

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE

- claimant

CASE NO.

WT154/2011

UD442/2011

Against

EMPLOYER

- respondent

under

ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr J. Horan
Mr F. Dorgan

heard this claim at Carlow on 7th June 2012 and 18th October 2012.

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:-

At the outset of the hearing the claim under the Organisation of Working Time Act 1997 was withdrawn.

Respondent's Case:

The respondent is a bookmaker with several betting shops throughout Ireland. The respondent bought three shops from company S. The claimant worked in one of these shops, Shop B. Company S had operated telephone betting and credit betting and this practice continued for some time in Shop B. This was unusual.

A pilot scheme of telebetting was introduced in six shops in March 2007. It was rolled out in shop B. In autumn 2007 credit betting was eliminated.

The company operates a security enquiry and investigation procedure to ensure that all security matters are dealt with in an efficient and professional way. All employees are regularly sent

booklets, briefs and memorandum which give clear guidance and assistance to enable the business to operate efficiently and safely. Employees are furnished with an Employee Handbook on commencement of employment. He signed for and was furnished with his handbook on 3rd March 2007. This handbook was subsequently revised in 2010 and again all employees were furnished with a revised copy. The simple rule is no money, no bet. The respondent has authorised credit betting for selected high value customers in selected remote locations, but these must be agreed at Senior Manager level with very strict limits in place.

A security enquiry was carried out on 11th October 2010 by COK. CCTV footage showed that the claimant entered the shop floor and appeared to go where a customer had been sitting. The claimant subsequently removed a slip from his right hand pocket and scanned it. There was no customer present at the counter at time of pay-out. This led to an investigation and COK interviewed the claimant. The claimant contended that the slip was given to him by a customer to put cash into his (the customer's) account. Several more slips were written by the claimant and he then admitted placing bets for his brother and some customers standing outside smoking. He also admitted to taking telephone bets. The claimant admitted that he did not take bets unless he had the money. He had taken bets for the manager of another betting shop but the manager always sent one of his staff in within ten to minutes to pay up. It also appeared that the claimant had manipulated amounts on slips. All the claimant could say was that the till balanced at the end of each day. The claimant was subsequently suspended on full pay.

JC is Area Manager responsible for thirty two to thirty five shops. She is in this role for six years having worked for many years previously in a supervisory role.

She got on well with the claimant who managed one of the respondent's shops. He was dedicated to the shop but he declined to listen and did not have good procedures in place.

Following the claimant's interview with COK, JC invited the claimant to a meeting on 21st October 2010 to discuss matters. JC had previously met the claimant in February 2009 and at that meeting told the claimant under no circumstances could he credit bet. He received a Stage 3 warning at that time as there were mitigating circumstances. The company previously had credit betting in the shop. A sum of €8000.00 had to be written off. EB, District Co-ordinator was in attendance as a note taker at the meeting on 21st October 2010. At that meeting the claimant admitted that he had read the handbook and was aware that it was gross misconduct to credit bet. He also admitted to placing bets for customers by credit betting. The claimant contended that bets are always paid and that the till always balances at the end of each day. One customer K was an exception to credit betting. He had been permitted to do so by the MD of the company. JC said she had no option but to dismiss the claimant with immediate effect for credit betting and placing bets as per page 50 of the Company Handbook, "Staff betting on their own or anyone else's behalf" and "acceptance of a credit bet which is processed without payment in full at time of acceptance".

The claimant was offered a right of appeal at the conclusion of that meeting.

JM is Head of Operations and following the claimant's appeal of the decision to dismiss him she conducted an appeal hearing on 19th November 2010. She read through the investigation report and her main concern was that the claimant did not see credit betting as an issue. The claimant had already received a Stage 3 final warning. He was not observing procedures. It was clear to JM that gross misconduct had been committed. The claimant had not received any personal gain. The claimant acknowledged that what he did was wrong and

that credit betting was forbidden in the store. The claimant wanted her to consider the good record he had in the company. He brought no new evidence to the appeal hearing. He should not have processed family bets. That had been discouraged. The claimant said that he only processed credit bets for customers he knew would pay.

JM looked at demotion to Deputy Manager as an alternative to dismissal but did not consider this to be a viable option.

By letter dated 23rd November 2010 JM upheld the decision to dismiss the claimant.

Claimant's Case:

The claimant commenced employment on 26th February 2007. He manages Shop B. He never received any training for his role. However he went to England and was trained-in on tele betting towards the end of May 2007. He was not aware of the existence of a list which contained customers who had authorisation to credit bet.

While the claimant acknowledged that he accepted credit bets the till always balanced at the end of the day. He had never made any personal gain. He took credit bets from four prominent customers and they always paid at the end of the day. He had spoken to a manager in another shop and that shop had a credit betting facility in place. The respondent had targets to be met and for the claimant to lose customers would be a downfall to him. He never made a conscious decision to break the rules. He did not want to be in a position that the respondent would have to close his shop.

The claimant had wanted to work his way up in the company. He saw a long term job there and he enjoyed his work. He wanted to keep his job and was willing to take a demotion. He always had the respondent's interests at heart.

He felt another caution would have been appropriate rather than be dismissed.

The claimant secured full time employment in February 2012.

Determination:

This claim comes before the Tribunal as a claim under the Unfair Dismissals Acts 1977 to 2007. The claim under the Organisation of Working Time Act 1997 was withdrawn.

The circumstances which led to this case was the summary dismissal for purported gross misconduct by the claimant in relation to his practice at work of accepting "credit betting" (i.e. a bet accepted when the person placing the bet was absent from the shop and made the payment for the bet at a later time) from individuals in the bookmakers shop wherein he was the Manager.

The claimant had previously been issued with a warning in February 2009 for such behaviour, however this warning was only placed on his record for a period of 12 months.

Having assessed all the evidence and the submissions provided by both parties over the two days of the hearing, the Tribunal does not believe that the behaviour complained of and the

alleged misconduct constitutes misconduct which warranted dismissal from the employment. The Tribunal believes that the dismissal was not proportionate to the alleged misconduct. The Tribunal has read the Judgment of Mr Justice Flood in the case of Frizelle –v- New Ross Credit Union Limited [1997] IEHC 137 (High Court on Circuit) which states *inter alia* in examining the principles to be established to support the decision to terminate the employment for misconduct that “*the actual decision, as to whether a dismissal should follow, should be a decision proportionate to the gravity of the complaint, and of the gravity and effect of dismissal on the employee.*”

Therefore in coming to this conclusion, the Tribunal decides that the dismissal was unfair.

In the calculation of any financial loss attributable to the dismissal, the Tribunal has regard to Section 7(2)(f) of the Act (as amended by Section 6(6) of the 1993 Act) and the extent to which the conduct of the claimant contributed to the dismissal.

In all the circumstances, the Tribunal awards the claimant the sum of €2,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)