

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

Employee - **Claimant**

UD907/2007  
MN712/2007

Against

Employer -**Respondent**

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S.C.

Members: Mr. T. Gill  
Mr. J. LeCumbre

heard this appeal at Sligo on 1,2 & 3 October 2008 and 17,18 & 19 February 2009

**Representation:**

Claimant: Mr. Gerard Cullen, John Gerard Cullen Solicitors,  
Main Street, Carrick on Shannon, Co. Leitrim

Respondent: Mr. Rory White B.L. instructed by Patrick J. Flynn Solicitors,  
26 Upper Pembroke Street, Dublin 2

The determination of the Tribunal was as follows:

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn during the course of the hearing.

The respondent was formed in 2000 upon the merger of two other co-operatives. The claimant was employed by the smaller of these two co-operatives from 1974. From 1995 the claimant was the manager of the smaller co-operative's Castlerea store. The claimant's position is that soon after the merger she attended an informal meeting in a hotel in Castlerea attended by the Divisional Manager (DM), MN and the General Manager (GM) of the respondent where she was asked if she intended to remain as manager of the Castlerea store. The claimant felt that she was being pressured to terminate her employment. This pressure continued throughout the next four years. On 1 June 2005 GM wrote to DM, with a copy to the claimant, referring to disappointing sales in the Castlerea store. It demanded significant improvement for the second half of the year and the completion of a detailed sales plan for the store by DM and the claimant over the next two weeks. A meeting between GM, DM and the claimant subsequently took place on 29 June 2005.

On 8 August 2005 GM wrote to the claimant to express his dissatisfaction at the store's sales figures up to and including July 2005 and his disappointment at the continuing lack of a sales plan for the store. On 7 September 2005 GM wrote to the claimant to the effect that he had received no reply to his letter of 8 August 2005. The claimant was told to treat the letter as a final warning about her performance as store manager and that unless there was immediate and concrete evidence of improvement in effort and results she would be removed from her position. The claimant replied to GM on 8 September 2005 to suggest that there was a fall in revenue across all stores. She opined that GM's letter was part of his efforts to remove the claimant from her position as manager of the Castlerea store. She sought an urgent meeting to resolve the issue and requested GM to contact her union official (UO) so that the issue could be resolved. To this end a meeting was held in the respondent's head office on 21 September 2005 and was attended by the GM, the Human Resource manager (HR), UO, the claimant and her shop steward. At this meeting it was agreed that the claimant, in conjunction with DM, would prepare a sales plan for presentation to GM on 5 October 2005. The claimant was also offered the opportunity to attend a retail management programme at Sligo IT. The claimant accepted this opportunity.

On 26 September 2005 UO wrote to GM to point out that his position was that the meeting of 21 September 2005 was total victimisation of the claimant in that no other store managers had been asked to supply a sales plan and was a continuation of several previous meetings where the claimant had been asked to seek voluntary redundancy.

The claimant successfully completed the retail management programme training in 2006. On 16 March 2007 the claimant was hospitalised with an illness described as being stress related. On 27 March 2007 HR wrote to the claimant in relation to her suffering a stress related illness and stating that the respondent wanted the claimant to be examined by a company doctor before she returned to work. HR stated that the claimant had mentioned similar symptoms in a previous period of absence.

The claimant's position is that this was the first occasion she had taken sick leave. Following telephone contact between them, HR wrote to the claimant on 27 April 2007 to confirm that an appointment had been made for her to see the company doctor on 3 May 2007. In the event the company doctor examined the claimant on 10 May 2007. The company doctor agreed with the assessment of the claimant's GP that the claimant would shortly be fit to resume work.

The claimant was then certified fit to return to work by her GP and spoke to HR on 18 May 2007. She was instructed not to return to work on 21 May 2007. She acknowledged this in a fax to HR on 21 May 2007. On 23 May 2007 the claimant attended a meeting with her UO, GM and HR. The purpose of the meeting was to discuss feedback on the medical report and the future management of the Castlerea Store. UO asked the respondent for proposals and if there was a redundancy package available. The parties agreed to a meet on the 30 May 2007 whereby the respondent made an offer of compensation to the claimant, which she refused. UO asked if there was alternative job and GM told it was too far away from other locations. On 6 June 2007 the claimant wrote to HR seeking an opportunity to return to work. She pointed out her annoyance at the reference to previous absence in HR's letter of 27 April 2007 and asked that it be corrected. She further requested that the grievance procedure be invoked in relation to the severe bullying and harassment she had suffered over the past seven years but in particular over the previous year. A mediation meeting was then arranged for 19 June 2007 but the claimant insisted on the branch organiser (BO) being present at this meeting. As BO was unable to attend on that date the mediation had to be rescheduled. This rescheduled mediation was set up for 9 July 2007. The claimant refused to attend on the grounds that the respondent was paying the mediator.

On 2 July 2007 the claimant wrote to GM to complain that her bonus for 2006 had been withheld

unlike the other store managers. She further sought payment of her expenses for the time before she went out sick in March 2007. On 6 July 2007 HR wrote to the claimant to state that in view of her refusal to attend two mediation sessions, which were arranged for the purpose of trying to agree mutually acceptable terms for the termination of her employment. The second paragraph of the letter states “ You have been advised on numerous occasions over recent years that the performance of Castlerea Store, under your management, has not been acceptable and despite extensive discussions and commitments the performance has not improved”. The letter terminated the claimant’s employment on the grounds of refusal to engage in meaningful discussion/mediation effective 6 July 2007 with Minimum Notice and holiday pay entitlements being honoured. The claimant was given seven days to appeal the dismissal.

The claimant exercised her right of appeal to the Chief Executive of the respondent and this appeal was heard on 7 September 2007. The Chief Executive notified the claimant’s solicitor of the rejection of her appeal for reinstatement by letter dated 14 September 2007.

**Determination:**

The claimant was targeted for a number of years. The profits in her store were good from 2001 to 2004 but started to fall off in 2006. Once the profits dropped the claimant was targeted. The claimant did have within her power the right to alter the conditions in the store so that she could be profitable. She was not given support from management to alter the situation in the company.

The figures, which the respondent provided, do not accurately reflect her performance. The claimant was called to meetings and was given a number of warnings in relation to her performance.

The respondent started to address the claimant’s issues when she became ill. The claimant attended meetings on the 23 May 2007 and 30 May 2007 and it was clear at the meeting on 30 May 2007 that the claimant had to go. She was offered a severance package, which was not acceptable to her. The claimant participated in a mediation process but she did not sufficiently contribute to a mediation process, which might have resulted in an amicable solution.

The Tribunal finds that the claimant was unfairly dismissed and awards her compensation of €70,000 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal did consider whether an order for costs should be made under Section 19 (2) of SI 24 of 1968 however in view of the manner in which the concluding stages of the hearing was conducted no such order will be made.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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