

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1092/2011
MN1189/2011

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: Ms N. O'Carroll-Kelly B.L.

Members: Mr A. O'Mara
Mr O. Nulty

heard this claim at Monaghan on 11th October 2012

Representation:

Claimant: Wilkie & Flanagan, Solicitors, Main Street, Castleblayney,
Co Monaghan

Respondent: DAS Group, Europa House, Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case:

The owner/director PW gave evidence that the respondent is a pharmacy chain. During 2010 it became apparent that till discrepancies were occurring at one of their stores. During July/August of that year discussions took place with all employees, reasons were sought and everybody was aware of the situation.

On 8th February 2011 the store manager rang PW and told him the tills were down again from the previous evening. They both began a process of going through the dates the tills were down and the staff that worked on those days. PW was totally shocked to realise that the claimant who had worked for him for 10 years was the culprit. He spoke with the claimant on 9th February and gave

her a list of discrepancies. He told her they needed an explanation. That evening PW asked her about the tills for the day. She said they were ok even though they were out by 20/30 euro. PW also got a detective from the local Garda station to go through the evidence, he told PW "it was as obvious as day light".

PW requested a meeting with the claimant on 19th February advising her to bring a representative with her. The claimant was suspended with pay pending an investigation. Another meeting was held on 26th March, the meeting was short but he asked the claimant for any feedback regarding the allegations. She said very little throughout, she just referred to a type written letter which she gave to the respondent. At a further meeting on 1st April 2010 he again asked the claimant to elaborate on the allegations, she just referred to the type written page. PW felt he was up against a brick wall and was left with no option but to dismiss the claimant.

Under cross examination PW said that monies were taken out of the tills for various things but written notes would be put into the tills to account for the difference. There was no counter signing of the notes. Anybody can use any till. Money is taken from each till at end of day by whoever is working on that till, and the money is then brought to the office by that same person. Nobody counter signs the reading/balance.

The discrepancies were monitored over a period of 8 months and pointed to the claimant all the time. The manager put an extra €50 in a lodgement and it went missing, the claimant was the only one who could have taken it. Up to February 2011 PW said he had no idea why the discrepancies were occurring, he hoped it would just stop after he spoke with staff. The tills have not been down since the claimant was dismissed. Asked if the claimant was ever accused for stealing money or of theft PW said no, it was cash discrepancies. Asked about the €50 discrepancy he said the money was put in the bag before the meeting on the 9th February so he already knew the outcome at that meeting. The manager had put the extra money in the lodgement and he was the last to leave the building. He was able to tell from his alarm system logs that nobody accessed the building and the manager was the first person in the next morning. The lodgement made by the claimant was €50 short. PW was sure that the manager had followed his instructions regarding the placing of the extra cash in the lodgement. Voids and returns are easy to spot on the tills.

EG gave evidence that she took the minutes of a meeting on 19th February. At the meeting PW just wanted to the claimant to explain where the money was. The claimant said the system being operated in the pharmacy was a poor one, up to four people could use the tills on any one day. The claimant later told EG that she didn't want to operate the till anymore

Claimant's case:

The claimant gave evidence that PW asked her to check the till rolls on 5th February 2010. She didn't find any discrepancies. On the 9th February he came in to the pharmacy around 3pm and when she cashed up he asked her to explain why the tills were up and down, he also said that people who steal money will be caught and hoped she had nothing to do with it. She told him she didn't want to do the tills anymore, the manager should do it. He replied that "she was making herself look guilty" and to continue doing what she was doing. The claimant was off sick on 11th and 12th February and returned to work on 16th. That day PW telephoned her at 9.30am. She was asked to leave the premises and return her keys but to wait on a fax before she left. She had to wait for one hour for the fax which confirmed she was being suspended. She asked him what to do next and he told her to come in on the 19th for a further meeting.

She attended the meeting of 19th with her husband. They asked if they could record the meeting, PW refused so they asked for someone to come in and take minutes.

PW asked for explanations and, in a round- about way, was saying she was stealing from him but never actually said it outright. She gave some answers to his questions and told him that the system being used was wrong. Everybody had access to the tills and everybody had access to the keys of the safe. On 13th March the claimant's solicitor telephoned her to say a Garda detective had been in touch with their offices, that a €50 note had been planted in a lodgement, it was missing, and she was being accused. Two days later she went to the Garda station of her own free will, she was arrested, questioned and released.

A further meeting took place on 26th March. The claimant was given a list of till balances and statements given by other employees. The statements were taken on 12th February. She asked why she hadn't seen the statements before the 26th March. She received her letter of dismissal on 1st April 2011.

Under cross examination the claimant said she had a good working relationship with her employer up to the events in February 2011. He never gave her a verbal warning, there was an accusation but no warning. The respondent took statements from other employees, she was never made aware of them and was given no opportunity to make a statement herself. The claimant could not explain the missing money but stated that nobody could prove that the manager put it in the lodgement in the first place.

Determination:

The Tribunal have carefully considered all of the evidence together with the documentation handed in during the hearing.

The respondent's disciplinary process was seriously flawed. It would seem from the evidence that PW formed the opinion that the claimant was responsible for the misappropriation of money and then commenced an investigation to prove his belief. The claimant was suspended by letter dated the 23rd February, 2011 pending an investigation, however, the very next day 24th February, 2011, statements were taken by An Garda Síochána in relation to the matter. The respondent must have reported the matter to An Garda Síochána on or before the 24th and prior to carrying out any investigation. Furthermore, statements were taken from other staff members before the claimant was even aware that there was an issue. The claimant was not offered the opportunity to make a statement herself nor was she given a copy of the statements taken in advance of the disciplinary meeting. At the meeting she was simply asked "could she explain the missing money". The claimant's failure to come up with a creditable or indeed any explanation was deemed in the eyes of PW to be an admission of guilt or at the very least proof that she has misappropriated the funds. Following the dismissal the claimant was not afforded the opportunity to appeal the decision. The Tribunal also note that the respondent did not follow its own disciplinary procedure and had no explanation why the procedure was not followed.

In all of the circumstances the Tribunal find that the Claimant's claim under the Unfair Dismissal's Act succeeds and accordingly award the Claimant the sum €10,000.00.

The Tribunal also find that the claimant is entitled to 6 weeks gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 in the amount of €1595.64 (€265.94 per week).

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)