

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD2266/2010

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

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr S. Mahon  
Members: Mr P. Pierson  
Mr O. Nulty

heard this appeal at Longford on 19th January 2012, 8th May 2012, 24<sup>th</sup> July 2012, 31<sup>st</sup> October, 2012 and 21<sup>st</sup> February, 2013

Representation:

Appellant: Mr. Tom Rogers, John J Quinn & Co, Solicitors, Earl Street,  
Longford

Respondent: Mr. Paul Dunne, IBEC, Confederation House, 84/86 Lower  
Baggot Street, Dublin 2

This case came to the Tribunal by way of an appeal by the employee against the decision of the Rights Commissioner Ref: r-081842-ud-09/EOS.

### **Respondent's case**

The respondent is a bakery and the appellant commenced employment as a truck driver on 11<sup>th</sup> August 2000. However his role subsequently changed to that of security man and he remained in that position until he was dismissed on 9<sup>th</sup> February 2009. The reason for his dismissal was gross misconduct on the grounds that he had misappropriated company funds.

Initially the appellant met with the Transport Manager and agreed to resign his position when the Transport Manager asked him about the missing money. There had recently been a CCTV camera installed in the office. The Transport Manager explained that he approached the appellant and asked him if there was anything he wanted to make him aware of, he then pointed to the new camera and the appellant said "when your time is up, your time is up". He asked the Transport

Manager not to get the HR Manager involved and signed a letter of resignation. However the appellant subsequently went to a solicitor and the respondent then decided to carry out the company's disciplinary procedures. After an investigation and disciplinary hearing the respondent dismissed the appellant. The appellant chose to appeal this decision in line with the respondent's grievance procedures and the outcome of that appeal was a decision to uphold his dismissal.

The respondent was satisfied that the appellant had misappropriated company funds and presented CCTV footage to the Tribunal in support of their decision to dismiss the appellant.

### **Appellant's case**

The appellant denied taking the money he was accused of taking. He removed the cash from a petty cash box in the office but placed it in an envelope which he intended to give to the Transport Manager at a later stage. When the appellant met with the Transport Manager and was asked to sign a resignation letter he was taken by surprise and signed it without thinking about it.

After being dismissed the appellant went to his solicitor and gave the solicitor the envelope containing the money he was accused of misappropriating. The appellant had no opportunity to return the envelope to the respondent before he was dismissed.

### **Determination**

The Tribunal carefully considered the evidence adduced at the hearing. There was a clear conflict of evidence between the parties and the Tribunal prefers the evidence of the respondent.

The Tribunal is satisfied that the respondent followed fair procedures and acted reasonably in dismissing the appellant and that the appellant was not unfairly dismissed. Therefore the Tribunal upholds the decision of the Rights Commissioner Ref: r-081842-ud-09/EOS and the Appellant's appeal under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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