

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD607/2011  
MN646/2011

against

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy SC

Members: Mr R. Murphy  
Mr J. Maher

heard this case in Dublin on 27 July 2012 and 26 October 2012

Representation:

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Claimant(s):

Respondent(s):

The determination of the Tribunal was as follows:-

Claims were brought under unfair dismissal and minimum notice legislation in respect of employment as a garage forecourt controller between January 2007 and 21 October 2010. It was alleged that the claimant was summarily dismissed after being accused of taking money.

The employer's position was that a container for six hundred euro went missing from the 20 October 2010 takings. PM (a director), FN (area manager), PRV (an employee) and the claimant all searched for it. At no time did PM blame anyone or indicate that anyone might have stolen the container as he would not do so without watching the video. (A container had previously gone missing and it had been found in a bin after a video had been checked but, this time, the bins had been collected.)

In the material instance, the respondent, having gone to the video, found that the claimant had taken stock (minerals and confectionery) home without paying and had also opened up late and, to the amazement of PM, walked out of his shift over an hour before it finished. The claimant had been warned several times previously. After video footage was viewed by PM and FN the

claimant was brought into the office and shown the video. When the claimant offered no excuse PM made it clear that this was not about the missing container but about what PM had uncovered when checking the video. PM then told the claimant that he would prefer if the claimant did not work there again as he had been warned so many times about being late and leaving before his shift finished (a sackable offence on the contract he signed). Garage staff were available to corroborate PM's experience of the claimant. Although the video only recorded for one month the claimant had never denied the accusations against him.

### **Determination:**

The Tribunal heard testimony from the claimant and witnesses from the respondent. The Tribunal finds that the claimant was not credible and does not accept his evidence. However, the Tribunal makes a finding against the respondent, because there were no written warnings, that the claimant had not been adequately disciplined. The claimant had not been clearly warned that he was liable to dismissal. When the claimant was brought in he did not know that he was liable to dismissal. The Tribunal is of the view that PM (director of the respondent) would not have dismissed the claimant at all if it had not been that a container of takings had not gone missing. The respondent accepted that the claimant could not be held responsible for this loss.

As the respondent decided to dismiss the claimant rather than give him a further warning, the Tribunal finds the dismissal to have been procedurally unfair, albeit with a very substantial contribution by the claimant.

Section 7 (1) of the Unfair Dismissals Act, 1977, as amended by section 6 (a) of the Unfair Dismissals (Amendment) Act, 1993, provides:

“Where an employee is dismissed and the dismissal is an unfair dismissal, the employee shall be entitled to redress consisting of whichever of the following the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers appropriate having regard to all the circumstances:

- (a) re-instatement...
- (b) re-engagement...
- (c) if the employee incurred any financial loss attributable to the dismissal, payment to him by the employer of such compensation in respect of the loss (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under section 17 of this Act) as is just and equitable having regard to all the circumstances...”

In all the circumstances of this case, the Tribunal, in allowing the claim under the Unfair Dismissals Acts, 1977 to 2007, considers compensation to be the appropriate redress and, given the claimant's very substantial contribution to his dismissal, unanimously deems it just and equitable to award the claimant the sum of €2,000.00 (two thousand euro) under the said legislation.

In addition, the Tribunal, allowing the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, awards the claimant the sum of €784.00 (this amount being equivalent to two weeks gross pay at €392.00 per week) under the said legislation.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

