EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF: CASE NO.

EMPLOYEE – **Claimant** UD1662/2011
MN1718/2011

against

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: Ms B. Glynn

Members: Mr D. Morrison
Mr T.J. Gill

heard these claims at Carrick-on-Shannon on 4 October 2012
and 22 January 2013

Representation:

Claimant:
Mr John Breen, H.D. Keane Solicitors,
22 O'Connell Street, Waterford
Respondent:
Ms Sheila Treacy, IBEC, Confederation House,
84-86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Determination:

The Tribunal have considered the evidence at length. Firstly evidence was given by the Respondent in respect of the Strict Regulations attaching to the inputting of correct action codes by their employees in the call section, stressing the dire consequences that could ensue where they were to be found in breach of same. Further evidence was given of the continual and constant training in place in relation to same. It was the respondent's case that the claimant's inputting of incorrect action codes inflated her and her peers' monthly incentives. The respondent's position was that the claimant had breached the trust and integrity placed in her by them to such an extent that her continued employment with them was untenable. Their position was that the actions of the claimant constituted gross misconduct which warranted summary dismissal. The action codes were commenced in December 2010 and March 2011

The Claimant had nine years' service with the respondent. She disputed that she was a senior collector as alleged by the respondent. She started in the Collections Section of the bank on her move to Carrick on Shannon but stated that she could be moved to other sections in the bank. A typical day could result in dealing with between 20/30 calls, which amounted to between 100/150 per week and between 400/600 per month. The disciplinary action taken by the respondent was initially in respect of ten incorrect codes. Three of these were later withdrawn, and the final seven related to four customers in all, one of which had three accounts, and one of which had two accounts The claimant further gave evidence that while she got action codes wrong in the past, she was not disciplined for same.

The Tribunal were informed that on her return from holidays on 5 July 2011, her manager asked for a meeting with her, whereupon she was brought into HR Resources where her Unit Manager, Team Manager and an Employee Relations Representative were present and a meeting took place in respect of the respondent's allegation of her imputing of incorrect codes. She was not prepared for this meeting. She received a letter the following day setting out the respondent's allegations against her.

A further meeting took place on 13 July 2011 and while the Claimant's evidence was that she explained three of the allegations against her, she received a letter the following morning from her Unit Manager which set out that the Respondent deemed her actions to amount to gross misconduct and she was dismissed with immediate effect. She was also advised of her right to appeal.

The Applicant appealed the finding and the Appeal Hearing was held on 3 August 2011 conducted by a Senior Manager from the Respondent's UK Operation. A further meeting was held on 10 August 2011 in which the Applicant was given a letter setting out the rejection of her Appeal.

In order to satisfy the Tribunal that the Claimant's coding errors amounted to gross misconduct it would be necessary to show that the Claimant's actions were wilful. During the disciplinary hearing, it was clear that a question of interpretation arose in respect of some of the codes used for the different scenarios and it is clear from the evidence given by the Claimant at the hearing that this is far from clear in some instances. In this regard we place reliance on the evidence supplied by the claimant that on several occasions she sought the advices of her Manager and work colleagues who supplied answers that turned out to be incorrect.

In the circumstances the Tribunal cannot accept that the imputing of the incorrect codes by the Claimant amounts to wilful conduct from which it would be reasonable that the Respondent could conclude that the Claimant was guilty of gross misconduct. This is particularly so in circumstances where there has been no previous disciplinary action against the Claimant. Allied to this is the fact that the claimant was disciplined in respect of seven incorrect action codes only, which figure pales

in significance when viewed against the number of calls taken on a daily/monthly basis. Such a low percentage, in the Tribunals opinion, could never support a claim for gross misconduct.

In these circumstances it is clear that the sanction of dismissal represented a dis-proportionate response to the acts complained of by the respondent. Having carefully considered the Claimant's contribution to the situation, the Tribunal measures the award under the Unfair Dismissals Acts 1977 to 2007 at €7,500.

The Claimant having been dismissed without notice, the tribunal further awards €2,268, being four weeks' pay, under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)