

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NOS.

EMPLOYEE – *claimant*

UD1454/2011
MN1536/2011

Against

EMPLOYER – *respondent*

EMPLOYER – *respondent*

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 E. Harrington

Members: Mr D. Hegarty
Mr J. Flavin

heard this claim at Cork on 8th February 2013.

Representation:

Claimant: Mr Martin Corbett of SIPTU,
Connolly Hall, Lapp's Quay, Cork

Respondent: Ms Siobhan McGowan of Purdy Fitzgerald Solicitors,
Kiltartan House, Forster Street, Galway

The determination of the Tribunal was as follows:-

Respondent's Case

The general manager gave evidence. At the time of the claimant's dismissal she was the assistant general manager. The claimant worked as a food and beverage coordinator and she usually worked as a cashier.

Every employee who operates a till is given a copy of the Cashier's Agreement. The terms of the agreement are explained to the employee and the employee completes a test. Then the employee signs the agreement. Failure to follow the procedure outlined is a seriousness matter and could result in disciplinary action. The cashier has sole access to a till drawer. If a

mistake happens there are procedures for dealing with it. The claimant signed off on the Cashier's Agreement in December 2009 following retraining due to discrepancies in her till. The claimant received a verbal warning at this time.

On 4th February 2011 a mystery shopper reported an issue with the claimant. The general manager looked at CCTV of the claimant's shift and saw breaches of the Cashier's Agreement. The general manager suspended the claimant with pay pending an investigation. The general manager wrote to the claimant asking her to attend an investigatory meeting and giving her details of her 4 alleged breaches of the Cashier's Agreement.

The investigation meeting was held on 24th February 2011. The claimant attended accompanied by her union rep. The claimant admitted breaching the Cashier's Agreement. The claimant had taken a float of €200 that she had signed for. However she took another €600 without signing for it. The manager who gave the extra money to the claimant did not inform the general manager. The manager's action resulted in disciplinary proceedings against him. The claimant did not give receipts to every customer and when customers did not accept receipts she did not dispose of receipts immediately. But she did dispose of receipts eventually. The claimant used an informal method of voiding mistakes.

The general manager did not provide the claimant a copy of the CCTV footage because she felt that it was not relevant.

Following the investigation meeting the general manager referred the matter to a second general manager for disciplinary action.

The second general manager gave evidence. She wrote to the claimant to invite her to a disciplinary hearing. The disciplinary hearing was on 7th March 2011. The same 4 points were put to the claimant. The second general manager did not give the claimant the CCTV that she requested. She looked at some transactions and asked the claimant to explain them.

Following the meeting the second general manager decided that the claimant should be dismissed. The claimant accepted that she had breached the Cashier's Agreement and she was aware of the importance of complying with it. In the second general manager's opinion there are no minor breaches of the Cashier's Agreement. She did consider other sanctions. Before making the decision to dismiss the claimant the second general manager looked at all the circumstances and examined all the options.

The operational manager gave evidence. She heard the claimant's appeal. The claimant accepted that she had breached the cash procedures but she argued that the sanction of dismissal was disproportionate.

The operations manager said that the respondent's business was fundamentally a cash business. The cash procedures were in place to protect both the business and the employees. The breaches that led to the claimant's dismissal were not isolated incidents.

The operational manager did not think the CCTV was relevant as the claimant acknowledged the breaches. Any breach of the procedures is serious. The claimant's appeal was not successful.

Claimant's Case

The claimant gave evidence. She had worked as a cashier in the food court. She got a float at the start of a shift. On occasion she got extra money from the safe in addition to the float. Managers did not have time to give change so the extra money was given on trust. The money came out of the safe and the money went back into the safe.

The claimant received a Verbal Warning in 2009 because on 3 consecutive days her cash was up or down. She never received a balancing statement and as a result felt under huge pressure when asked for an explanation after 6 days. Cashier's Agreement voids should be done in view of the cashier but this rarely happened. She could not know if voids were done. The claimant was upset by the verbal warning but did not appeal it bearing in mind that it would be gone in 6 months.

For a period before the 4th February 2009 business had been quiet. However on that day it was particularly busy. More than average customers came through. The claimant felt that the respondent was considering renegotiating her terms because they were more generous than those of other employees.

The mystery shopper asked the claimant about a transaction she had not registered. She did not decline to speak to the mystery shopper because she had nothing to hide. She explained and went to the general manager. The claimant's till was counted out of her view. She felt intimidated by the process from the start and felt that she was not given the opportunity to explain what had happened.

The claimant was concerned that the 15 minutes of edited CCTV she was shown were too short. The period of at least 10 minutes before the breaches occurred would have been relevant in enabling her to explain why the breaches occurred. Someone would go through and say I will pay for his items. Then the second person's transaction would not be registered because it had been included in an earlier transaction. The tills malfunctioned on occasion. Customers complained of delays getting through. She was under pressure on occasion. From time to time managers did spot checks on tills and no issues arose in relation to her till.

The meetings arranged by the respondent were at short notice. The claimant had difficulty arranging representation at such short notice. One day she visited the respondent's premises to deliver a letter by hand. She received a letter saying not to visit as it was a breach of her terms and conditions.

The claimant was annoyed that the second general manager did not view the complete CCTV before deciding that dismissal was the appropriate sanction. There was no allegation that the claimant had misappropriated funds.

The claimant felt that her breaches of the Cashier's Agreement warranted a Written Warning. She had worked hard for the respondent for many years.

The claimant established loss for the Tribunal.

Determination

The Tribunal carefully considered the evidence adduced. The respondent uses mystery shoppers routinely to monitor employee performance. When a mystery shopper raised concerns about the claimant's performance the respondent properly instigated an investigation. It seems to the Tribunal that when a large unexplained surplus of funds was discovered in the claimant's till the tenor of the investigation changed from routine monitoring to an enquiry into a potentially serious fraud. When an innocent and reasonable explanation for the surplus was forthcoming the respondent did not reduce the intensity of the investigation.

The Tribunal finds that the actions of the claimant, while amounting to breaches of the Cashier's Agreement, do not amount to misconduct that would warrant dismissal. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds and the claimant is awarded the sum of €17,500.00.

No evidence was adduced in relation to the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Tribunal makes no finding regarding this claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)