**EMPLOYMENT APPEALS TRIBUNAL**

| **CLAIM OF:** | **CASE NO.** |
|---|---|
| EMPLOYEE | UD2247/2010 |
| - *Claimant* | MN2202/2010 |

Against

EMPLOYER
- *Respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**
**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr J. Horan
Mr C. Ryan

heard this claim at Naas on 10th January 2013 and at Dublin on 12th June 2013

**Representation:**

Claimant:

Respondent:

The determination of the Tribunal was as follows:-

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was formally withdrawn at the outset of the hearing.

**Determination**

The Tribunal has carefully considered the evidence adduced in the course of the two days of oral evidence. The claimant has initiated these proceedings claiming that she was unfairly dismissed on the 20th of August 2010 following an investigation and disciplinary sanction arising out of a purported failure to follow company procedure in scanning products at the checkout.

The claimant commenced her employment with the respondent company in January 2006. The claimant worked in a position of trust wherein she was a checkout operator handling money and scanning goods at point of sale.

The respondent company gave evidence to the effect that the claimant's training as regards hercheckout duties would have been comprehensive and complete. In particular, the

respondentcompany gave evidence to the effect that all personnel operating a checkout were obliged to ensurethat every single item being purchased must be scanned through the system. It was accepted thatwhilst there was scope for indicating that a multiplicity of an item might be purchased the onusabsolutely rested with the checkout operator to count each item and ensure the number of any oneitem is exactly correct before scanning into the system.

The claimant accepted that this training had been given and that the onus was on her in operating a till to make sure that the items were identical before scanning.

On the 23rd day of July 2010 the claimant was working in her usual position at the checkout. A colleague (FW) who was on the shop floor approached the checkout with a customer. They had a flatbed trolley with numerous boxes of tiles. There is a conflict of evidence as to what exactly happened next. The claimant says she was led to believe by FW that there were seventeen boxes of the same tiles being purchased by the customer and arising out of this confirmation the claimant scanned a single box of the product and registered the transaction as a multiple purchase of seventeen. The claimant said in evidence and had maintained at all times that it was not unusual for her to accept the veracity of what she was told by the shop floor staff. She therefore accepted that the customer was buying seventeen boxes of the same tiles and gave the transaction no further thought.

The Tribunal notes that FW in an interview said he did not tell the claimant what was contained on the flatbed trolley, however he did not give evidence for the company at the hearing.

It subsequently turned out that the customer had been overcharged as there were two different boxes of tiles on the flatbed trolley and the claimant had registered the entire sale as seventeen boxes of the same tile which was more expensive. This gave rise to an overcharge which was the subject of a complaint to the store manager.

The respondent company has consistently maintained that the claimant misconducted herself by not personally ensuring what was on the trolley. The company states that the claimant could not rely on the words of another and the obligation rested with her alone to ensure that she was scanning exactly what the purchaser presented at the point of sale.

Quite apart from the events of July 2010 the Tribunal must give consideration to the fact that the claimant was on a final written warning since May of 2010. The fact of being on a final written warning would have a significant impact on the disciplinary outcome which she could expect in the aftermath of the July 2010 scanning incident.

The Tribunal has carefully considered the evidence leading up to the issuing of the final written warning letter which issued on the 26th of May 2010 and which indicated that the period of unauthorised absence from work from January to April 2010 was gross misconduct that warranted a final written warning. On looking at the facts the Tribunal cannot accept that the evidence supports a finding of unauthorised absence in circumstances were there was clearly on-going dialogue with the management concerning the claimant's perceived grievances which had at one point led to her resignation. It was not reasonable of the company to issue the claimant with the letter of final warning and the claimant's acceptance of same (i.e. by not appealing) which was to prove a decisive factor in the company's consideration of the disciplinary action open to the company on foot of the customer complaint of overcharging.

The Tribunal finds that as a stand-alone incident the claimant's failure on one single occasion to

double check and ensure that the items on the trolley were, as she had been told they were, was not gross misconduct which could have led to her dismissal. Certainly the claimant could have been warned not to rely on the assurances of others and to take sole responsibility for accurate scanning of items purchased.

The Tribunal finds that the incident was not a dismissible offence and that the claimant was dismissed primarily by reason of the fact that she was already on a final written warning, which final warning was of itself flawed.

The Tribunal finds in all the circumstances the claimant was unfairly dismissed however, the Tribunal accepts that the claimant's own sense of persecution contributed to the outcome and awards compensation for loss of earnings in the sum of €6,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)