

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - *claimant*

UD2386/2009
MN2208/2009

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: Mr. J. Fahy BL

Members: Mr. T. Gill
Ms. H. Henry

heard this claim in Galway on 10th May, 12th July, 13th July, 15th September and the 16th September 2011

Representation:

Claimant(s) : Mr. Paul McGettigan BL instructed by Mr. Kevin McNamara, Kieran Murphy & Co, Solicitors, 9 The Crescent, Galway

Respondent(s) : Mr. Alastair Purdy, Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street, Galway

Claimant's Case

The claimant gave evidence she was employed by the respondent on the 3 November 1997. She said at that time the company was owned by (CD) and (JD), and that (CD) bought out (JD). In 2002 new owners took over the company. In January 2004, she became the General Manager for the company. She was the one point of focus for staff to come to. Targets were set on a monthly basis and deadlines were day to day. It was her responsibility to ensure each job was properly

completed from start to finish.

The respondent was part of a group of 17 branches and reached 1st place in 2007 and 2008 within that group for sales. In October 2008, the monthly turnover dropped. She was called into the boardroom and told that the turnover for the next three months would have to be increased to ensure no layoffs. She agreed not to tell the staff about possible layoffs. (P) and (G), the owner told her to call a staff meeting and to pretend it was her idea. She did so and called a staff meeting the following week and told (P) and (G) that the staff were up for it. She was to the forefront in driving the staff at that time and some staff felt she was pushing them very hard. She couldn't tell the staff the reason and one staff member used bad language towards her so she asked (G) to call a meeting of the staff. On 14 December 2008 (G) told her that a staff member had made a complaint against her two weeks previously and (G) said the complaint was on behalf of the staff. (G) would not tell her who had made the complaint and to take it as a lesson and move on. She was not told about the contents of the complaint and when she asked why it took two weeks before she was told, (G) told her that (P) and herself had looked at the claimant for the past two weeks and had felt the same way as the staff who had complained. (G) told her that the complaint was not going to be recorded on her file but she (the claimant) was not satisfied with the manner in which the matter was handled. She was very upset. She was put in a position of being alienated and the staff meetings she had asked for never happened.

Coming up to Christmas, she didn't know who she could trust so she put her head down and got the work done. She decided to sit down with each member of staff, did not mention the meeting with (P) and (G) and apologised to each one. Not one member of staff said she did anything wrong. She later found out that it was the partner of a staff member who had made the complaint. In January 2009 a staff meeting was called. One staff member was made redundant and another was moving to Mayo. A solution was to take a 10% pay cut across the board to take effect from the 1 February. The claimant was told that her salary was being reduced to €40,000 and her €500 bonus was being scrapped. She was not happy with this as her bonus was part of her salary. She was told that (P) and (G) were going to restructure the company and the bonus structure would be changed to ensure the money was made up. This did not happen.

The claimant said that the volume of sales which were added to her workload in February 2009 was proving to be too much for her. She had done her very best to carry out the tasks but the role was having serious implications on her health. As general manager she did not have enough time in her working day to carry out the extra sales duties. She made (P) and (G) aware of this fact at fortnightly meetings on numerous occasions but was told that time management was her problem. Prior to January 2009, as general manager she had responsibility for monitoring the total sales at the centre. She also had a direct sales responsibility but this was less than other employees. She had a daily sales target of €1,000.00 compared to other employees who had daily targets of €2,000.00. This position changed in January 2009 whereby accounts were allocated to specific account managers. This was part of re-structuring within the company and resulted in her being allocated more clients with an increased sales target. She was allocated 339 extra clients. She accepted that she had an input into what accounts were allocated to her but was not counting the accounts as they were allocated. She denied that she told her employer that she would be willing to accept an allocation of work belonging to another employee known as (S).

She accepted that there was a downward trend in sales from 2007 to 2009. Turnover decreased from €2.1 million in 2007 to €1.9 million in 2008 and further decreased to €1.35 million in 2009. However she felt very stressed in the workplace and the level of sales expectation and the constant need to justify her sales was the primary reason for this stress.

In March 2009 she met with (G) and the sales figures for March were discussed. (G) told her that pressure needed to be put on people to achieve sales targets. As a result of this she “turned up the heat” to try and increase sales figures. She accepted that employee’s jobs would have been put on the line if targets were not achieved. A sales target of €230,000 was then set for the month of June 2009. The claimant felt that this was a totally outrageous target and it was later reduced to €200,000. In April 2009, (P) called her into his office and told her he was calling a meeting the following day to inform staff a merger was taking place. She was due to be on annual leave. She asked (P) if the new person would be her boss and (P) told her no he would be a named Director only. She told (P) that she was glad this was happening. After the meeting (P) called her into his office and told her (D) was a Director and shareholder and had equal status to him and (G).

She confirmed that she had a further meeting with (P) on 2 May 2009 and enquired if her years of service would be taken into account if she was made redundant. She was concerned for her position in the company as she was the primary earner in her family. (P) assured her that there were no plans to make her redundant. He told her that if there were only two people remaining in the company it would be him and her.

On 5 June 2009 she attended for work but left work at approximately 11am and visited her doctor’s medical practice. She was feeling unwell, she was very tense and anxious and suffering from chest pain. She was attended to by a practice nurse when she became very upset and began to cry uncontrollably. The nurse called Dr. (C) to attend to her. Dr. (C) attended to her and an appointment was made for her to return to the practice on 8 June 2009. She returned to her workplace and resumed her duties at approximately 1 pm on 5 June 2009. She deleted some e-mails and some old files from her computer as it was jamming due to a lack of space. She accepted that she received a large number of spam e-mails but she had no control over the amount of e-mails sent to her. She did reply to a number of those e-mails out of courtesy but did not even read the majority of those e-mails. She denied that she deleted the history cache from her computer. She did not even know how to delete the history cache. She also confirmed that she does not know how to delete internet history as she very rarely used the internet.

She visited Dr. (C) on 8 June 2009 and they had a lengthy discussion. Dr. (C) wanted her to take at least one month off work but she told Dr. (C) that it was a critical time at work and she could not be absent for that length of time. She did not want any reference to stress put on her medical certificate but Dr. (C) said she had a duty of care towards her and there was no substitute for the truth. She was certified as being medically unfit for work from 8 June 2009 until 22 June 2009 due to stress, chest pain and awaiting a cardiologist appointment. She contacted (P) on 8 June 2009 and informed him that she was going to be absent from work as a result of stress related illness. She returned to her doctor for follow up appointments and submitted further medical certificates which stated stress related illness as the reason for her absence from work. These certificates covered the period from her original absence on 8 June 2009 until 11 August 2009.

During her absence from work she requested a meeting with her employer and on 2 July 2009 she met with (P) and (G). She told (P) that she was suffering from stress due to her sales responsibilities. She accepted that sales were part of her duties and also told (P) that he was too soft and he needed to get tougher with staff. She did not say that she could not return to work until her workload was reduced. She did not say that her doctor would release her for work when her workload was reduced. (P) and (G) told her that they would have to consider how they would deal with matters. She remained certified unfit for work and, on 23 July 2009 she received a letter from her employer informing her that her job had been benchmarked against similar jobs within the

nationwide franchise network. She was also informed that her employer had conducted a health and safety risk assessment of her current job to determine what factors (if any) could be causing her alleged stress. She was out sick when these processes were carried out and she was never invited to participate in the process. She did wish to be involved in the processes but the company conducted them without her involvement. Following the completion of the processes the company determined that her allegations of stress being induced by an overload of work within the company were completely without foundation and this was conveyed to her by way of the said letter of 23 July 2009.

She replied to that letter by way of an e-mail to (P) and (G) on 24 July 2009 informing them that she did not think it fair that her input into the benchmarking or health and safety risk assessment was not sought by the company. She informed them that she would be returning to work on 4 August 2009 and requested that a meeting be held then to discuss the issues further in order to resolve things. She also requested that she be provided with a copy of the benchmarking and health and safety risk assessment reports so that she could be familiar with the contents before the suggested meeting of 4 August 2009. She finally received copies of these reports after three requests. She did not receive a copy of the recommendations at that time and this was only provided to her after the termination of her employment following a request under the data protection act. She also outlined the factors which had caused the stress and informed the company that she would be very happy to return to work resuming her role as general manager with a reasonable expected workload. She suggested that a reasonable portion of customers and sales be allocated elsewhere. She did not propose that all accounts be taken from her and confirmed her resolve to manage a fair portion of them to the best of her ability. She was happy to discuss all avenues for allocating these accounts. She gave evidence that all she wanted was a little help and had no intention of leaving her job.

She received a reply to her e-mail by way of letter dated 27 July 2009 from her employer. She also received the benchmarking and health and safety risk assessment reports. She could not understand how the benchmarking exercise could have been completed without a person observing her in the workplace. In the letter of 27 July 2009 the company did not accept that she was absent from work due to work related stress. The company also responded to various points raised in her e-mail of 24 July 2009 and stated that they were not in a position to allow her to return to work until such time as allegations of work related stress were withdrawn by her. They also required her to commit to carrying out her job as previous. She exchanged further e-mails with her employer informing them that she could not say that her stress is not as a result of work. A further meeting was scheduled for 11 August 2009. The claimant and her husband attended that meeting along with (P) and (G). She presented (P) and (G) with a return to work certificate but (P) said that she could not return to work until she withdrew her allegation of stress. (G) told her that she was concerned about her (the claimant's) health but the claimant could not recall if she said that she wanted her to return to work. She was happy to return to work and do the best that she could with the additional workload. She was not aggressive in any manner and she desperately needed to return to work. She did ask if they were prepared to take some accounts away from her and they replied "absolutely not". (P) and (G) both said that her role must stay as it was previously. (P) asked her to e-mail him stating what she was prepared and capable of doing. (P) then told her to go home and she asked him if she was being fired. The meeting concluded and a number of e-mails were exchanged between herself and her employer later that evening. She again informed her employer that she cannot say that her stress is not as a result of work. She informed her employer that, as she had supplied them with a fit to work certificate she will be attending work tomorrow at 8.30am. She further stated that she will carry out her role as general manager and endeavour to carry out as much of the new sales role/responsibility as possible to the best of her ability.

She received a reply to this e-mail requesting confirmation in writing that she will fulfil the role with the same workload and sales duties as before she went on sick leave. She replied to this e-mail stating that while she was concerned about the volume of sales being asked of her, she wanted to return to work and she would carry out her role as general manager and endeavour to carry out as much of the new sales role/responsibility as possible to the best of her ability. She then shut down her computer and reported for work at 8.30am on 12 August 2009. She accepted that nobody had instructed her to go to work and the purpose of her return to work was to get back to her role and earn a wage. When she reported for work (P) called her into his office and he gave her a handwritten letter which stated that she was being asked to leave the premises. She informed (P) that she was not leaving if she was being asked to leave and she requested that the letter be typed and the word "asked" be changed to the word "told". (P) then left the room and returned and tore up the letter. He then said that he was telling her to leave and she did so and believed that her employment was terminated.

Since she ceased working for the respondent she has applied for approximately 44 jobs, largely in her field of expertise. She has not been successful in her efforts to secure employment. She was provided with a reference by the respondent by way of a letter dated 22 September 2009 but this reference was unhelpful. She has completed three courses of study in her efforts to make her employable and has earned a total of €3830 since the cessation of her employment with the respondent company.

The next witness Dr.C gave evidence that the claimant had attended her practice on a number of occasions from 2006 to 2009. During that time she never complained of any of the symptoms as those she presented with on 5 June 2009. She saw her briefly on 5 June 2009 and had a consultation proper with her on 8 June 2009. The claimant was very tearful and distressed and seemed agitated. She complained of chest pain and tingling in her arm and she said that she felt overwhelmed in the workplace. They had a long discussion and the witness felt that the claimant needed rest and time off from work. The claimant seemed particularly conscientious about her work and while she accepted that she needed to take time off work she had misgivings about being off work. She was certified as being unfit for work until 22 June 2009. The witness arranged for cardiac investigation and the results from that investigation proved negative. The claimant attended her practice again on 22 June 2009 and her condition was reviewed. She was still very tearful and while she did not require medication she seemed to be under a considerable amount of stress. The witness suggested that she required more time off work and she certified her as being unfit for work until 6 July 2009.

At the next appointment on 6 July 2009 the claimant's condition seemed to have deteriorated and she told the witness that she felt she was being treated aggressively by her employer. The claimant attended her practice on a number of subsequent occasions and it was clear to the witness that she was suffering from stress. She presented with an acute stress reaction and she indicated that the cause of the stress was work related. The reasons for the stress could only be determined by the information given to her by the claimant. She was relying on information given to her by the claimant. She accepted the information given to her and had no reason to doubt the claimant. She found her truthful in every sense. She felt that the claimant had an overwhelming desire to return to work. She was very work focussed and returning to work was a priority for her. She told the Tribunal that recommendations contained in the risk assessment report carried out by (CC) seemed like common sense and were sensible suggestions.

Respondent's Case

(G), a director of the respondent company gave evidence that the company is an independent franchise operating with the support of the corporate office. She is responsible for the financial aspect of the respondent's business. She worked very closely with the claimant who was employed as the centre manager. She had a good relationship with the claimant in both a personal and professional sense and advised and assisted her on staffing issues. Towards the end of 2008 she received a complaint about the claimant's aggressive behaviour. As a result of this complaint she observed the situation for a period of time and had a discussion with the claimant. The matter was closed after that discussion.

In January 2009 a new corporate system was introduced. This new system was a team based system requiring a team effort whereby accounts of all customers which were held on the company's computer database were allocated to individual employees. This was seen by the company as an opportunity to stay in touch with its customers. As the claimant and employees (K) and (S) had developed relationships with certain customers they decided which customer accounts should be allocated to them. Four drafts were compiled and when the final allocation of accounts was made the claimant expressed relief at the introduction of this system as each employee was now going to be accountable for their own sales figures. The claimant felt that employee (S) was under pressure and requested that some of (S's) accounts be allocated to others including herself. (P) was also allocated a number of accounts and prior to the introduction of this system he was responsible for sales. (LM), sales director from the corporate office had responsibility for the introduction of the system. He met with employees and described how the system would operate. Dedicated time was set aside daily for the employees concerned to contact their customers and the claimant was offered the witness's office to make her calls. The claimant was allocated 339 customers and was expected to concentrate on a certain number of these customers as 80% of the respondent's business came from 20 % of their customers. Accordingly it was necessary to identify the customers that should be contacted and this decision was left to each individual employee.

In or around April 2009 the respondent purchased a company which automatically secured €700,000 worth of business. The claimant was made aware of the purchase and the witness was conscious of the need to support the claimant during that exercise as the claimant was a key person within the company. She met with the claimant on 4 June 2009 and told her that she was happy to help her if she required any help. The claimant identified areas of work and the witness was happy to support her. She also told the claimant that she should put any issues that she had in writing to her. (S) was also absent on sick leave at that time. The company hired a part-time receptionist as her replacement and the claimant was relieved following that appointment. The claimant carried out the interviews that led to the appointment of the part-time receptionist as it was very important that the company selected the correct person for the job. The claimant never told the witness that she was suffering from work related stress at that time.

The claimant left the workplace to attend for a medical appointment on 5 June 2009. She did not complete the standard form that the company had in place for employees to request time off from the workplace. The claimant's husband delivered a medical certificate on 8 June 2009 and the claimant submitted further medical certificates until 6 July 2009. The claimant requested a meeting and the witness and (P) met with her on 2 July 2009. The claimant was aggressive and agitated at that meeting. She was aggressive in particular towards (P) and she kept pointing her finger at him. She questioned their management style and told (P) that he was too soft with employees. She said she felt stressed because of her sales duties. She was not communicating in her normal fashion and the witness felt as though there was a barrier between them. (P) explained that the new system had been introduced with her approval and that she had welcomed the introduction of the new system. She then said that she would not be able to return to work until her workload was reduced. She said

that her doctor would not allow her to return to work until her workload was reduced. She told them that her doctor had diagnosed her to be suffering from stress. The meeting was very negative and was going nowhere.

Following that meeting the company conducted a benchmarking and health and safety risk assessment as (P) wanted to address the issues raised by the claimant. (CC) was appointed to carry out the risk assessment and benchmarking exercise. The witness contacted the claimant and asked to speak with her as part of those exercises. The claimant replied that she had better make it quick as she was collecting her daughter. On 23 July 2009 (P) wrote to the claimant informing her that they had conducted a benchmarking and health and safety assessment. The letter informed her of the reasons of the company's conclusions, that the allegations of stress being induced by an overload of work within the company were completely without foundation. The letter also stated that, from a Health and Safety perspective the job should be within her capabilities and as such cannot be the cause of any stress currently being experienced by her. A copy of the risk assessment and benchmarking reports was given to the claimant on 4 August 2009. It did not contain (CC's) recommendations. The witness did not know why the recommendations were not included with the reports.

The claimant then e-mailed the company on 24 July 2009 outlining the factors that she felt were causing her stress. (P) replied to this e-mail by way of letter on 27 July 2009 seeking clarification on what the claimant deemed to be "work related issues". The claimant never clarified what she meant by "work related issues". A further meeting took place on 11 August 2009. The company wanted to reach an agreeable solution and were prepared to discuss the benchmarking and health assessment reports. The company was totally committed to reaching a resolution and looked for suggestions and recommendations from the claimant. They had always supported her in the past allowing her to leave work at 5.20pm even though her finishing time was 5.30pm. She was a key person in the business into the future. However the claimant never mentioned the reports at that meeting. She was not forthcoming with any suggestions. She was very agitated and dismissive at the meeting. She said she was coming back to work as she had a fit to return to work certificate. The claimant was then asked to e-mail the company informing them as to what level of work she was willing to undertake. A series of e-mails were exchanged between the claimant and (P) on the evening of 11 August 2009 and the claimant reported for work on the morning of 12 August 2009. A meeting then took place in the boardroom. (P) and (G) attended the meeting with the claimant. The claimant was again agitated and confrontational. (P) told the claimant that her role in the company could not be changed but they were willing to listen to suggestions from her. The claimant did not offer any suggestions. She said she was dressed and ready for work. The claimant then insisted that she be given a letter stating that they were "telling" her to leave. A letter was then typed and given to the claimant. The letter stated they could not allow her back to work and expose her to an environment which she (the claimant) believed to be stressful. The claimant then asked that the word "asked" be changed to "tell" as she said telling somebody to do something does not give a person a choice. The claimant circled the word "asked" and stated that she wanted it changed to "tell". The claimant conducted telephone conversations during this meeting and (G) believed that she was receiving advice in those phone calls. (P) then said that he was not going to allow himself be bullied by the claimant. He tore up the letter and asked the claimant if she wanted a witness present. The claimant replied that she wanted (DM) present. (DM) was then called into the boardroom and (P) explained the reason to (DM) as to why he was in attendance. (DM) remained in the boardroom as a witness. (P) then contacted his solicitor and informed the claimant that he did not need to give her a letter. He said he had no choice but to tell/ask her to leave. Neither (P) nor (G) ever said that the claimant was dismissed and the claimant's employment was not terminated at that meeting.

(P) wrote to the claimant later that day setting out the company's position. He stated *inter alia* that he could not allow the claimant return to work until such time as the matter is resolved. He also again sought suggestions as to how the claimant could be accommodated. The claimant made no suggestions as to how an agreeable solution could be achieved or never sought to use the grievance procedure.

(G) accepted that while she worked in the Human Resources area she was not trained in human resources and had no qualifications in that area. She confirmed that the claimant had enquired from her as to the identity of the person who had made the bullying allegation. She told the claimant that she could not reveal the identity of the person who made the complaint as the complaint was to be treated confidentially. The company dealt with the complaint in an informal manner and no record of the complaint was placed on the claimant's file. (G) confirmed that the claimant was allocated 60 accounts after initially being allocated 339 accounts. Following the departure of the company's receptionist, telephone calls were taken by all staff members including the claimant. It was becoming very difficult to make calls and (G) offered her office to the claimant and other staff members if they wished to make calls. (G) suggested to the claimant that she make 2 telephone calls per day to customers. She wanted the claimant to focus on 20% of the customers who were responsible for 80% of the company's business and the claimant was given complete flexibility to manage that process. She was always there to provide support and guidance to the claimant. The claimant also interviewed 4/5 prospective employees for the vacant receptionist position and this position was filled as a result of the interviews.

(G) gave further evidence that the claimant was diligent, efficient and very reliable. She was also truthful and honest. The claimant provided the company with a medical certificate on 8 June 2009 confirming her absence from work for the following two weeks. The company did not contact the claimant during that time as it was not company policy to contact employees if they were on sick absence from work. This was the first occasion the claimant was absent from work on sick leave. On 2 July 2009 (P) and (G) met with the claimant. The claimant said she was suffering from stress due to the sales. She also said that she felt unhappy at the manner in which the bullying complaint had been handled. She also said she had not been properly consulted in relation to a proposed merger between the respondent and another company. This was the first occasion that the company were aware that the claimant felt stressed because of work. (P) and (G) told her that they would do everything in their power to support her but they could not change her role. They did not say that they could take away her sales responsibilities.

(G) gave evidence that they had discussed the claimant's role with the risk assessor and the recommendations of the assessor's report were based on the claimant returning to work. She fully intended to go through the assessor's recommendations with the claimant when she returned to work. She had told the claimant on 8 July 2009 that the company was in the process of carrying out the risk assessment and benchmarking process. She could not recall if the claimant had requested to have an input in those processes. (CC) conducted the risk assessment and benchmarking processes on 7 July 2009. The claimant was absent on sick leave at that time. She confirmed that the claimant e-mailed the company on 24 July 2009 and it was obvious from that e-mail that the claimant wanted to have a role in the benchmarking process. As part of the risk assessment process (CC) did not interview the person who was carrying out the claimant's work. (G) had no reason to doubt that the claimant was genuinely off sick from work but never accepted that her sickness was due to work related stress. She did not request the claimant to attend the company doctor. The company could not change her role but they were willing to work with her to come to an agreeable solution. The company needed the claimant to withdraw her

allegation of work related stress before she was allowed return to work. The claimant had to agree to do the job she was doing previously as a general manager with the same customer base. They needed to know from the claimant what she meant when she said she returning to work to fulfil her role to the best of her ability. (P) is now the general manager of the company.

(DM), employee of the respondent company gave evidence that he was called into the meeting on 12 August 2009. (P) explained to him that he was present as a witness at the request of the claimant. (P) then said that the claimant was returning to work after a period of sick leave but that he was reluctant to allow her return until health and safety issues were resolved. (P) asked the claimant to leave and the claimant said to (P) that he had to tell her to leave. (P) said "I'm telling you to leave" but he did not say that he was terminating her employment. He (the witness) did not interpret that the claimant's employment ended at that meeting. He interpreted that the claimant was being asked to leave the workplace premises but not that she was ultimately dismissed.

Determination

The Tribunal has considered carefully all the evidence and submissions of the claimant and respondent in this case.

The Tribunal is satisfied that a good working relationship existed between the parties up to the end of 2008 at which point a complaint was made against the claimant by the partner of an employee. The respondent refused to identify the complainant to the claimant and the claimant was not afforded an opportunity to confront her accuser. The Tribunal is satisfied that the complaint was not investigated or resolved in a manner satisfactory to the claimant.

Following a reorganisation of the business, the claimant was assigned additional duties in the form of an increased client base. The claimant was under pressure to achieve results having been set targets which she believed were outrageous, she was absent from work from 8 June 2009 and on that date submitted a medical certificate and contacted the respondent and advised that she was suffering from work related stress. The claimant submitted a number of medical certificates and a final medical certificate indicated that she was fit to return to work on 4 August 2009. The respondent was aware and particularly from the 2 July 2009 that the claimant suffered from work related stress. The Tribunal is satisfied that the respondent, at a very early stage adopted a position that the claimant's absence from work was not due to work related stress and in fact maintained this position up to 12 August 2009 notwithstanding that the medical certificates submitted clearly stated that she suffered from work related stress and the respondent furthermore failed to have the claimant medically examined by its own doctor.

The Tribunal is satisfied that the benchmarking exercise and Health and Safety Risk Assessment carried out by the Respondent following the claimant's claim that she suffered work related stress was flawed, as the benchmarking exercise and Health and Safety Risk Assessment were carried out without any input, interview or consultation with the claimant. The Tribunal is further satisfied that the respondent failed to provide the claimant with the complete report into the benchmarking exercise and Health and Safety Risk assessment whereby the recommendations were omitted and no plausible reason for the omission was advanced by the respondent to the Tribunal. The Tribunal is satisfied that the respondent was not prepared to engage or consult in any meaningful way with the claimant on a return to work, as the only basis of engagement or consultation was the precondition that firstly the claimant would withdraw all allegations of work related stress against the respondent, notwithstanding work related stress was the medical diagnosis proffered by the claimant as the reason for her absence.

The Tribunal is satisfied that the claimant made every effort to return to work and engage with the respondent in a meaningful way and finds the respondent's entrenched position of setting preconditions, as contrary to good industrial relations practice. The claimant returned to work on 12 August 2009 having previously advised the respondent of her intention to do so. There is a conflict between the parties as to what words were spoken at the meeting that took place on that morning, principally relating to whether the claimant was asked to leave her workplace or was she told to leave her workplace. The Tribunal is satisfied that it was reasonable for the claimant to conclude that she had been dismissed on 12 August 2009 regardless of whether the words spoken were "I am asking you to leave or I am telling you to leave".

The Tribunal is satisfied that the claimant was unfairly dismissed and awards compensation in the sum of €75,000.00 under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal furthermore awards the claimant the sum of €5503.80 being the equivalent of six weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)