

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1907/2010
MN1851/2010

against
EMPLOYER
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: Dr. A. Courell B.L.

Members: Mr D. Morrison
Ms R. Kerrigan

heard this claim at Donegal on 15th March 2012 and 22nd May 2012 and 23rd May 2012
and 25th September 2012 and 26th September 2012 and 30th November 2012

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:-

Background:

It is the respondent's case that the claimant worked in their employ as a cashier. The claimant balanced the cash as usual on Friday 28th August, 2009. Over that weekend she had an accident that led to her arm being in plaster. The following Monday (while on sick leave) the claimant arrived at her place of work at approx. 4pm. She helped out and advised members of staff that she had "some issue to sort out". It became apparent that a shortage of €1000 in coin and an amount of €550 in soiled notes were the issue. The claimant said that the coin shortage could be balanced up by another day's coins. On the same day she made a lodgement of €45 on another cashier's machine, she later withdrew €50 from her account.

The following day PH decided to do a count. The €1000 coin could not be found and the soiled notes weren't there either. Internal Audit became involved on 1st September. All bank personnel were questioned and a report was compiled. The claimant offered no explanation for the discrepancy but stated that she didn't count any money on the day in question as she was wearing a cast on her hand. She did say that she signed bundles of money on the day (one was €50 short).

The respondent concluded that the claimant was deliberately manipulating the coins, she was holding €400 in soiled notes which was unusual and it was a breach of procedure to use another cashier's machine.

A Stage 1 disciplinary hearing was held on 27th November. The claimant agreed with the report that had been compiled and also accepted that the situation looked unusual. The claimant also accepted that she could have rang in sick on the day but stated that she had loans to finish and she wanted to help P. She stated that she remembered throwing a bag of coins into the drop safe on the Friday evening; it wasn't included on the sheet. She admitted that it was careless but felt it may have been hidden under cash bags on the day. She also agreed that she had signed off on a bundle that was €50 short on the day and didn't have an explanation for lodging the €45 on another person's computer

The claimant was written to on the 8th December and was advised dismissal was warranted but a Stage 2 meeting was held on 14th December. At that meeting the claimant had nothing new to add, she told them that nothing had been proved and broke down in tears asking for another chance. She was formally dismissed.

The claimant appealed the decision and an appeal took place on 5th February 2010. She remained on paid leave until the appeal process ended. The appeal was upheld and she was dismissed for gross misconduct.

It is the claimant's case that she was cashier and part of her job was to tally cash and coins at the end of each day. She did so as normal on the Friday evening in question. Over the weekend she broke her wrist. She rang JG her manager and was told that the branch would have to get a relief member of staff, she knew that PH was under pressure because of the number of student loans to be processed so she travelled to the branch to point out what needed to be done.

The bank records show that she tallied her cash and coins on the Friday evening, and the relief member, prior to opening would also have to tally again and sign it. That was done by the relief member on the Monday morning and on the Monday evening the cash also tallied. It was on the Tuesday evening that the discrepancy in the coin and soiled notes occurred. The claimant also suggested that bank procedures were not followed in (a) tallying or (b) soiled notes. The bank carry out surprise cash audits and one was done on 12th August. Re- the lodgement of €45 it was the claimant's case that relief member allowed her to enter her details on screen, it was common practice in busy branches and management were well aware of it. Re- the counting of bundles of money that Monday evening, PH was complaining because the relief had only arrived at 12.30pm, she asked the claimant to key in the amounts as they were bundled and the claimant counter signed them, both work on mutual trust.

It is the respondent's case that the claimant did not follow company procedures in relation to lodging any monies to her own account, breaching company procedure relating to the use of another cashier's till and company procedure relating to soiled notes was not adhered to. The respondent felt complete company procedures were maintained during the full and thorough investigation and disciplinary process and the claimant's dismissal was fair.

Determination:

Having considered the contested evidence, together with the oral and written submissions advanced

on behalf of each of the legal representatives, the Tribunal finds in favour of the respondent. The issue for the Tribunal to determine is whether, or not, the decision to dismiss was reasonable having regard to the nature and extent of the enquiry which was carried out by the respondent, and the conclusion which was reached by the respondent following this enquiry. While, it could well be the case that the Tribunal may have come to a different conclusion, this is not the issue. The issue for the Tribunal is whether, or not, the decision to dismiss could be labelled as an unreasonable one in light of the facts gathered.

The €1,000 coin shortfall and the €550 soiled notes discrepancy resulted in an investigation by Group Internal Audit. Following, the findings of Group Internal Audit, the respondent commenced its disciplinary procedures. At the initial meeting on the 27th November, the claimant confirmed that she accepted the conclusions of the report. While, consideration has to be given to the claimant's young age and the circumstances in which she found herself in, she was unable to provide Mr. AB with an adequate explanation for the queries in relation to her conduct between Friday 28th August and Monday 31st August. Following Stage 1 of the Disciplinary Process, the respondent decided that dismissal was warranted. At Stage 2 of the disciplinary procedure when the Claimant was given an opportunity to comment on the respondent's findings, she indicated that she was disappointed with the sanction but had nothing further to add in relation to the substantive findings of Mr. AB. The claimant was then dismissed by letter dated 22nd December, 2009 which was upheld on Internal Appeal. The claimant did not follow up by way of further appeal.

The Tribunal finds that the respondent followed fair procedures during the disciplinary procedure and that the conclusion which it arrived at was a reasonable one. In those circumstances, the claimant's case under the Unfair Dismissal Acts 1977 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)