

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE *-claimant*

CASE NO.  
UD1424/2010  
MN1371/2010  
WT591/2010

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: Mr. L. Ó Catháin

Members: Ms. M. Sweeney  
Mr. J. Flavin

heard this claim at Cork on 16th January 2012

#### **Representation:**

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Claimant: Ms Jane-Anne Rothwell B.L. instructed by,  
Ahern Roberts O'Rourke Williams & Partners, Solicitors, The Old Rectory,  
Carrigaline, Co. Cork

Respondent: Mr. John Boylan, McNulty Boylan & Partners, Solicitors, Clarkes Bridge House,  
Hanover Street, Cork

Dismissal is not in dispute in this case therefore it is up to the respondent to prove the fairness of the dismissal.

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

The respondent is a family run fruit and vegetable business that supplies to bars and restaurants in the area. The Managing Director gave evidence that in May 2010 they became aware that there were sums of money unaccounted for. They put this down to mistakes and human error; they did not imagine any of their employees would take money from them.

A driver would make a delivery and return to the premises with the money and an invoice marked 'paid', the following day the transaction would be processed by administration. As money had gone missing around the May Bank Holiday 2010 this system was changed. The new system required that at the end of each day the driver put all the cash, dockets and a daily

cash sheet into a sealed plastic bag and put it in a post-box that had been installed in the office.

On the 17<sup>th</sup> of May (two weeks after the initial incident and the system change) the MD received a call to say that one of the driver's bags had €21.67 on the cash sheet but no invoice or cash for it. The driver (ES) was contacted; he told the respondent that he definitely got the cash and he did not understand what had happened. At that stage the respondent believed that the money could only have been taken by the driver (ES) or the administrator. As there was no invoice for the €21.67 the driver and the MD went to the delivery destination and asked for a copy of the invoice for the €21.67. When they returned to the office they discovered that the corresponding docket for the €21.67 had been deleted from the computer system. The respondent asked all the staff including the claimant if anyone knew what had happened. The claimant said he had no knowledge of the situation.

The respondent then contacted the software company to find out the exact time and date of when the record was deleted. On the 18<sup>th</sup> of May the MD was informed it had been deleted on Sunday at 12.20pm. The MD was aware that the claimant was the only person in the office on that day. The MD asked the General Manager (D) to review the CCTV to ensure no-one else had been on the premises that day. The CCTV confirmed that the claimant's was the only car parked at the premises. The MD does not recall the claimant ever making a complaint against the general manager.

The respondent requested a meeting with the claimant at 10.00am on Wednesday. The MD asked the claimant again about the missing money and he again said he did not know anything about the money. The MD put all the facts to the claimant; he could offer no explanation so he was informed he was being suspended with pay for one week pending further investigation. A letter was issued to him later that day confirming the suspension and enclosing a copy of the respondent's grievance and disciplinary procedure.

The claimant was asked to return his warehouse keys; on Friday when he was asked by (D) for the keys he admitted taking the money. On foot of this admission a notice to attend a disciplinary hearing was issued on the 21<sup>st</sup> of May. This letter offered the claimant the opportunity to bring a representative and informed him he would have the chance to review all evidence 'that formed part of this process.'

The disciplinary meeting took place on the 26<sup>th</sup> of May 2010. The claimant attended the meeting by himself and was asked on three occasions if he wanted a representative. At this meeting the claimant admitted to taking the money and deleting the docket from the computer system. The claimant said he needed the money for petrol. The meeting was adjourned.

After this meeting the MD considered the claimant's admission and explanation. The MD is of the opinion that the claimant could have borrowed €20.00 on Sunday and informed the respondent on Monday and there would not have been a problem. The respondent's problem was with the 'sneaky' manner in which the claimant went about taking the money, deleting the computer record and allowing the respondent to cast aspersions on other staff members. Given the claimant's long service (19 years) this was an 'appalling' act against the company and the other staff and was a serious breach of trust. Given the serious nature of the claimant's actions no other sanction other than dismissal could be considered. This decision was taken solely by the MD.

The claimant was issued a letter of dismissal dated the 26<sup>th</sup> of May 2010 stating that the

respondent deemed his actions to be gross misconduct and his employment was being terminated with immediate effect. The letter also informed the claimant of his right to appeal this decision. The dismissal letter had been drafted prior to the disciplinary meeting but the decision to dismiss was made after the meeting and only then was the letter finalised and given to the claimant.

The General Manager (D) gave evidence that he gave the claimant the letter of the 19<sup>th</sup> of May on the same date containing the grievance and disciplinary procedure. He then met with the claimant on the 21<sup>st</sup> of May and handed him the letter of the same date and watched as he read it; he also advised him to get representation. The claimant brought the grievance and disciplinary procedure with him to the meeting on the 26<sup>th</sup> of May. The claimant admitted to taking the money and said he did not know why he did it.

The General Manager was not aware of any complaint that the claimant might have made against him to (JC.) D did not say to the claimant ‘if you say I’m intimidating you, I’ll say you’re intimidating me.’ The prospect of dismissal was not contained in the letters as, until the claimant admitted the theft dismissal was not a consideration.

### **Claimant’s Case**

The claimant was happy in his employment until 2-3 months before his dismissal. He was initially a sales representative and then moved to the store house; he was in a position of responsibility. He worked every second Sunday. The claimant was not aware that money had been missing previously and that’s why the ‘post-box’ system was introduced.

The claimant felt intimidated by the General Manager (D); he felt that D wanted to put him under pressure. D said to the claimant, ‘you’re after reporting me so I’m reporting you to the boss for intimidation.’ Their relationship was always strained. He complained to another manager (JC) who said that he would ‘have a word with D.’

On Sunday the 16<sup>th</sup> of May the claimant needed money for petrol. As there was no petty cash on a Sunday the only option was to take it from the post-box. The claimant took the docket and the money out of the post-box and deleted the record on the computer. He retained the docket so he could pay the money back when he had it; he was aware that the amount was itemised on the cash sheet.

The claimant feared for his job and felt that if he was found out he would lose his job. The claimant was aware that the missing money was being investigated but he was not approached and was afraid to admit what he had done. He was aware that the administrator and the driver were the suspects for taking the money; he would not have let it get to the stage where either of their employments was terminated.

At the meeting on the following Wednesday the claimant denied taking the money. When the claimant was informed that they had ‘computer analysis’ he admitted what he had done. It was on Wednesday and not Friday that the claimant admitted to taking the money. He was informed and given a letter outlining that he was suspended with pay and told that they would be in contact.

After numerous phone calls the claimant met D on Friday where he was given a letter dated the 21<sup>st</sup> of May which included the grievance and disciplinary procedure. He also returned the keys

to the warehouse.

The claimant was never informed that the process could lead to his dismissal. The claimant did not think there was a possibility of dismissal when he attended the meeting on the 26<sup>th</sup> of May and therefore did not think he needed a representative. He was not aware that the respondent would be treating the incident as theft although he was aware at the meeting on the 19<sup>th</sup> of May that the respondent was investigating 'stealing.' At the meeting of the 26<sup>th</sup> of May the claimant apologised for his actions and was told by the MD, 'there's no point going through the procedure again (D) told me everything you said on Friday.' The MD said, 'give us 5 minutes to consider.' On his return the claimant was informed that his employment was terminated and was handed the dismissal letter.

**Determination:**

Having carefully considered the evidence available to it in this unfortunate case, the Tribunal was satisfied that the respondent was entitled to dismiss the claimant after the claimant had taken money (without leaving any note as to what he had done) and adjusted the respondent's records. The Tribunal was satisfied that the respondent's subsequent procedures were fair and reasonable. It was contended that there was at least one member of the respondent's staff glad of an opportunity to see the claimant leave. However, the claimant cannot blame anyone else for his dismissal. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

The Tribunal took the view that the claimant had been guilty of gross misconduct such that he had no right to notice. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails.

It was not established to the satisfaction of the Tribunal that the respondent was in breach of working time legislation. The claim under the Organisation of Working Time Act, 1997, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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