

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.  
UD2112/2010

EMPLOYEE *-appellant*

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE

-v-

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr D. Peakin  
Mr P. Trehy

heard this appeal at Dublin on 13th July 2012

#### Representation:

Appellant: Ms Aishling Ní Chaoláin BL instructed by Mr. Niall Murphy  
Solicitor, Murphys, Solicitors, Mount Clarence House, 91 Upper  
George's Street, Dun Laoghaire, Co Dublin

Respondent: Mr Michael McGrath, Ibec, Confederation House,  
Lower Baggot Street, Dublin 2

#### **Background:**

This case is before the Tribunal by way of an employee appealing the Decision of a Rights Commissioner, Ref: r-081638-ud-09/pob under the Unfair Dismissals Acts 1977 to 2007. The employee is the Appellant and the employer is the Respondent.

The respondent company is a multiple food and goods chain store. The employee was employed as a general assistant in the respondent company. The employee was on duty on the night of 30<sup>th</sup> January 2009. As his break time was approaching he picked a steak portion to cook for his consumption on his break. On his way to the canteen he realised he did not have his wallet with him. He proceeded to the canteen and cooked and consumed the steak. He returned to the shop floor and he realised that there was no one on the shop floor that he knew well enough to ask for a loan of money to pay for the steak.

When he finished his shift he was approached by the duty manager and a security officer and was told that they were conducting a staff search. He was asked to empty his pockets and was asked if he had purchased any items. He said he had not purchased any items. He then clocked out.

On his way out he was stopped by the store manager and his section manager and they went to the office. He was asked what he had eaten on his break. He explained that he had mislaid his wallet and was going home to look for it and it was his intention of returning with money to pay for the steak. The store manager told him that he was being suspended with pay pending investigation. He went home and returned with money to pay for the steak and the store manager refused to accept payment.

An investigation meeting was held on 12<sup>th</sup> February 2009. The events of the night of 9<sup>th</sup> January were detailed again. The meeting ended and the store manager said he would need to look into matters further and that the suspension would continue.

A number of weeks passed and the appellant returned to the store to clarify the situation. He was told on the shop floor that he was dismissed and that a letter to that effect had been sent to him.

The appellant appealed the decision to dismiss. The appeal was heard by the regional development manager and the appeal failed.

The Tribunal heard evidence from the store manager. The group personnel manager gave evidence as to the appeal process that she had presided over.

The Tribunal heard evidence from the Appellant.

The Tribunal heard closing submissions from both representatives. Counsel for the appellant argued regarding the procedures and proportionality of the decision to dismiss and that it was an honest mistake of the appellant.

### **Determination:**

It would have been reasonable of the employee to go to his manager to inform him that he had no money. He had all of the night to inform management. The onus was on the employee to do this. He failed to do this or to put matters right. The claimant took the food cooked it and consumed it. It took the claimant some time to admit he took the food. Regardless that he admitted consuming the food, the employee failed to convince the Tribunal that he would have paid for the food had he not been found out.

The appeal under the Unfair Dismissals Acts 1977 to 2007 fails and the Tribunal upholds the

Decision of the Rights Commissioner ref: r-081638-ud-09/pob.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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