

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE

- *claimant*

CASE NO.

UD1566/2011

Against

EMPLOYER

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Meghen

Members: Mr G. Andrews
Mr F. Dorgan

heard this claim at Limerick on 19th April 2013 and 10th June 2013.

Representation:

Claimant:

Respondent:

Respondent's Case:

The respondent is the owner of cinemas in the country. The claimant's role was that of supervisor and he worked in a cinema in Limerick. His duties included cash handling, supervision of staff and stock control.

The claimant was provided with training. KA, General Manager, during the claimant's tenure took him through all aspects of the training document.

After Christmas 2010 KA received a telephone call from a manager on duty informing her that a lodgement was down €1,000.00 for the 27th December 2010. KA looked at camera footage. Cameras are in place in the office, at safes and at the counters.

The daily float reconciliation sheet had been completed but KA could not see the safe count taking place on the CCTV. A daily float handover reconciliation sheet is completed before opening and last thing at night. While reviewing camera footage it became apparent that the claimant spent long periods of time on the internet. Internet usage is for business only and it is not for any private or other use. KA became concerned when she saw the claimant using the

computer for long periods of time during his shift.

KA invited the claimant to an informal meeting on 10th January 2011. Camera footage was shown to the claimant. KA questioned the claimant on his use of the office computer. The claimant explained that he was watching videos of trailers. The claimant said he could not understand the policy on internet usage.

KA questioned the claimant on the cash handling policy. The claimant was shown camera footage in relation to cash drops which he had taken up from the floor to the office. The claimant said he counted the cash drops downstairs and inputted the cash drops upstairs on the system. He said he kept the cash on the office table instead of putting it in the safe as he understood this was the way it was to be done. The claimant had put the cash drop in his pocket to bring up to the office. He said he had not taken any company money.

Finally KA asked the claimant if he had completed a safe count and when he completed the daily handover sheet. A camera is in place at the safe. It was not apparent where the claimant had done the safe count. KA could not see from the camera footage where the claimant had counted the money. The claimant said he would not go back and sign the sheet if he did not count the money.

KA was confused by the claimant's explanation. She thought it appropriate to suspend the claimant pending investigation into an allegation that he failed to complete the daily euro count and informed the claimant accordingly on 14th January 2011. In addition, it was alleged that the claimant had breached the company's internet policy.

KA asked PW, General Manager, of a cinema in Waterford to conduct a disciplinary hearing. In advance of the disciplinary hearing she forwarded PW a copy of her fact finding notes, camera footage, a copy of the euro count sheet and the company's policy on email and internet usage. It became apparent that the claimant was not responsible for €1000.00 missing from the cash lodgement.

PW conducted the disciplinary hearing on 1st March 2011. The purpose of the hearing was to consider whether disciplinary action should be taken against the claimant in respect of alleged gross misconduct. PW went through the allegations with the claimant. One allegation was that the claimant had failed to complete the daily euro float count as required by him and the second was it was also alleged that the claimant had spent extended amounts of time using the internet during office hours. The claimant was sent a copy of the findings of the investigation in advance of this hearing.

PW had seen excessive use of the internet on 27th December 2010. The allegation of gross misconduct was for excessive use of the office computer for non company related work and for breach of the cash handling procedure. The claimant contended that if he filled out the reconciliation sheet he had in fact counted the money. The meeting adjourned with PW proposing having another meeting. He felt the claimant did not represent himself fully at this meeting.

A second disciplinary hearing took place on 8th April 2011. The claimant was again questioned on the allegations of internet usage and the euro float count.

PW took the decision to dismiss the claimant and the claimant's employment was terminated on

20th April 2011. PW contended that the claimant was not forthcoming with any reasonable explanations during the course of the disciplinary hearings. PW did not consider a lesser sanction on the claimant as there had been a breach of trust and the claimant was not honest. PW equated the claimant's failure to complete the safe count as fraud. The claimant was afforded a right of appeal.

Claimant's Case

The claimant commenced employment with the respondent in May 2005 at the age of 16. He was promoted from floor staff to the role of supervisor 2 years later, in which he remained until his dismissal. The claimant views the cinema as his career and has found alternative employment in the same area.

The claimant was dismissed for breaching the respondent's internet usage policy and breaching the cash handling procedures for the safe count. The claimant accepts responsibility for breaching the internet usage policy as he now sees that his internet use was excessive. The claimant was not previously aware of the internet usage policy and it had never been mentioned to him by his previous manager, who was aware of the claimant's internet usage.

The respondent operates two shifts. A safe count is completed for both the morning and the evening shift. The claimant maintains that although he does not specifically recall counting the safe on the 27th of December, he would categorically not sign the cash sheet confirming the safe count if he had not actually counted the safe. The claimant accepts that he could have made it clearer for the purpose of the CCTV that he counted the safe.

The claimant received on the job training in the cash handling procedures. Although the claimant signed the check sheet confirming he had received thorough training, in reality this training lasted 5-10 minutes. The claimant did not see or receive the comprehensive cash handling policy as produced by the respondent at the hearing.

All through the disciplinary process and in the claimant's dismissal letter, the €1,000.00 missing from the cash lodgement is referred to. The claimant was never accused of or investigated for having anything to do with this money missing from the lodgement. It transpired that this money was never missing and the respondent did not suffer any financial loss. The dismissal letter states,

'The basis for this allegation is that the cash banked on 27th December 2010 was found to be a €1000 short when received at (the bank). Upon investigation into the full days cash handling it was found that you had failed to follow company policies and procedures with regards to cash handling in particular by not carrying out a daily Euro Float Count on the 27th of December 2011.'

The claimant gave evidence of his loss and his attempts to mitigate his loss.

Determination

There was conflicting evidence presented to the Tribunal regarding the primary allegation of the safe count which resulted in the claimant's dismissal. The claimant accepted the

econdary issue of breaching the respondent's Internet Usage policy. The respondent loosely and without regard to the implications and the possible inference, used the term 'fraud' throughout the hearing and referenced the €1,000.00, even going so far as to include it in the dismissal letter.

The Tribunal is satisfied that the claimant's dismissal was disproportionate both in language and sanction. The claim under the Unfair Dismissals Acts 1977 to 2007 succeeds. The Tribunal find that an award of €6,000.00 is just and equitable in all the circumstances.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)