

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.  
UD423/2010

EMPLOYEE *-claimant*

against

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Herlihy  
Members: Mr. W. O'Carroll  
Mr. F. Dorgan

heard this claim at Limerick on 17th October 2011  
and 30th January 2012  
and 31st January 2012

#### Representation:

Claimant: Ms Karen Wall, Mandate Trade Union,  
Killoran House, Catherine Place, Limerick

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

#### **Respondent's case:**

The Tribunal heard evidence from a witness (EK) who was the store manageress at the time. She explained that the claimant participated in an induction course which included training in selling. She signed off on the claimant's induction. The claimant also got different types of training during her employment with the respondent.

The witness explained that if anything arose or came to her attention she would escalate the matter to HR.

There were a few issues regarding the claimant. The claimant phoned-in sick a lot. A lot of times the claimant did not comply with her requests. There were a lot of other staff complaining about the claimant. There were issues with the claimant being aggressive.

The witness explained that she left strict instructions that takings were to be lodged every two to three days. This was because they had no safe. She was away for a time and when she returned she saw that there was a very substantial amount of money on the premises. She looked over the security cameras and it was clear that money had not been taken out for lodgement. She reported this to HR.

Regarding sick days and days off the claimant would always take sick days either before or after her days off.

In 2009 the claimant was demoted and issued with a final written warning. The witness explained that the claimant took the sanction very well and carried out her daily duties.

Then the claimant had a lot of absences again and again did not carry out her instructions.

The witness was trying to build staff morale. It was difficult to discipline staff for absences when the claimant was absent herself and this was when the claimant was an assistant manageress. This caused low morale.

She had conversations with the claimant and she “rooted” for the claimant. She told the claimant that there was a new store opening in Cork and if she “knuckled down” there could be a potential promotion for her. However the claimant was demoted and there was no improvement.

The witness contacted HR as there was no improvement and they decided to carry out an investigation.

Documentation was opened to the Tribunal regarding an investigation with the claimant.

The Tribunal heard evidence from a number of witnesses for the respondent.

**Claimant’s case:**

The Tribunal heard evidence from the claimant. She commenced as a sales assistant and sometime later she was promoted to supervisor. She and SH (the current store manageress) ran the store. She and SH were then made equal assistant manageress. They got on very well together and consulted on everything.

They consulted on all staff matters. They did not have many problems.

EK commenced with the respondent in September 2008. The claimant was out sick when EK started. EK phoned her when she was out sick and she called in to meet EK while on sick leave.

On her first day working with EK, EK took “dumpers” off the floor. They had been told previously (by senior management) to leave the dumpers on the floor and she told EK this.

Later on when EK was totalling the tills she made a recommendation to EK and EK told her that she would reconcile the tills and that she could go home early.

She was happy that they had got a new manageress as they needed a new manageress.

On 11<sup>th</sup> November 2008 she was called into an investigation meeting and EK and another person was in attendance. She did not know that there was any problems. She then asked for her Trade Union representative and the meeting stopped.

A copy of correspondence to the claimant dated 12/11/08 was opened to the Tribunal:

“your manager (EK) attempted to carry out an investigation with you in the presence of SH(assistant manager) on Tuesday 11<sup>th</sup> November 2008. The preliminary investigation stage is used to establish if there is any prima facie evidence of misconduct before resolving the matter and going no further or referring the matter to disciplinary procedure. ....

“ ..when informed by EK that she wished to conduct an investigation with you in the presence of SH (assistant manager) you refused to participate, you stated that you would not answer any questions put to you by your manager unless it was done formally in the presence of someone from your union.

“ at your request the company will bypass the preliminary investigation stage which was to be conducted internally by your manager and proceed straight to a formal disciplinary meeting with you.

The disciplinary meeting will cover the areas that were meant to be discussed in the investigation on Tuesday 11<sup>th</sup> November 2008.

The reasons for the disciplinary meeting are therefore as follows:

- . Alleged failure to follow direct and lawful instructions on Monday 4<sup>th</sup> November 2008 (a copy of the diary entry, a statement from EK and statements from members of staff on the day are enclosed).
- . Alleged failure to follow direct and lawful instructions from your manager on Tuesday 14<sup>th</sup> October (statement from EK enclosed).
- . Alleged failure to follow direct and lawful instructions from your manager on Wednesday 15<sup>th</sup> October (statement enclosed).
- .Alleged use of aggressive behaviour and bad language to GMcA and in the presence of CE (statements enclosed).
- .Using bad language on the telephone to GD (HR officer).
- .Allegedly making a unilateral decision to discontinue the services of the stores window cleaner and engaging a new one without consulting your manager.”

The claimant gave evidence that she did not know that the manager was unhappy with her performance. She did do everything the EK had asked her to do on 14<sup>th</sup> October. On 15<sup>th</sup> she had been allocated three tasks: to price and re-package a wall unit, to “clean-out” the tills and to deal with damaged stock. She had difficulty with an Alan key or lack of same.

The claimant explained that the allegations were “out of the blue”. At some point EK told her that she could not speak to her anymore and that she would have to speak to HR. the claimant then spoke to GD the HR manageress. GD said to her that if she wanted to know what was going on she should have let the meeting (On 11<sup>th</sup> November) continue.

A letter to the claimant dated 25<sup>th</sup> March 2009 was opened to the Tribunal:

“RE: outcome of disciplinary hearing

EK (manager) held an investigation with you at 5pm on Tuesday 17<sup>th</sup> February 2009 in the presence of GD (company witness). The reasons for the investigation were listed as follows:

- .failure to follow cash handling procedures on w/e 07.02/09
- .level of absence
- .failure to follow an instruction-use of office.

The letter continues by outlining the hearing and ends by explaining the position of the respondent and the claimant is demoted as a disciplinary measure and given a final written warning to remain on her file for twelve months.

The claimant appealed the demotion but was unsuccessful.

The claimant decided that she could just “get on with her job” as she was no longer a manager.

Another letter of correspondence dated 10<sup>th</sup> September 2009 was opened to the Tribunal. The letter outlined other disciplinary matters and outlined meetings about the disciplinary matters. The letter ended in terminating the claimant’s employment.

**Determination:**

The Tribunal have carefully considered the evidence adduced in this case. The Tribunal unanimously finds that the dismissal of the claimant was fair. The company procedures were thorough and fair. Accordingly the claim under the Unfair Dismissals Acts, 1977 To 2007, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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