EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF: CASE NO.

EMPLOYEE – *claimant* UD355/2012

against

EMPLOYER – *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr P. Pierce
Ms N. Greene

heard this claim at Dublin on 10th April and 13th & 14th June 2013

Representation

Claimant: Mr Conor Power BL instructed by Liam Moloney of Moloney & Co Solicitors 4A North Main Street, Naas, Co. Kildare

Respondent: Mr Tom Mallon BL instructed by Seamus Given of Arthur Cox Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal is as follows

Determination

The Tribunal has carefully considered the evidence adduced over the three days of hearing. The claimant initiated proceedings under the Unfair Dismissals legislation in consequence of his having been dismissed as a fundraiser with the respondent company on the 13th of April 2011. The claimant makes the case that the respondent's procedures were flawed and that the findings of fact did not warrant the ultimate sanction associated with gross misconduct.

The respondent, for its part, stands over its procedures and the decision to dismiss the claimant, which said decision was confirmed on appeal on the 6th of December 2011 as being reasonable, appropriate and proportionate in all the circumstances.
The claimant commenced his employment with the respondent charity on 16th September 2002. The claimant's credentials are beyond doubt. The claimant has raised funds for many

orthy causes for many years and this experience was what made him an attractive potential employee for the respondent company. During the course of his employment there can be no doubt that the claimant performed his job to the best of his ability and it seems common case that in the eight and a half years he worked with the respondent the claimant raised in excess of 1.4 million euros in funds to support the invaluable works being done by the respondent company. There can be no doubt that the claimant was considered a most hardworking member of the team and the respondent had every reason to place the highest standard of trust and confidence in him.

It was, the Tribunal believes, as a consequence of allowing this high level of trust and confidence to be placed in the claimant that the respondent company failed to ensure that the absolute best practises would prevail when it came to the handling of donated funds.

So it was that the claimant was very often solely responsible for the gathering in of funds raised, the counting of funds raised and the lodging of funds raised. It was accepted by both parties that funds raised would be well documented so that anybody making enquiries would know what a particular event had raised. It was accepted by both parties that there would not be a lodgement to the relevant branch of AIB every day, but that funds might build up and be lodged together once or twice a week.

It was most certainly accepted by the claimant and the respondent that the use of the secure safe facilities on the premises was expected between bank-lodgement runs.

The claimant was very clear on the practices he ordinarily adopted for the collection, counting and safe guarding of funds and these procedures were acceptable to the respondent company.

At this juncture the Tribunal would have to once again observe that neither party operated what would universally be accepted as best practise. In circumstances such as these, there should always be at least two people counting monies and funds raised with amounts signed and co-signed and with safe lodgements noted as to time, date and who lodges and who witnessed.

The Tribunal notes that no satisfactory explanation was made as to why best practise was not in operation and the claimant confirmed that very often there was not the level of support and administration staff required to facilitate a two-person operation.

Then in December 2010 a robbery was committed on the premises. In the course of the investigation – which it has to be said was initiated by the claimant – it became apparent that there was a significant amount of cash being kept in the claimant's filing cabinet in the claimant's office.

The cash involved may be divided into two broad categories. The first was monies raised from three different charity events in the sum of €4,150.00. This was being held in a cabinet drawer separate from the second bundle of monies which amounted to about €5,280.00 which was being held in respondent's petty cash box albeit marked with a piece of card distinguishing it as the claimant's 'own money'.

Access to the cabinet had been obtained by way of a cabinet key secreted on the claimant's desk.

The Tribunal accepts that the respondent had every reason to be concerned that

nearly €9,500.00 cash was sitting unaccounted for in the claimant's filing cabinet. The reasons for thisconcern were twofold. The money could never have been considered to be safe in a filing cabinet in an office where the likelihood is always going to be that the key to the same is goingto be hidden within a few feet of the cabinet. At the very least, it was probably well known thatthere was a petty cash box contained in the filing cabinet which might pose an allurement for anunscrupulous person.

The second and greater concern was how all this money came to be held in this filing cabinet with no record of same and no knowledge of same outside the claimant himself.

On foot of these matters the respondent was obliged to conduct an investigation to determine whether disciplinary action needed to be taken. The respondent company's procedures were carefully documented and given to the claimant before the investigation began.

Terms of reference were collaborated and drawn up and the purpose of the investigation was ultimately to establish how the funds were being handled and administered by the claimant and whether errors in the management and in the accounting of funds had been made.

A thorough investigation had been conducted, with the claimant as the primary witness and therefore the facts elicited came from him. The claimant felt that more effort should have been expended examining the systemic failures within the organisation that resulted in his being solely responsible for large sums of money.

By way of explanation the claimant has consistently said that he made an error in allowing funds build up in the bottom drawer of his filing cabinet. There can be no doubt that he always intended to account for the monies (raised in the course of these three charity fund-raising events) and to lodge the monies. The claimant accepted that he had deviated from his usual practises for which he had the respondent's approval. His biggest mistake was his failure to place the monies in the secure safe which was but a short distance away. However the Tribunalnotes that the claimant did not adequately explain why monies remained in the filing cabinet drawer for a period of at least four weeks during which period other funds were lodged to therespondent's bank account. The claimant had opportunities on three occasions to put the moniesin the safe or lodge them over this period. He also converted some €3000.00 of coins into notesfrom these funds during this period, without lodging the funds.

Regarding his own monies being saved in the respondent's petty cash box, the claimant accepted that the practice could be seen to be at the least concerning for senior members of the respondent's staff.

The purpose of the investigation was to establish the facts of the incident and the Tribunal firmly accepts that the claimant, as an experienced person in a senior position, knew or ought to have known that the thrust of the investigation was serious. The investigating team found and reported that there were serious issues of trust and confidence in the claimant and the matter was raised to the next level of a disciplinary process. The claimant was suspended with pay pending the outcome of the disciplinary process.

The claimant accompanied by a representative attended a disciplinary meeting on 6th April 2011 at which the claimant was given the opportunity to give his response to the investigation report. On 13th April 2011 the HR manager for the respondent wrote to the claimant to inform him that

the sanction of dismissal would apply because the respondent could no longer have trust and confidence in him by reason of his conduct with regard to the safeguarding of funds collected and the handling and accounting for funds generally.
The claimant's appeal of the decision was unsuccessful.

On balance, the Tribunal accepts the inevitability of this finding in light of all the circumstances, facts and explanations offered. The claimant was the pre-eminent fundraiser for the respondent entity in the particular area. As such there was a high expectation on him to act in a transparent and acceptable manner. For reasons unknown, the claimant on this occasion failed to act in the manner expected of him, and left himself exposed. In consequence of this the respondent had every entitlement to lose confidence and trust in him and given his position and did not act unreasonably in dismissing him.

The Tribunal finds that the claimant was not unfairly dismissed. The claim under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)