

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.  
UD2413/2009

EMPLOYEE *-claimant*

against

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.  
Members: Mr. D. Morrison  
Ms R. Kerrigan

heard this claim at Sligo on 8th March, 15th and 16th June 2011

Representation:

Claimant: Mr Vernon Hegarty, S I P T U, Hanson Retail Park, Cleveragh, Sligo

Respondent: Ms Anne Hickey, Solicitor, Wine Street, Sligo

**Respondent's case:**

The respondent manages a secondary school. This institution recruited the claimant as a full time secretary and administrator following an interview. The acting principal, who was also the secretary to the respondent and who sat on the interview panel, expressed satisfaction at the way the claimant initially performed her duties and described her as a good employee. A contract of employment was drawn up and presented to the claimant shortly after her commencement of employment in the spring of 2007. That contract, however, remained unsigned by both parties until September that year. A number of versions of the signed contract were presented to the Tribunal and the principal accepted that her signature and style differed somewhat on those versions while the claimant's appeared the same. Among the contents of that contract was a list of duties attached to the post of secretary and a section on disciplinary procedures. In March the claimant received formal training on the operation of accounts relating to her work.

Apart from grants the school's income was augmented from revenues from other sources including various fees and fund raising activities. It was the claimant's role to record and lodge that income. Since there were no issues about that for over a year, the principal felt no need nor was in the habit of checking that this was done. That situation changed in the summer of 2008 mainly due to a reminder from a newspaper that it had not been paid and the fact that the school's power supply was disconnected. That disconnection was as a result again of unpaid bills. The principal became so concerned

about these developments that she took a deeper interest and closer look at the way the claimant handled her paperwork. In early September she discovered a number of unpaid bills and stale cheques that had been made out to the school had not been lodged. In addition cash lodged from a school function in May still lay in a safe in the school office. By the middle of that month she had brought these issues to the attention of the claimant and on 13 September issued her with what she called a warning about this. The letter writer informed the claimant that these issues were very serious and needed to be looked at immediately.

By that stage the chairperson of the Board of Management of the respondent had granted permission to the claimant to take leave of absence commencing 1 October 2008 with a return to work date set at 1 April 2009. The stated reason was that absence was to allow the claimant to spend that time in Australia. The respondent sought a temporary replacement to cover that absence. Prior to leaving, the claimant supplied a list of creditors who had been paid. Outstanding and current creditors were also being attended to. In some cases the respondent found itself paying interest and charges on late payments. An audit was due and that entailed compiling details on accounts.

That audit and ongoing calls from customers about payments revealed, at first, shortcomings in settling invoices and bills, and later a sizeable unexplained and unaccountable absence of money. With the aid of photocopies of many lodgements the principal indicated that the claimant recorded taking in money but a lot of it remained missing. This was brought to the attention of the school's accountant and it was decided that the claimant needed to be spoken to about this. The witness reacted firstly with disbelief at the notion and amount of missing money but that feeling was soon overtaken by concern at the situation. She concluded that the claimant had not made lodgements on all the monies received into her care. It was decided that the claimant had some explaining to do and in that context the principal wrote and posted a registered letter to the claimant dated 24<sup>th</sup> March 2009.

The first paragraph of that letter read as follows:

*“ On checking the accounts with our Accountant it appears that there are considerable discrepancies to accounts that you were dealing with whilst you were working with the school ”*

That letter then invited the claimant to attend a meeting with the principal and the accountant “in order to clarify and hopefully explain the discrepancies so that the books can be finalised”. That letter also informed its intended recipient

“we have no option but to suspend you on full pay...”. The principal explained the “we” meant the respondent as she felt she had the authority to act in this way without consulting the respondent.

While the principal was unclear about the dates and times she confirmed that the claimant's mother phoned her one evening whereby both women discussed the nature and contents of 24<sup>th</sup> March letter. A photocopied hand written note of that discussion was presented to the witness who in turn neither denied nor challenged its contents. The witness was unable to confirm she phoned the mother the next day; however she nevertheless responded to a second written summary by the mother of their second telephone conversation. She repeated her assertion that the contents of that second summary were untrue, inaccurate or misplaced. She told the Tribunal she was very surprised that a person other than the claimant opened and read that letter. The principal also submitted notes she took of the first call with the claimant's mother. She had suggested that the claimant's family contact a local solicitor about this matter.

On 6 April 2009 a meeting attended by the claimant, her witness and representative, the accountant and the principal took place. The respondent submitted detailed notes on that meeting and the witness commented that the claimant offered no explanation regarding certain lodgements and discrepancies. Subsequent to that meeting the accountant presented a report to the respondent and the principal again wrote to the claimant listing nine separate but linked charges against her. That letter stated that the respondent was now invoking disciplinary procedures against her and requested her attendance at another meeting.

Resumed hearing on 15<sup>th</sup> June 2011, *Cross-examination of first witness ongoing.*

**Claimant's case:**

The Tribunal heard evidence from the claimant. She commenced working with the respondent in March 2007. She was on a leave of absence from October 2008 up until. She was dismissed on 05<sup>th</sup> June 2009.

Her work entailed all aspects of office work and counting money and some payroll work. She "tidied up" teacher correspondence, took messages and had contact with parents. She had an assistant helping until September 2007, and thereafter worked on her own in the role.

The Claimant also gave evidence that there were difficulties with the postal service in that they were getting post for other schools and other schools were getting their post. She had to contact An Post about this. The principal normally dealt with the post except for the teachers' post. The claimant distributed the teachers post. If the principal was not there then she would open the post.

At one time Sr L brought her into the library and bombarded her with questions. She had no idea of what was going on. It was out of the blue.

Regarding her work relations with Sr L she considered her a friend and had received presents from her in the past.

She asked Sr L if she could take a leave of absence. Sr L told her she would not have to ask the BOM if she got a replacement. She contacted someone she knew and she then trained this person to do her work.

She went on a leave of absence. She travelled to Australia to work there. When she returned in March 2009 her parents showed her a letter which stated that she was suspended. She was astonished and did not understand why she was suspended. She had got a reference from the respondent before she left on her travels. Sr L had said to her parents to meet a man (CJ). CJ was an independent mediator and he called to them on 30<sup>th</sup> March 2009 and showed them a list.

The list referred to matters some six months prior to this. Without being shown other documents she could not understand the situation. CJ left and said that he would speak to Sr L.

Regarding the accounts and cash she had asked that Sr. L be present to count cash with her when lodging and counting. Also if she opened an envelope and the money was short then it would be witnessed.

Regarding the CEB cheque she asked when the cheque arrived into the office. Regarding a

cheque for €790.00 she would not have opened that letter and she also would not have opened a letter from the accountant.

Regarding a cheque to JL she did write that cheque but Sr L was the person who signed the cheque.

Regarding the electricity being cut-off in September, she had no recollection of this happening also the invoice was not in the school.

Regarding the Independent newspaper, this matter had been brought up before she had left for Australia. She had been in the process of clarifying a matter and a cheque had been written in November.

When CJ had called to their home she had given him answers as much as she could. He then left the house and he had said he would speak with Sr L and revert to them, but said his main reason for the situation was the €12,000.00, shortfall. CJ seemed to think that suspension had been ratified by the BOM. CJ seemed sympathetic and that it would be sorted out the following day.

CJ returned on 31<sup>st</sup> March with two lists. He put one document aside and said of the other that was what they were going with.

At one point CJ met Sr L and told the parties that he was not going to mediate as he was too close to the situation.

The claimant got a second letter of suspension on 31<sup>st</sup> March 2009.

A meeting was arranged with the accountant and it was arranged that DC be her representative. She met the accountant (GQ) in his office along with Sr L and DC. GQ said the purpose of the meeting was because of the discrepancy (with monies). Sr L had a folder with her but at no time was the claimant shown the documents in the folder. Sr L read from a pre-written speech. The claimant asked for a copy of the speech but did not get one. GQ seemed to have a copy of the speech. Everything that she had explained to CJ she re-iterated at the meeting. However Sr L “talked over” her and contradicted her. If she started a sentence Sr L interrupted and said “that’s not how it happened”. Sr L’s notes of events were different than her notes.

She had made it known that she was not happy counting the money on her own. Regarding the weekly or monthly accounting these were introduced after she had left to travel in September.

At one time she had found money in a filing cabinet and this had been left there by the previous secretary. At the meeting she had also said to Sr L that other people had access to the monies and Sr L had agreed with her and GQ told her that she was not being accused of “that”. GQ also admitted that the amount on the cheque should not have been included in the shortfall.

She could not give reasons or details regarding the accounts queries because she was not given access to the accounts.

The claimant was asked if she was concerned at the time and she replied that she was because of the missing money. She was asked if she had been accused of theft or of incompetence and she replied that she was not sure at the time.

**Evidence of 16<sup>th</sup> June 2011:**

The claimant and others had a meeting with the accountant GQ. She felt that after the meeting that they would have another meeting or have contact from the BOM. She was waiting for them to revert to her.

They had a meeting in Knock on 08<sup>th</sup> May. Present were herself, her representative, Sr L and Sr. M and a person from the BOM to take notes. Sr. L told her that there were nine charges against her and a letter listed those. They asked if there was a report and Sr. M would not confirm or deny that there was a report. The meeting was unsatisfactory and the respondent representatives would not confirm or deny if the accountant had a report. She would only answer questions if she could return to work as this was in-line with her contract and disciplinary conditions. She felt that she had already been sacked.

She got a letter from Sr L to say that she was not willing to answer questions. She expected to have a meeting with the BOM. The next letter she received was on 5<sup>th</sup> June and she was asked if she would answer questions. The next letter that she got was a letter of dismissal. She felt that she had no recourse to an appeal of her dismissal as the letter did not mention this.

The claimant was asked directly by her representative if she stole money from her employer and she replied "No". She was also asked if she had resisted answering questions by her employer and she replied "No". It was put to her that a lack of information left her unable to answer questions and she agreed that this was the case. She had no access to her own officer records and if she had she would have been able to answer questions. If she had access to the information "it would never have come to this".

**Determination:**

This was a lengthy and difficult case which was dealt with by the legal representatives with the highest level of professionalism. The Tribunal heard the oral evidence of a number of witnesses and both sides submitted documentary evidence. After having carefully considered all of the evidence before it, the Tribunal has unanimously determined that the claimant was unfairly dismissed.

It is common case that the claimant, in her role as secretary, was responsible for the receipt and lodgement of monies received by the school. It is accepted by the Tribunal that while the claimant was away in Australia, the respondent discovered discrepancies in the way in which school monies were being accounted for. It is also accepted that, as a result of these discrepancies, an investigation, including an audit, was carried out. The result of this audit was that there was a shortfall of approximately €12,000.00 of school monies. As a result of this investigation, the auditor raised a number of queries. The Tribunal accepts that the respondent had legitimate questions to ask of the claimant. However, the Tribunal does not accept that the respondent was entitled to single out the claimant in the course of its investigations as there were other parties who also had access to the monies. It is also difficult to get a true impression of the extent of the shortfall and/or the reason for the shortfall of monies as the accounting procedures adopted by all members of staff were routinely very slack.

As a matter of law, the Tribunal when considering whether, or not, the particular action or inaction of an employee justifies a dismissal will have regard to the reasonableness of

the employer's decision to dismiss. In deciding whether, or not, the dismissal was unfair we apply a test of reasonableness to 1. The nature and extent of the enquiry carried out by the respondent prior to the decision to dismiss the claimant, and 2. The conclusion arrived at by the respondent that, on the basis of the information, resulting from such enquiry, the claimant should be dismissed.

In this particular case, the quality and extent of the respondent's investigation was highly questionable in circumstances, where the accounting practices in place were very relaxed, certain other persons had access to the monies and one individual, namely, the principal was given too much responsibility for the conduct of the enquiry and the instigation of the disciplinary procedure. However, that is not the end of the matter as the claimant herself assumes responsibility to bear. The claimant received advice that she should not attend a disciplinary meeting unless she was first reinstated. Her refusal to engage with the process effectively backed the respondent into a corner. If the facts of this case were different, this failure to engage would have entitled the respondent to dismiss her as it would have had little alternative. However, it is a unique feature of this case that the initial contact between the respondent and the claimant's family was handled poorly and it is also a feature of this case that the enquiry itself was flawed to such an extent that it would be unjust to hold that her failure to engage remedies the deficiencies on the respondent's part. In those circumstances, the decision to dismiss, based as it was on a flawed enquiry could not be said to be within the range of reasonable responses open to the employer.

The Tribunal determines that compensation, and not reinstatement, be the most appropriate remedy in this case. Accordingly, having regard to all the circumstances, the Tribunal awards the claimant the sum of €9,850.00.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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