

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

- claimant

CASE NO.

UD671/08

Against

Employer - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. J. O'Neill
Mr A. Butler

heard this claim at Dublin on 6th October 2008, 12th December 2008 and 26th February 2009.

Representation:

Claimant : Ms Ursula Finlay B.L., instructed by T.J. Brabazon & Co., Solicitors, Brighton House, 29 Fairview Strand, Dublin 3

Respondent : Mr. Duncan Inverarity, BCM Hanby Wallace, Solicitors, 88 Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case:

The Store Manager of the Swords Branch gave evidence. The claimant reported to her. The claimant commenced employment as a Trainee Manager on 30th July 2007 in the Swords branch of the respondent company having previously worked as a Sales Assistant in the Portmarnock branch. On that day the Store Manager took the claimant through a management induction course. A guideline document outlined the training required for the claimant's position. The management training plan set out the section, time frame to be spent in each section, manager responsible for each section and dates completed. The three month and six month appraisals were explained to the claimant.

During the first three months of the claimant's employment the Store Manager had informal contact with the claimant. At the three month appraisal meeting the Store Manager rated the claimant at 4 in the customer service category but the claimant's overall rating was close to 2. Immediately after the appraisal meeting the Store Manager informed the claimant that a significant improvement was

needed. She highlighted areas where the claimant needed to improve. The claimant did not display enough initiative. If she did not improve the Store Manager explained that her contract of employment could be terminated.

On 19th January 2008 and prior to the claimant's six monthly appraisal meeting, the Store Manager together with the Personnel Manager met the claimant. The Store Manager told the claimant that standards were not being met and that she had not improved since her three-month appraisal meeting. The claimant was still within her probationary period. She gave her two weeks notice of termination of her employment. The claimant became upset and left the meeting for five to ten minutes to compose herself. When the claimant returned to the meeting she enquired if there was a Check Out Manager or Customer Service Manager position open to her. She reminded the claimant that she was employed as a Trainee Manager. She told the claimant that she could have time off to attend interviews and that she would support her. She had no personal issues with the claimant. She furnished the claimant with a reference on 22nd April 2008.

Under cross-examination the Store Manager said that all stores of the respondent were training stores. She oversaw the claimant's training schedule. She agreed that the Management Training Plan was not an accurate record of the training actually received by the claimant. She had asked the claimant to help out in the goods inwards section when a colleague was on sick leave for a period of two to three weeks. She knew the claimant was confident in working in that area and the claimant had agreed to help out. She could not recall if the claimant had ever said that she did not wish to work in goods inwards. The Store Manager denied that the claimant had spent 90% of her time in the goods inwards area but said that she had spent her time between the floor areas and the goods inwards area. The claimant worked a lot of weekends and was facilitated with time off to look after her ill mother.

At the claimant's three month appraisal meeting areas were highlighted where improvement was needed. The claimant showed weakness in leading the team and staff and keeping standards that the respondent had set down.

At the meeting on 19th January 2008 the claimant was asked if she wanted to have a witness present with her. Unfortunately, the claimant had not met the requirements set down by the respondent and she knew what was required of her after the three-month appraisal meeting. The Store Manager had told the claimant that she would be assessed at a distance on a weekly basis. The Store Manager's opinion was that the claimant was not ready to go forward and she had shown no signs of improvement.

The Store Manager told the Tribunal that she believed the claimant had received sufficient training. After the three month appraisal meeting she had informally spoken to the claimant and expressed a view that it was not looking good for her. The Store Manager said she now realised that she should have had a number of meetings with the claimant from six weeks onwards. She never had a cross word with the claimant. She was unaware if the claimant invoked an appeal. She knew the claimant had written to the Personnel Manager and that the matter passed to the Regional Manager. A meeting was arranged but the claimant did not attend.

The Personnel Manager in the Swords Branch gave evidence. She had been asked by the Store Manager to attend a meeting with her and the claimant on 19th January 2008. The claimant was taken through her three-month appraisal assessment. The claimant was given two weeks notice of termination of employment as per her contract of employment.

She told the Tribunal that the Store Manager had informed her in advance of the meeting that it was a disciplinary meeting and that the Store Manager was going to dismiss the claimant. She did not tell the claimant the purpose of the meeting in advance. She would have thought the Store Manager would have told the claimant. She did not know if a policy document existed. She did not know if the claimant was offered representation before the commencement of the meeting.

The Grocery Regional Manager gave evidence. The Swords Branch where the claimant had worked fell under his remit. The claimant's appeal was passed to him. He interviewed the Store Manager twice and also met the Personnel Manager of the Branch. He wrote to the claimant on 14th February 2008 asking that she contact him to bring the matter to a conclusion. He arranged to meet the claimant on 23rd February 2008 in conjunction with the appeal. He told her he would be in the Store on 25th February 2008. The claimant agreed to meet him at 3 pm at the Customer Service Desk that day. The claimant never arrived and there was no further contact. He assumed she did not want to pursue her appeal.

Under cross-examination the Regional Manager contended that a Trainee Manager would not necessarily become Manager within six months. The Trainee Manager at the end of the six months training needs to demonstrate in six core areas. He stated that his investigation did not reveal that the claimant had spent 80% of her time at the goods inwards area. His experience was that the Trainee Managers familiarised themselves with an understanding of the business within 4/5 weeks. After three months he said that the claimant had an opportunity to discuss any concerns she had but that these were not discussed. He also believed that the claimant had covered all the relevant work areas. He said the claimant had made no reference at all that she did not get proper training.

The Regional Manager contended that in the interviews he conducted with the Store Manager the claimant did not wish to revert to her position of Sales Assistant. He explained that the rating scale of five points was a guide for the Manager. A pass mark was 3. The average score and the pass mark were not the same. The score 3 was an acceptable standard. At the claimant's three month assessment she had the opportunity to comment. The claimant was assessed daily and the Store Manager spoke to her regularly. The Regional Manager said the Training Plan and Map Plan were very clearly laid down.

Determination:

The Tribunal determines the claimant's service with the respondent was not broken by virtue of her promotion to the management training course within the respondent's employment. Accordingly, her previous service as a Sales Assistant was taken into account when considering her eligibility to avail of the remedies provided under the Unfair Dismissals Acts.

Having carefully considered the evidence the Tribunal finds that the respondent has failed to discharge the onus of proof in relation to the justification for the dismissal as required under Section 6 of the Unfair Dismissals Acts, 1977. On its own evidence, the respondent did not succeed in justifying its actions. In the circumstances, the Tribunal did not require to hear evidence from the claimant.

Accordingly, the Tribunal finds the claimant was unfairly dismissed. Having heard a submission in relation to losses sustained and remedies sought, the Tribunal has determined that the claimant be reinstated to her position of Sales Assistant in the Portmarnock branch of XXXX with immediate effect. The Tribunal notes her earnings amounted to €4,405 since her dismissal in February 2008. This sum is to be deducted from the salary she would have received in the event that she was not

dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)