

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE *-Claimant*

CASE NO.  
UD2111/2010

MN2072/2010  
WT938/2010

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: Ms M. Levey B.L.

Members: Ms J. Winters  
Mr J. Flannery

heard this claim at Dublin on 12th March 2012 and 25th June 2012 and 26th June 2012

#### **Representation:**

Claimant: Mr. John Wilde Crosbie B.L. instructed by Doyle & Company, Solicitors,  
123 Cabra Road, Dublin 7

Respondent: Mr. Eamonn McCoy, IBEC, Confederation House, 84/86 Lower Baggot Street,  
Dublin 2

Dismissal as a fact was not in dispute.

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

The Operations Manager gave evidence to the Tribunal that he commenced in this role from the end of February 2010. He was line manager to a number of express store managers, including the claimant. The Operations Manager conducted an investigation which ultimately resulted in the termination of the claimant's employment.

The claimant was due to relocate to another store. As was normal practice, the incoming manager (BB) oversaw a safe check. A safe check was performed to verify how much cash was in the premises and to verify the position of the store across a number of areas. BB realised that there were a number of reporting discrepancies. BB reported to the Operations Manager that €900 was physically not in the safe but was accounted for on the safe check book. After BB

confirmed this to the Operations Manager, an investigation was conducted.

During this investigation the Operations Manager discovered that the sum of €900 was broken into three parts. A sum of €500 was referenced to an email in the safe check book relating to expenses paid to an employee who had worked on a project in store.

A sum of €300 was recorded with the letters LK beside it. LK was a former employee whose holiday pay had been incorrectly calculated. A former store manager had issued LK with an advance of €300 and there was an outstanding IOU to LK for this sum. As LK made deliveries to the store, the Operations Manager would have expected the claimant to have made some efforts to recover the money. The Operations Manager took a statement from LK who verified that he owed €300. The Operations Manager told him that he should contact the new store manager (BB) about repaying the sum.

A sum of €100 was recorded and referenced with SG. On investigating this, the Operations Manager discovered that it referred to a staff gift. Each staff member in the store was given €20 and a €3 scratch card by the claimant at Christmas. In previous weeks the figure was recorded as a higher sum. It had been reduced four times by the value of €50 each time. The Operations Manager spoke with staff in the cash office and was told about the staff gift and that the sum was being paid back from petty cash at a rate of €50 per week. The Section Manager also made a statement in relation to this as part of the investigation. The money was taken from the safe in the store and broken down into envelopes and given to staff as instructed by the claimant. The respondent company does not give cash gifts but provides its employees with a bonus at Christmas.

The Operations Manager outlined to the Tribunal that the respondent's stores have a "paid out" facility to allow for the use of petty cash for expenses that may occur. However, the Operations Manager found a number of "paid outs" that caused alarm as he did not recognise them as legitimate paid outs. He provided examples of these to the Tribunal. A store manager is authorised to do a paid out only up to the value of €100 and with valid reason.

There was also a further issue with cheques to the value of €1,714.47. These cheques were actually lodged on 14 September 2009. However, the safe check documents did not reflect this and the value of the cheques were carried on the safe check until 7 February 2010. During the investigation employee M told the Operations Manager that she had raised the issue with the claimant.

The Operations Manager acknowledged that the company was not at a loss as a result of this as the cheques were social welfare cheques relating to staff sick leave. However, the problem was that the cheques were recorded for a number of months in the cash office but were not physically in the store. The Operations Manager was very concerned that this had happened.

Three investigation meetings were held with the claimant between 6 March and 15 March 2010. The Operations Manager put the matters to the claimant but he was not satisfied with the general explanations offered by the claimant. He put it to the claimant that the manner in which certain matters were recorded in the safe check was not in line with company policy. He also raised the issue of a number of paid outs with the claimant which he believed related to items such as parking and clamping fees based on a number of statements from staff. In some cases the paid outs for cash were performed by the claimant or else by a staff member whom he had instructed to perform the paid out. The claimant did not dispute paid outs for parking were

done but maintained he had authority to do so. The claimant maintained that he had authorisation from the Group Personnel Manager to park at the store. However, the Personnel Manager provided a statement on 16 March 2010 that she had not given the claimant authorisation to park outside the store and have the company pay for parking.

It was not normal practice to see re-imbursements for these items and the total value for these items was unclear as petty cash vouchers were never completed nor receipts presented. This was failure to complete routine documentation and constituted serious misconduct. The unauthorised payment of parking fines (clamps) and parking charges from the store's petty cash was a breach of company policy.

There was also an IOU for €200 with the claimant's name beside it. When he spoke to the claimant about this the claimant said that he had hired a van from a friend to move stock to other stores as the stock room was congested. The Operations Manager was unable to find a receipt for van hire. However, another staff member told him that the sum was a loan given to the claimant in May 2009.

The claimant said he had known other stores to provide a staff gift but he could not remember what stores. The claimant mentioned that he had put in some of his own money against the cost of the staff gift and that the section manager was aware of this. However, when the Operations Manager interviewed the section manager he did not know of this.

As part of the investigation the Operations Manager found that employee M had been instructed by the claimant to put through paid outs against the staff gift in small amounts. The Operations Manager viewed this as a reluctance to put it through as one item in case it drew attention. Had the claimant put in his own money, as he alleged, then there would have been no need to perform the €50 paid outs. The Operations Manager could not prove nor find evidence to support the claimant's allegation that he had put his own money against the cost of the staff gift.

The respondent's petty cash guidelines were outlined to the Tribunal. During the investigation the claimant had raised the issue that he did not understand and was not trained on petty cash guidelines. However, an email was sent to all store managers during January 2009 requesting them to read the paid out letter and policy attached. The claimant's actions did not comply with the policy which stated that staff gifts could not be reimbursed via petty cash. In addition the use of the company's paid out procedure is subject to guidelines and controls such as store managers not being allowed to authorise his/her own expenditure. The claimant breached the policy over 15 times.

The Operations Manager stated that he had completed a lengthy investigation process. From the initial investigation meeting he had outlined to the claimant that the matter was very serious and could lead up to and including dismissal. He believed he carried out a detailed investigation and considered all of the facts and information from the claimant. Indeed as part of the investigation he went to the previous store where the claimant held the role of manager but he found the procedures in that store to be very good.

The Operations Manager felt the manner in which the paid outs were conducted was non-compliant in relation to the respondent's procedures. Following a disciplinary meeting on 16 March 2010, the claimant was informed at an outcome meeting on 25 March 2010 that the Operations Manager had reached a decision to terminate his employment.

A letter of dismissal dated 1 April 2010 issued to the claimant and stated that he was dismissed on grounds of serious misconduct for breach of company honesty policy, failure to properly complete routine documentation procedures/or falsification of such documents and unauthorised personal use of company property, facilities or resources.

The claimant's personnel file was not taken into consideration when the decision to dismiss him was taken as the file could not be located. Three different members of staff were responsible for the safe during the claimant's employment at the store. The Operations Manager disputes that there was an authorised IOU system in place in the respondent and that Christmas Gifts are ever given to staff out of petty cash. He had an issue with the €200.00 not being put directly into the cash book (for the Christmas gifts), that the van rental did not have a receipt and that the correct cost centre was not used in accounting for an authorised payment.

The Operations Manager is not concerned with parking arrangements in other stores only that the claimant did not retain any receipts for his parking and AC denied authorising the practice. The value was a few hundred euro. The Operations Manager determined that money was being taken from the store without authorisation, receipts or following the correct procedure. The conclusion was the claimant was being 'dishonest.'

A complaint was made against the claimant by (DB) for not returning coupons to the head office in a timely manner. The claimant did complain about the store being under staffed. The claimant attributed staff shortage as the reason he did not return the coupons as promptly as he should have. No disciplinary action was taken against the claimant.

The claimant was contacted and asked to help 'sort out' the cheque issue. The Operations Manager does not recall when this meeting took place only that he suspended the claimant pending the outcome of the investigation. The respondent was unable to produce the procedural document at the hearing stating that the claimant had to be suspended at that stage. The investigation discovered that the cheques had been lodged and were not 'missing.' The Operations Manager consulted with HR throughout the process.

The claimant's successor (BB) gave evidence. BB made a complaint and gave a statement in relation to the €900.00 but took no further part in the process.

A Section Manager (M) gave evidence that she explained the breakdown of €900.00 to BB. M was questioned as part of the investigation. M did the €50.00 'paid-outs' for the Christmas gifts on the claimant's instruction. M also did the 'paid-outs' for the claimant's parking and clamping charges without receipts.

A Section Manager (C) gave evidence that she was interviewed as part of the investigation. C entered the parking and clamping payments for the claimant as 'travel expenses' as there was no heading in the cash book for parking. She does not believe any other manager got paid for their parking or clamping charges. C has no recollection of a van hire.

Another Section Manager/Duty Manager (B) gave evidence that he and the claimant discussed the Christmas staff gifts and he physically put the €20.00 and the scratch card into the Christmas cards for the staff.

## **Claimant's Case**

The claimant worked for the respondent from 2003. His career progressed very well. He worked in this store with another manager (DH) before he became the Store Manager. His and the Store Manager's parking were paid for at that time. The claimant moved to another store and then was informed of his promotion by the Area Personnel Manager (AC) back to this store. The claimant was concerned about parking in the store and was informed that he was to park in another store and 'from there do what you got to do', AC was aware of the parking arrangements in the store. The parking tickets were always paid and never questioned; it was standard practice in city centre stores.

The claimant only ever received 1 hour of basic cash office training; he asked on numerous occasions for additional training. The store was so busy he left the cash office management to the more experienced people in the cash office. As he had no cash office experience as far as the claimant was concerned IOU's were standard practice as everyone did them eg. for ink cartridges/vans etc. The claimant always signed everything and endeavoured to leave a clear paper trail. There were holes in his procedures but 'you have to know the procedures first.'

There had to be a van hired on occasion to move stock; if there was an inspection and the stockroom was too full the stock had to be cleared out temporarily until the visit was over. The cash office receipts were sent to head-office on a weekly basis; the claimant believed all the practices were fine as the receipts had never been queried.

There was constant staff shortage in the store. A previous manager had to return on occasion to operate the cash office. The situation was brought to the respondent's attention but it was never resolved. The claimant was in receipt of a Christmas gift in previous stores; he did not name them during the disciplinary process as he did not want to get anyone in trouble. The claimant believed the Store Manager had the authority to give staff gifts.

The €50.00 paid-outs for the staff gifts were marked in the cash book as 'staff gifts' as were the parking/ clamping payments. There was never an intention to cover up these payments.

The claimant was not aware that he was attending a formal meeting that could result in disciplinary action. He was offered representation but no further information. The following week, around the 16<sup>th</sup> of March the investigation meeting took place; the claimant felt it was a 'dismissal process' and not an investigation as his explanations were not listened to or considered. He discovered that AC had denied giving him permission to 'do what I had to do.' After this meeting the claimant discovered that his position in the store had been replaced; it was announced at a store wide staff meeting. A further meeting was held on the 25<sup>th</sup> of March where the claimant felt badgered and felt that it was not a fair hearing. The Operations Manager and AC left the meeting to confer.

The claimant was summarily dismissed by letter given to him on the 25<sup>th</sup> of March. The claimant appealed this decision. The appeal was heard by an Area Manager (SH) and the Employee Relation Manager (AM). As AM had been consulted by the Operations Manager from the beginning of the process the claimant felt this to be unfair.

### **Determination**

The Tribunal carefully considered all the evidence adduced over the course of the hearing. The Tribunal determined that the respondent's actions were disproportionate to the offence. The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the claimant is awarded €50,000.00 in compensation.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 succeeds and the claimant is awarded €3,408.28 being the equivalent to 4 weeks' pay in lieu of notice.

The claim under the Organisation of Working Time Act, 1997 is dismissed as it is being pursued in the correct forum.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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