesty policy. The claimant maintains that a number of signatures next to training records are not hers. The respondent produced a signed acknowledgement of receipt of the company handbook; the claimant accepts it is her signature.

The claimant signed a number of contracts namely in 2002, 2003 and 2007.

On the morning of the 6th of November the claimant discovered a price error on washing powder. She did not report it to the manager BM but did send an email to head office to fix it. The claimant does not know why she did not raise the fact that she sent an e-mail before today's hearing. The claimant admits purchasing the goods at the incorrect price at lunchtime.

On Saturday the 7th of November BM called the claimant to his office. He informed the claimant that he was aware she had purchased the goods at the incorrect price, that it was being investigated and he would speak to her on Monday. BM did not say what the repercussions would be. The claimant had offered to pay the money back but BM said it was too late. On Thursday the 12th of November the claimant was called to the office and was informed she was being suspended for a week on full pay while the incident was being investigated. The claimant believes the delay until Thursday took place as her replacement was out on sick leave.

The disciplinary meeting took place on the 23rd of November where the claimant's rep responded to the allegation saying 'this is not a sacking offence.' The claimant was dismissed and she appealed that decision. The claimant was contacted a week after the appeal meeting and told it had failed.

The claimant gave evidence of her loss and attempts to mitigate her loss.

Determination

In view of all the circumstances the Tribunal find that the initial procedures in the disciplinary process were flawed namely the first meeting with the claimant on the 7th of November. The respondent was fully aware of the incident on the 6th of November but allowed the claimant to continue working after this meeting until the 12th of November 2009. The Tribunal find that the claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and awards the claimant €750.00 in compensation.

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 is dismissed as there was no evidence adduced to support the claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)