

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE - *claimant*

CASE NO.
UD930/2009
MN1962/2011

against

EMPLOYER – *respondent*

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: Ms. M. Levey B.L.

Members: Mr. W. Power
Mr. G. Whyte

heard this claim at Dublin on 24th May, 5th October 2010 and 10th February 2011.

Representation:

Claimant: Mr. Brendan Archbold, 12 Alden Drive, Sutton, Dublin 13

Respondent: Ms. Angela Grimshaw of Peninsula Business Services Ireland Limited
Unit 3 Ground Floor Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

The representative for the claimant made an application to have the T1A amended to show a claim for minimum notice. The Tribunal granted the application.

Respondent's Case

The area manager gave evidence. Before her appointment as area manager she had been a store manager for the respondent. The claimant was a store manager. It was her job to run her store. She had 8 staff to assist under her supervision in running the store. The manager ensured that the store was opened every day. She checked the float and assigned tasks to staff. Merchandise was delivered every day and the manager had to ensure that the merchandise was displayed for sale in the store. It was important that the store was well stocked at all times.

At the end of the day the manager or someone delegated by her had to cash up the till. Take a Z reading from the till and balance the day's cash and card receipts. Aside from a float of €50 the money was put into a lodgement bag together with a lodgement slip in the safe. A security firm collected lodgements twice a week from the claimant's store. The claimant then filled in a daily financial report sheet. At the end of the week a summary of the daily report sheets was faxed to head office. At the end of the day a discrepancy of €10 or less was dealt with by the manager any larger discrepancy had to be reported to head office by phone.

When the claimant was appointed she was sent for 4 days to work with an experienced store manager to be shown what was required of her. During that time she was given a handwritten guide that contained all the information she required to run her own store.

In the beginning the area manager visited the claimant's store quite often. Later she visited the claimant once a month. For a time the claimant's performance was satisfactory. Then standards slipped. Reports were not filled in at all or not correctly filled. There were difficulties with merchandising. The stock room filled up and the displays in the shop were inadequately filled. The area manager visited the claimant's store more often and coached her and helped her to meet the required standards

The area manager was off on Saturday 22 January 09 when the claimant phoned head office to report that money was missing from Friday's takings. The area manager went to the shop to investigate on the following Monday. There she found that the situation was not as the claimant had reported. The claimant had said that €250 was missing. The area manager found that in fact the takings for Thursday were down by just over €400 but the takings for Friday were up. This was serious because there were discrepancies in the takings on two successive days.

An investigative meeting was held on 02 February 2009. The claimant declined representation. The area manager conducted the meeting. She asked the claimant what had happened on the day and whether she had checked the money. The claimant said that there had not been previous discrepancies.

The area manager spoke to members of the store's staff as part of her investigation into the serious discrepancy reported by the claimant. Allegations of bullying and harassment were made against the claimant by some of her staff. It was also suggested to the area manager that the money had been missing for some time and that the claimant had been covering up the loss. When the accounts for the store for December 08 were examined undue delays in lodging takings with the bank came to light. Lodgements should be left in the safe. The claimant said she retained €400 as a float. In the area manager's opinion a float of not more than €200 would be adequate during busy periods. Also it came to light that in December 08 the receipts from credit card sales were not immediately going into the respondent's bank account. The store till supervisors card had been lost and the claimant had delayed contacting the service provider to obtain a replacement.

A copy of the notes of the investigatory meeting and of the staff statements was posted to the claimant together with a copy of the disciplinary procedure.

The financial controller for the respondent gave evidence. It was company policy for each manager to fax details of takings, wages, discrepancies and rosters to her office. Every day two spreadsheets needed to be filled in, cash and VAT analysis. These too were to be faxed to her office. If there is a

problem she examines the bank statements and then if she cannot find the explanation she reports the matter to senior management. If there is a discrepancy the matter should be reported to her by the shop manager.

Each shop manager has a supervisor card to balance credit card transactions on the till. On a busy day credit card transactions cannot be reconciled without the supervisor card. The supervisor card is provided by a contractor and when a replacement is required a new supervisor card will issue in 2 or 3 days.

It became apparent during the second week in December that there were problems with credit card transactions in the claimant's shop. The financial controller asked the office staff for the paper work from the claimant's shop. There was no paper work at all from the claimant's shop.

The figures from the claimant's shop for December were a mess. The paper work was correctly done only for 7 or 8 days. The analysis was not done. The daily reports were not filled in. Notes were written on old jotters. There were delays in lodging takings in the bank. The takings for 18 December were lodged on 5 January 09. The takings for 19 December were lodged even later. It was unacceptable to keep money sitting in the shop. The financial controller needed the money to pay wages and to pay bills.

When there is a discrepancy in a shop's takings of less than €10 the manager deals with it. A larger discrepancy should be reported to the financial controller. There was a discrepancy of about €400 in December and one of about €200 for January in the claimant's shop. The claimant reported neither discrepancy to the financial controller. The respondent did not recover the money. The money was written off. The financial controller was not aware that the claimant was without a supervisor card. The claimant never informed her of the loss of the card. Supervisors' cards are seldom lost. The card is necessary if the job is to be done correctly.

Due to a loophole in the financial controllers office nobody noticed that the claimant missed sending reports from October 08. Later some of the paper work turned up.

The director received a phone call from the claimant's shop expressing concern about a lodgement in December being short.

The director of the respondent company gave evidence. He is one of three directors of the respondent. He is based in Belfast and his role is to set up new shops. He also has a merchandising role. If there are problems the financial controller brings them to him.

The manager of the shop in Drogheda trained the claimant. She also wrote out by hand, based on her experience, the guidelines and procedures she gave to the claimant. The daily report form was the first item. It is most important. The manager was shown how to use the till. It only takes about half an hour to train a person in till procedure. At the end of the day the claimant had to count the cash, total the cheques (they no longer accept cheques), total money paid out and discounts, take out the float. All the figures are entered into a form. There should be no discrepancies.

When the claimant took over the management of her own shop the area manager supported her. The claimant varied in how well she ran the shop. Her management varied from quite good to not good. There was a good patch from August to October when everything was well done. In November there was a problem with merchandising. The director visited the shop on a busy Saturday. The claimant had a Do Not Touch sign on some rails of clothes. She was merchandising at the front of

the shop on a busy Saturday. In December the director and the area manager put all the stock on display because the claimant was not replenishing the merchandise in the shop properly.

Also in December the claimant informed the director that she needed extra staff. The director placed an ad in the shop window. There were 4 or 5 applicants. Within a day he hired someone.

An issue arose when the books for the claimant's shop were not balancing. The director and the area manager went to the shop and found the claimant's reports in a bag behind the door of the kitchen. They took the reports back to headquarters for analysis. He told the claimant that she should have submitted these reports to headquarters every week. The office balanced the figures.

On Saturday 22 January 2009 phoned the director at about 5.15pm. €250 was missing. The director said contact the Gardaí and let the staff know. He would send the area manager to the shop on Monday. The director felt there could have been a theft but it could have been a mistake. The areamanager went to the shop. She checked the lodgements for Wednesday, Thursday, Friday and Saturday. The lodgement for Thursday was down by about €440. The lodgement for Friday was down by about €190. The lodgement for Saturday balanced. The area manager's findings contradicted what the claimant had told him.

The director decided to suspend the claimant. He wanted to investigate the discrepancies. He prepared the letter suspending the claimant. The area manager gave the claimant the letter.

The director investigated. He interviewed about 6 members of staff. The claimant's shortcomings became apparent. A part time sales assistant felt bullied and harassed by the claimant. She also said that one day when she was due to take leave the claimant phoned her at short notice and demanded that she come in at 8.00am. The claimant told her that she would never again get a day off. The part time sales assistant also stated that one day when she prepared the lodgement the cash was €60 up but the claimant insisted that she declare it correct. Not all the staff said the same things but a consistent picture of the claimant emerged she bullied staff and covered cash problems. She was in breach of trust.

An investigative meeting was held. The claimant refused representation. When the issue of missing cash was put to the claimant she said that she did not know where it was. When asked about the bullying of the part time sales assistant the claimant said that she had been bullied as a child and would never bully anyone. There were grey areas in her responses. The director decided that he needed more information.

A disciplinary meeting was held on 5 February 2009. The director, the area manager and the claimant were present. The claimant was told she could have a colleague or a union representative with her. The claimant did not want anyone with her. The claimant could not explain what happened to the missing money. She did not phone the area manager immediately because she panicked. The director told the claimant that he had heard that €200 was missing since before Christmas. The claimant said that never happened. The claimant also denied telling the part timesales assistant that she would never again get a day off not even for a funeral. There were issues with the truth of the daily report forms, matters of trust and things being done badly. When asked if there was anything she wanted to say the claimant disagreed with the transcript of the first meting. The meeting was adjourned. The director wanted to look at other issues, issues of trust. He also wanted to get advice. A copy of the grievance procedure was sent to the claimant.

The director held a second disciplinary meeting on 04 March 2009. The claimant did not take

responsibility for jobs not done properly or for reports not filled in. The claimant was a senior employee and it was her job to check things and see that things were done properly. The records were not satisfactory. The information from the bank was different from the information forwarded to HQ and different too from the information from the till. The claimant had no concern for accuracy. She did not appear to understand the role of manager. The issue of the missing money could not be addressed. The director did not know what happened to it.

The director felt that the claimant's position was untenable. There appeared to be falsification of records. She was not doing the manager's job properly. Members of staff complained of harassment. The director issued the letter of dismissal to the claimant.

A part-time sales assistant gave evidence. Money went missing from the shop in January 09. On a Thursday evening the part-time sales assistant cashed up. The money was up 53c. The following evening the cash was up by €69. On Saturday she was phoned several times by the claimant but did not answer her phone. Then she got a text message asking who had cashed up. The part-time sales assistant phoned her colleague who was in the shop. €250 was missing. The part-time sales assistant was asked for her boy friend's name as he had been in the shop the previous night. The claimant wanted this information to pass it on to the Gardaí for their investigation into the missing money.

After she spoke to the claimant the part-time sales assistant phoned her mother. Her mother phoned director and relayed the information that no one was being accused of stealing money. She was to report for work on Monday and talk to the area manager.

On one occasion the part-time sales assistant saw the claimant lend €20 to a security man. She said I'll put it back later but the part-time sales assistant did not see her do that.

The part-time sales assistant had problems with the claimant over time off. She requested a day off for her graduation ball. The claimant agreed but put her on the roster for that day. She had to persuade one of her colleagues to work that day for her. The part-time sales assistant was shown how to do the night procedure by her colleague but the claimant was not satisfied and insisted that she get extra training. The assistant manager said she was fine.

The part-time sales assistant was not the only member of staff to have problems with the claimant. So she wrote typed an anonymous letter outlining their difficulties and sent it to the director. When the director came to the store she told him that she had sent the letter.

The buying director gave evidence. She had not met the claimant before she heard the appeal of her dismissal. The buying director wanted to get to the bottom of the problem with the claimant. However on the advice of her representative the claimant did not engage with her. The buying director adjourned the appeal meeting. The claimant did not attend the second meeting. The buying director upheld the decision to dismiss the claimant. She felt that it was unfortunate that she had not heard the claimant's views.

Claimant's Case

The claimant gave evidence. She first saw the company procedures when they were given to her in the same envelope as her suspension letter.

When the claimant was appointed she was supposed to receive 2 weeks training in Dundalk. After only 3 days she was sent to run her own shop. She was told that procedures vary between stores and if she had a query to ask her assistant manager. When she was being trained she was told to put reports in a box and when the box was full send it back. It would take months to fill the box. Head office never contacted her about this. She never sent the paperwork back every week. She always did as she had been shown.

On Saturday 22 January 09 when she realised the money on Friday, the previous day, was down she contacted both members of staff who had been at work. She left a voicemail message for the area manager and she phoned the director. The director told her not to call the police and said that the area manager would come to the store on Monday to investigate. When the claimant met with the area manager it was suggested that she had taken the money. The area manager told the claimant that she was not part of the investigation and sent her home. The claimant was not given the opportunity to be present while the area manager counted the takings from the previous Friday to determine how much was missing.

At the investigatory meeting the claimant was told she could have a union representative or a colleague with her. The claimant was not a union member. Some staff members were complaining about her but she was not informed whom, therefore she felt it would be unhelpful to have a colleague present. When the claimant received the minutes of the first meeting she disagreed with some of the contents. She requested that her partner accompany her. This request was refused. At no stage was she given the option of having a staff member from another store attend the meeting with her.

She did not have a copy of the staff handbook. There was no copy of the staff handbook in the store. The respondent accepted that written terms and conditions had issued but due to inaccuracies these were withdrawn.

The claimant lodged takings according to usual practice in December. She kept the €5 notes and coins in the safe. It was usual practice to keep a larger float during the summer sales and at Christmas. This issue was only raised after the claimant was suspended. It was after her suspension that the claimant was informed that there were delays in lodgements going into the respondent's bank accounts. Also no problem was raised about the financial forms filled in at the shop until after her suspension.

At the disciplinary meeting the claimant could not recall when the takings for specific days in December 2008 had been lodged. The director asked her about particular dates and she got confused. Lodging the takings had never been a problem. At the disciplinary meeting the claimant was not shown any of the financial reports that the director claimed were incorrect.

The claimant was adamant that no money was missing from before Christmas. She was confident the returns for December were correct.

The claimant appealed the decision to dismiss her. She attended the appeal meeting on 22 April 2009 with her representative. The buying director was to hear the appeal. The claimant did not agree to the meeting being taped. The claimant asked her representative to speak for her. The

buying director got flustered. Then she decided to go ahead with the meeting. Later she told the claimant and her representative to go. The claimant wanted her representative to open her appeal. However the buying director was only interested in the missing money. The buying director did not inform the claimant how much money was missing. The meeting adjourned when the buying director told the claimant and her representative to go.

The buying director wrote to the claimant requesting that she attend a reconvened appeal meeting on 08 May 2009. The claimant felt that the case law quoted in the letter did not apply to her circumstances. The claimant did not attend the reconvened meeting. She had been asked to leave the first meeting and she felt that the proposed second meeting would be a repeat. The buying director wrote to the claimant on 13 May 2009 confirming the decision to dismiss her.

Determination

The Tribunal considered all the evidence adduced in this case. The claimant's difficulties began when she informed the director that the money was down on a Saturday afternoon. The area manager arrived at the shop managed by the claimant on the Monday following to begin investigating. The area manager and the director said in evidence that before this event there had been problems with the claimant's performance of her duties. However no evidence of formal measures to enumerate or remedy shortfalls in the claimant's performance was produced at the hearing.

There was a conflict in the evidence concerning the financial reporting. The financial controller stated that 2 spreadsheets were to be filled in every evening and the daily cash and VAT analysis faxed to her at the end of the week. The claimant told the Tribunal that she put the financial reports into a box. When the box was full she sent it to headquarters. The financial reporting only became an issue after the claimant reported a cash deficit.

The claimant's management of her staff also only became an issue once the area manager started investigating the cash deficit. Details of the specific allegations made against her were not given to the claimant.

In the course of investigation the cash deficit neither the area manager nor the director gave the claimant written details of the inadequate or incorrect financial reports or of the amount of money missing. From the evidence given the Tribunal it is possible to conclude that the issue was no more than a series of accounting errors.

There was a flaw in the disciplinary procedure used by the respondent to dismiss the claimant. She was not given the precise details of the allegations she had to answer. Also she had a difficulty in obtaining a representative.

The Tribunal finds that the claimant was unfairly dismissed. The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The claimant is awarded €16,000.00.

No evidence was adduced in respect of the minimum notice claim and the Tribunal makes no order in respect of this claim.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)