

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD1492/2011

against

EMPLOYER  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. O'Connor

Members: Ms M. Sweeney  
Mr D. McEvoy

heard this claim at Tralee on 20th February, and 15th May 2013

### Representation:

Claimant :

Respondent :

The determination of the Tribunal was as follows:

### Respondent's Case

The respondent is a business entity that operates four retail outlets. The events in this case centred round one of its stores located in a town in the southwest. This store consisted of a motor service station and a general grocery shop. Through personal connections the respondent recruited the claimant to the position of store manager commencing on 1 January 2009. According to one of its directors the claimant had a very good record in management. As part of this appointment the claimant underwent training for this position. She was responsible for the day-to-day running of this store.

In the course of employee reviews in February 2011 this director learned from some of the staff of a number of issues concerning the claimant's alleged attitudes and behaviours towards them and the running of the store. Those issues which did not reflect well on the claimant came as a surprise to this witness as he regarded the claimant as a competent and professional person. He then invited her to an investigation meeting to discuss her performance and procedural issues. The claimant was placed on suspension. She expressed shock at these complaints and was upset at this development.

That meeting on 28 February was also attended by a person from an appointed human resource group. As the respondent did not have its own personnel section. The claimant declined to bring a

representative with her. A number of issues were addressed at this meeting and a review of cctv was shown. In the course of that meeting the claimant confirmed some of the performance and procedural complaints against her and admitted they were wrong. She also acknowledged many of her inappropriate remarks she made towards staff and others and apologised for that behaviour.

A further meeting was held the next day attended by the same three people. That meeting concluded the investigation process. It was clear to the witness that a total breakdown of trust had occurred between the respondent and the claimant and in that context he took the decision that day to dismiss her. This witness also cited gross misconduct as a reason for his decision. A detailed letter bearing the name of the human resource person confirming that decision was then sent to the claimant.

The witness denied telling the claimant earlier in this process that she had nothing to worry about. He did not accept that this process came as a surprise to her or that she was ambushed and he certainly never gave her permission to use the store's facilities for her own use. Through her own behaviour the claimant had jeopardised her own job.

A major shareholder in the respondent and a former business acquaintance of the claimant heard her appeal on 16 March 2011. This witness did not consider himself an inappropriate person for this task and the claimant never objected to his involvement in this case. Four main points were considered at this appeal hearing and apart from a minor omission this shareholder regarded the respondent's procedures as proper and fair. Following a thorough consideration of this case and the grounds of appeal this shareholder concluded that the claimant's behaviour amounted to gross misconduct and duly upheld the decision to dismiss.

### **Claimant's Case**

Prior to commencing employment with the respondent in 2009 the claimant said she had a great business relationship with the major shareholder and described him as a father figure. She labelled him as tough but fair and had a lot of trust in him. Before she actually physically started her job as shop manager the claimant participated in a detailed training course in how best to perform her duties. The claimant who enjoyed a very good relationship with the staff worked in excess of fifty hours a week at this shop. She seldom took breaks and contributed to the success of the shop and had an input into its awards.

On 22 February 2011 the claimant received a letter from the director inviting her to an investigation meeting for the following week. While the director was not willing to comment on the nature of that investigation the claimant heard him tell her to relax and to treat her suspension as a four day holiday. Not only did the claimant not relax she became restless at this development. Declining an opportunity for representation the claimant met with the director and a human resource person on 28 February. A subsequent detailed and lengthy letter relating to that meeting was presented to her. That letter contained up to eight allegations against her in which the writer confirmed she played a role in. She signed that letter having read its contents and accepted them as accurate.

Those allegations included misuse of newspaper and magazine procedures, inappropriate use of company premises and name calling and defamation of some staff. Other allegations included improper use and possible abuse of purchasing goods from the shop and unclear handling of cash from a safe. The claimant told the Tribunal that at the time she would have signed anything to get back to work.

In addressing those allegations the claimant maintained the procedure she used regarding newspapers was the procedure she was directed to operate by the respondent. She also stated that there was no established and formal procedure on how to deal with staff purchases. It was not her intention to short change the respondent and added that any unpaid goods she acquired from the shop was a result of an oversight. The claimant also commented that the so called derogatory remarks were either not made or had been taken out of context. She denied any wrongdoing regarding cash and the use of facilities or out of date food.

The claimant received notice of her immediate dismissal in a letter written by the human resource manager and dated 2 March 2011. This development which she described as mind blowing had a massive impact on her life and she felt greatly hurt by it. The claimant took this case to the tribunal as she wanted to clear her name.

### **Determination**

The Tribunal has no doubt that the claimant is a hardworking and competent person and employee. Her contribution to the success of the shop has been acknowledged by all concerned and the support she received in the course of her employment was well founded.

The respondent showed itself to be a responsible employer and its interactions with staff and clients were transparent and professional.

Both parties gave clear evidence on their version of events leading to the cessation of the claimant's employment. The greater onus lay with the respondent in showing that this dismissal was not unfair. A major element in their favour was the signed acceptance by the claimant that she confirmed those allegations. Her explanation for doing that is nevertheless outweighed by her admission. On receipt of that acceptance the respondent acted in the honest belief that her actions amounted to gross misconduct. The Tribunal finds on that assertion that this dismissal was therefore not unfair.

The Tribunal accepts the respondent's contention that it did not promote nor encourage any irregular procedures in the handling of newspaper and magazine transactions. While there were certain procedural flaws in the management of this case by the respondent this does not in itself render this dismissal unfair.

The claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

