# THE INDUSTRIAL TRIBUNALS

**CASE REF: 7/18**

**CLAIMANT:** **Rachel McLaughlin**

**RESPONDENT:** **Superdrug Stores PLC**

## DECISION

The unanimous decision of the tribunal is that all the claims are dismissed.

**Constitution of Tribunal:**

**Vice President:** **Mr N Kelly**

**Members:** **Mr Anthony Carlin**
**Mr Noel Jones**

**Appearances:**

**The claimant appeared in person but was assisted by Mr Christopher Mallon.**

**The respondent was represented by Ms Sarah Agnew, Barrister-at-Law, instructed by A&L Goodbody Solicitors.**

**BACKGROUND**

1. The claimant was employed by the respondent from 11 November 2016 to 22 November 2017, latterly as the manager of their Coleraine branch.

2. The respondent operated a chain of retail outlets.

3. The claimant resigned her employment on 22 November 2017, with effect from that date.

4. She lodged a claim in the tribunal on 13 December 2017, alleging that she had been constructively and unfairly dismissed contrary to the Employment Rights (Northern Ireland) Order 1996 (the 1996 Order).

   The remainder of the claim raises other issues which have been treated as separate claims. Those are;

(i) a claim that the claimant was not paid £831.20 in respect of training expenses arising out of a training course which ran from 11 November 2016 to 9 December 2016, contrary to the provisions relating to unlawful deductions from wages in the 1996 Order, or alternatively, as a breach of contract.

(ii) A claim that she had not been given paid holidays, or payment in lieu of such holidays, contrary to the Working Time Regulations (Northern Ireland) 2016 (the 2016 Regulations).

(iii) That she had been forced to work excessive hours and had been refused breaks contrary to the 2016 Regulations.

(iv) That she had not been properly paid for untaken holidays allegedly outstanding at the date of her resignation, contrary to either the 1996 Order or the 2016 Regulations.

(v) That she had not received the correct amount of salary allegedly due at the date of her resignation, contrary to the provisions relating to unlawful deductions from wages 1996 Order; or alternatively as a breach of contract.

**PROCEDURE**

5. A Case Management Discussion took place by telephone conference call on 13 April 2018.

6. Directions were given in relation to the exchange of documents. The witness statement procedure was explained to the parties. Directions were given in relation to the exchange of those witness statements and the lodgement of same in the tribunal.

7. Each witness, when called to give evidence, swore or affirmed to tell the truth and then adopted their previously exchanged witness statement as their entire evidence in chief. They then moved immediately to cross examination and then to brief re-examination, if required.

8. The claimant cross-examined the witnesses for the respondent, with the assistance of Mr Mallon.

9. The claimant gave evidence and her domestic partner Mr Sam Shearer gave evidence on her behalf.

10. The respondent called as witnesses;

(i) Ms Catherine Ferguson who had been the store manager in the Castle Court store and the claimant's first line manager.

(ii) Ms Ashleen McKenna, who had been the manager of the Coleraine store before the claimant took up that position.

(iii) Mr Steven Douthart, who had been the area manager at the relevant times.

11. The evidence was heard on 19 and 20 June 2018. Submissions were heard on 21 June 2018. The respondent presented its submission first. The claimant then presented her own submission. Mr Mallon finally gave a submission on the law on behalf of the claimant.

12. The panel met immediately thereafter to consider the evidence and the submissions and to reach a decision. This document is that decision.

**RELEVANT LAW**

**Constructive Unfair Dismissal**

13. To succeed in a claim of constructive unfair dismissal, an employee must establish that his employer had committed a repudiatory breach of contract. That is a significant breach going to the root of the contract. (***Western Excavating (ECC) Limited v Sharp [1978] ICR 221)***.

14. In this respect, the contract is taken to include not just the written and specific terms laid down in that contract but also an implied term of "trust and confidence" between the employer and the employee. In ***Woods v W M Car Services (Peterborough) Limited [1981] IRLR 347,*** the EAT stated;

> *"17. In our view it is clearly established that there is implied in a contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee:* ***Courtaulds Northern Textiles Limited v Andrew [1979] IRLR 84.*** *To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it: see* ***British Aircraft Corporation Limited v Austin [1978] IRLR 332*** *and* ***Post Office v Roberts [1980] IRLR 347.*** *The conduct of the parties has to be looked at as a whole and its cumulative impact assessed:* ***Post Office v Roberts (Supra) paragraph 50."***

15. In determining whether there has been a fundamental breach of contract, unreasonable conduct alone is not sufficient (see ***Claridge v Daler Rowney Limited [2008] IRLR 672 EAT***); it has to amount to a breach of contract that fundamentally undermines the employment relationship; something which has to be determined objectively by the tribunal as a question of fact.

The EAT stated:

> *"39. It is well established that unreasonable conduct alone is not enough to amount to a constructive dismissal; see* ***Western Excavation v Sharpe [1978] IRLR 27****. As that case makes clear, it must be unreasonable conduct amounting to a breach of contract, and in this context of the breach of the trust and confidence term that means that*

*it should fundamentally undermine the employment relationship. If an employer has acted in a way in which the tribunal considers a reasonable employer might act, then we would suggest that it cannot be a proper inference that an employee is entitled to say that nonetheless this was so fundamental a breach of the employer's obligation towards him that he should not be expected to remain in employment. Once the tribunal concedes to itself that there may be more than one view as to whether the conduct is sufficiently unreasonable, that undermines its conclusion that the employment relationship has been sufficiently damaged."*

That task does not, however, import a range of reasonable responses test (as applied ordinarily when determining the fairness of a dismissal for the purposes of 1996 Order). The House of Lords has determined in ***Malik v BCCI SA [1997] ICR 606*** that that test is not appropriate when considering whether there has been a fundamental breach of the implied obligation to maintain trust and confidence. The test to be applied is therefore whether the employer has, without reasonable and proper cause, conducted itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between the employer and employee."

Lord Steyn stated at page 623d:

*"But Mount LJ (below) held, at p411, that the obligation*

*"may be broken not only by an act directed at an individual employee but also by conduct which, when reviewed objectively, is likely seriously to damage the relationship of employer and employee."*

*That is the correct approach. The motives of the employer cannot be determinative, or even relevant, in judging the employee's claim for damages for breach of the implied obligation. If conduct objectively considered is likely to cause serious damage to the relationship between employer and employee, a breach of the implied obligation may arise."*

16. In ***Omilaju v London Borough of Walthan Forest [2005] ICR 481,*** the Court of Appeal (GB) stated at paragraph 14;

*"1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment:* ***Western Excavating (ECC) Limited v Sharp [1978] ICR 221.***

*2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example,* ***Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606, 610E-611A (Lord Nichols of Birkenhead) 620H-622C (Lord Steyn).*** *I shall refer to this as "the implied term of trust and confidence".*

*3. Any breach of the implied term of trust and confidence will amount to*

*a repudiation of the contract: see, for example, Per Brown-Wilkinson J in **Woods v W M Car Services (Peterborough) Limited [1991] ICR 66, 672A.** The very essence of a breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.*

*4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in **Mahmud**, at page 610H, the conduct relied on as constituting the breach must*

> *"impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer."*

*5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put in Harvey and Industrial Relations and Employment Law paragraph D1 [480]:*

> *"Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the Courts to warrant their treating the resignation as a constructive dismissal. It may be the "last straw" which causes the employee to terminate a deteriorating relationship.""*

17. At paragraph 16 of the judgement in ***Omilaju,*** Dyson LJ said;

> *16. Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle is that the law is not concerned with very small things (more elegantly expressed in the maxim, "de minimis non curat lex" is of general application".*

At paragraph 19, he said;

> *"19. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant."*

18. The Court of Appeal (GB) stated in ***Lewis v Motorworld Garages Limited [1986] ICR 157*** *that;*

*"If the employer is in breach of an express term of the contract of employment, of such seriousness that the employee would be justified in leaving and claiming constructive dismissal, and the employee does not leave and accepts the altered terms of employment, and if subsequently a series of actions by the employer might constitute together a breach of the implied obligation of trust and confidence, the employee is entitled to treat the original action by the employer which was a breach of the expressed terms of the contract as a part – the start – of a series of actions which, taken together with the employer's other actions, might cumulatively amount to a breach of the implied terms."*

The application of the final straw principle requires that the series of actions relied on constitute conduct of such seriousness that, taken together, and viewed objectively, they can constitute a breach of contract of sufficient gravity.

19. It is not enough to show merely that the employer has behaved unreasonably or thoughtlessly. However the Court of Appeal (GB) in ***Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445*** *stated:*

*"Reasonableness is one tools in the Employment Tribunal's factual analysis kit for deciding on whether there has been a fundamental breach".*

In ***Brown v Merchant Ferries Ltd [1998] IRLR 682,*** the Court of Appeal (NI) said that although the correct approach in constructive dismissal cases was to ask whether the employer had been in breach of contract and not to ask whether the employer had simply acted unreasonably; if the employer's conduct is seriously unreasonable, that may provide sufficient evidence that there had been a breach of contract.

20. A breach of contract may be anticipatory rather than an actual breach of contract which has already occurred. It is sufficient that an employer has indicated a clear intention not to fulfil the terms of the contract in future, if the employee accepts that intention to commit a breach as bringing the contract to an end.

21. If a repudiatory breach of contract, including a breach of the implied term of trust and confidence, has been established, the employee must show that he has left his employment because of that breach. The test is whether or not the breach of contract "played a part" in the claimant's decision to resign – see ***Nottinghamshire County Council v Meikle [2004] IRLR 703*** and ***Wright v North Ayrshire Council [2014] IRLR 4*** at paragraphs 8-20. Care needs to be taken to avoid an "effective cause" test being applied.

**Unauthorised Deduction from Wages/Breach of Contract**

22. On termination of an employment contract, a former employee may claim wages allegedly unpaid on foot of a contract as an unauthorised deduction from wages contrary to Part IV of the 1996 Order, or as a breach of contract under the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994 SR 1994/308.

**Holiday Pay/Breaks/Hours of Work**

23. The 2016 Regulations provide for claims in respect of unpaid holiday pay and breaks in Working Time which have not been allowed contrary to the Regulations.

Under Regulations 4 and 5, a worker can opt out of the 48 hours maximum working week.

**Statement of Employment Particulars**

24. The 1996 Order requires an employer to provide an initial written statement of particulars of employment covering specified matters and a written statement of any subsequent changes to those particulars. Article 27 of the Employment (NI) Order 2003 provides for the payment of an award of between two weeks gross pay and four weeks gross pay.

No specific claim is required in the ET1 to give the tribunal jurisdiction.

25. However the tribunal only has jurisdiction to make such an award if the claimant succeeds in one of a list of claims – Schedule 4 of the 2003 Order. The relevant claims in the present case are unfair dismissal, unauthorised deductions from wages or breach of contract.

26. The claim for an award under Article 27 of the 2003 Order is therefore not a free standing claim. In this case, it can only be considered as an adjunct to a successful unfair dismissal claim, a successful unauthorised deduction from wages claim, or a successful breach of contract claim. If no such claim succeeds, it cannot be considered.

**Relevant Findings of Fact**

27. The claimant's evidence and the details of her claim were somewhat amorphous and difficult to follow. However, at the start of her cross-examination, the claimant accepted that her primary claim of constructive unfair dismissal was based on different specified allegations which she has made against the respondent. Those were;

(i) an allegation that training expenses at the start of her employment were unlawfully withheld and that this allegation had not been properly investigated by the respondent

(ii) an allegation that her first line manager, Ms Catherine Ferguson had fraudulently processed the claimant's holidays to the claimant's detriment

(iii) an allegation of a campaign of victimisation and harassment by, amongst others, Ms Catherine Ferguson and Ms Ashleen McKenna. The terms "victimisation" and "harassment" appear to have been used in a non-legal or non-technical sense to simply mean adverse treatment;

(iv) an allegation that she had been harassed by a junior employee Mr Keith Stewart and that that allegation had not been properly investigated by the respondent

(v) an allegation that she had been unfairly treated subsequently and in particular in relation to Mr Stewart's proposed return to the business.

The relevant findings of fact can therefore primarily relate to those allegations, before turning to the ancillary allegations relating to pay, holiday pay and working time.

28. In relation to her constructive unfair dismissal claim, the claimant argued firstly that there had been a series of actions leading to a last straw and that she had resigned in relation to that "last straw". Secondly the claimant argues that she was constructively and unfairly dismissed because of one incident involving Mr Keith Stewart and because of Mr Douthart's alleged failure to properly deal with that matter.

Apart from the difficulty of showing that she had been motivated to resign by, simultaneously, a series of events leading to a last straw and then, separately, by only a single incident, the matters raised by the claimant as the initial cumulative incidents to establish her allegation of a "last straw" constructive unfair dismissal were not breaches of contract viewed singly or cumulatively. A great deal of time has been wasted by the claimant in pursuing the "last straw" argument. That argument was entirely baseless and misconceived. The hearing has been significantly lengthened and significantly confused by her decision to run both arguments; and by her attempt to put forward a series of preliminary incidents as the basis for a "final straw" argument.

**Training Expenses Allegation**

29. The first allegation relates to training expenses which the claimant alleges she had been promised in relation to a training course which ran between the 11 November 2016 and 9 December 2016, immediately after she had commenced employment with the respondent as an assistant store manager at the Castle Court store.

30. The expenses claimed by the claimant related to travelling and parking costs which she had incurred during the duration of the training course. However those travelling and parking costs were exactly the same as the travelling and parking costs which she would have incurred in any event, as an employee based at the Castle Court store as an assistant store manager.

31. The claimant repeatedly alleged that she had been promised payment of her expenses by Ms Ferguson, the store manager at Castle Court and her first line manager. In cross-examination, she accepted that she was alleging that she had been offered payment of those training expenses after she had accepted and had commenced employment. She was not alleging that she had been induced to accept an offer of employment, or induced to commence employment, on the basis of any alleged promise to pay expenses during her training course at her ordinary place of work. It did not seem that the claimant was alleging that she had been contractually entitled to those expenses; simply that she had been promised these expenses.

32. The expenses policy of the respondent company follows the standard format which is common to all industries. Expenses were only to be paid where the employee

was required to work other than at his or her normal place of work. Even then, travelling expenses were only to be paid to the extent that such expenses as were incurred exceeded the ordinary expenses that would have been incurred in relation to his or her normal place of work.

33. Ms Ferguson denied making any promise to the claimant to pay her expenses during the training course which ran from the 11 November 2016 to 9 December 2016. Ms Ferguson had been an experienced store manager and the tribunal can see no logical reason why she would have made any such promise. It would have been contrary to both the respondent's clear written policy and clear practice and, indeed, contrary to standard employment practice. Similarly, the tribunal can see no reason why the claimant would have expected the payment of such expenses in these circumstances.

34. The expenses claimed by the claimant in this respect exceeded £800. That was a substantial sum; particularly to an employee on a relatively low salary. Despite that, the claimant did not lodge an expenses claim and did not formally pursue this claim until March 2017, over three months after the end of the relevant training course. The tribunal concludes that if she had been promised payment of these expenses, for whatever reason, she would not have delayed formally pursuing payment for such a substantial period.

35. No documentary evidence of any sort has been produced by the claimant to support her allegation that she had been promised payment of these expenses. There was no evidence of any such payment having been offered or having been made to any other employee in the same or in similar circumstances. Given the inherent unlikelihood of any such promise ever having been made, the tribunal unanimously concludes that no such promise was made. In reaching that conclusion, the tribunal also takes into account its significant concerns about the claimant's credibility. Those concerns will be discussed later in this decision.

36. The claimant further alleged in cross-examination and for the first time that Ms Ferguson had deliberately withheld or delayed her training in relation to the expenses policy, so that the claimant would have been disadvantaged in some unexplained way. It is difficult for the tribunal to see why the claimant would have needed any specific training to know that expenses are not ordinarily awarded to attend your normal place of work. It is equally difficult for the tribunal to see why the claimant would have needed any specific training to enable her to pursue an expenses claim. She had been employed before in a similar store environment. She had been employed by the respondent in a managerial position. In any event, the tribunal accepts Ms Ferguson's clear evidence, which was unrebutted by the claimant, that there had been no specific element of training relating to the expenses policy; any discussion of the respondent's policies would have been dealt with under training in relation to the internet. The claimant argues that Ms Ferguson had not only withheld expenses in excess of £800, but also that she had also gone as far as to deliberately alter her training to "disadvantage" her. That is simply not credible.

37. The claimant eventually raised the claim in relation to travelling expenses with Mr Douthart, her regional manager, possibly in March 2017. Mr Douthart took the trouble to raise the matter with his own line manager although he was doubtful that there had been any basis for such a claim. Unsurprisingly, he was immediately told

that such expenses were simply not payable. He relayed that back to the claimant. The claimant was dissatisfied with that decision. She threatened to take the respondent to court. However, she did not lodge any formal grievance and she did not lodge any Industrial Tribunal claim at that point.

38. The claimant repeatedly raised the allegation that, by engaging in informal discussion with Mr Douthart or with Ms Ferguson about this or about other issues, she had in fact invoked the grievance procedure. That argument is entirely misconceived. The grievance policy makes it plain that before invoking such a policy, attempts should be made to resolve the matter informally between an employee and his or her line manager. However, invoking a grievance policy requires a formal grievance. That is the method adopted sometime later by the claimant after her resignation and it is the manner which she clearly understood to be the way in which a grievance should be invoked. There is a clear difference between an informal discussion and a formal grievance under the respondent's internal policy.

39. As indicated above, the manner in which this claim was conducted and the manner in which the claimant's arguments were advanced was confusing. It is entirely unclear whether the claimant had been pursuing this allegation of unpaid expenses as a separate "unauthorised deduction from earnings" claim or a separate "breach of contract" claim, as well as part of her "last straw" constructive unfair dismissal argument. It seems however that she may have been doing so.

40. Any such "unauthorised deduction from earnings" or "breach of contract" claim is manifestly out of time and no application has been put before the tribunal to extend time in either respect. Furthermore, no evidence has been presented which could in any circumstances successfully ground any such application.

41. The tribunal has in any event concluded that no promise was ever made by Ms Ferguson to pay training expenses incurred during the duration of the claimant's training course. There is no reason why any such promise would have been made by an experienced manager. This would have been contrary to the clear and absolutely standard expenses policy of the respondent company, contrary to normal employment practice, and contrary to common sense. There is also no reason why, if such a promise had been made, it would have been effectively ignored by the claimant for several months. It is no answer for the claimant to allege, as she did, variously, that she had been told that the expenses would be included in her monthly pay or that she had been waiting for an expenses form to be provided by Ms Ferguson. It is not credible for the claimant to suggest that she had been waiting for payment of these travelling and parking expenses with her monthly salary, when no formal claim had been made and when no receipts had been retained by the claimant or had been submitted to the respondent. The respondent would not have known what she had been claiming or how much she was claiming. The claimant must know that that is the case and yet she persisted in mounting this argument, which was again entirely misconceived. Furthermore, if the claimant had been waiting for an expenses form, there would have been some sort of an email trail to establish requests for that form. She could at any stage have obtained an expenses form from a colleague or from HR. There is no evidence of any of this. In any event, it is again a nonsense for the claimant to run both these explanations simultaneously. It makes absolutely no sense, even if either argument had the least basis in fact, for the claimant to argue that she had been simultaneously waiting for

an expense form which she had requested and had been promised, while simultaneously waiting for a payment in her monthly salary, without a claim form having been completed and without those expenses being vouched by receipts.

42. As with much of the claimant's evidence in relation to this case, her evidence in relation to her claim of training expenses did not stand up to any scrutiny. The tribunal unanimously concludes that the claimant had not been promised payment of these expenses and there had been no breach of contract. Nothing had occurred in relation to training expenses which could form part of a cumulative series of events for the purposes of a last straw argument.

**Alleged Fraudulent Processing of Holidays**

43. This was a serious allegation by the claimant. She alleged that Ms Ferguson, her first line manager, had deliberately and fraudulently processed her holiday entitlement on multiple occasions to her detriment.

44. The claimant's evidence in relation to this allegation was repeated and was vehement. She rejected any suggestion that her allegation had been misconceived or that she had misunderstood the facts. She rejected any suggestion that Ms Ferguson, in the midst of her other responsibilities, had simply made errors in relation to holiday calculations. She was adamant that Ms Ferguson had been doing this deliberately, motivated by personal vindictiveness. The claimant accepted that Ms Ferguson had made mistakes in relation to other employees: but that did not persuade her that Ms Ferguson's actions had not been focussed on her.

45. The claimant said in her claim form that;

> *"After contacting payroll it was confirmed to me that Catherine Ferguson had been fraudulently processing me for holidays."*

That wording, which had presumably been carefully chosen by the claimant, suggested that Payroll had accused Ms Ferguson of acting fraudulently and deliberately. That had not happened. It had not been "confirmed" to the claimant that Ms Ferguson had been acting in that way. The most that payroll had confirmed to the claimant had been that Ms Ferguson's calculations had been incorrect. Payroll had certainly made no accusations of fraud. However, the claimant felt able to make a clear suggestion that they had done so.

46. It is important to remember that in the early stages of the claimant's employment, her holiday entitlements had been difficult to calculate. On the one hand, they increased as her service accrued and, on the other hand, they decreased as holidays were taken. Mistakes were an everyday possibility. However that was a possibility that the claimant adamantly refused to countenance.

In cross-examination, the claimant argued that Ms Ferguson's motivation had been that the claimant had completed an analysis (described as a "SWOT" analysis) of the operations of the Castle Court store as part of her interview before appointment. She alleged that Ms Ferguson had resented the criticisms which the claimant alleged had been contained within that analysis. That document was not presented to the tribunal or opened in argument. It is also important to remember that this alleged motivation had not been contained in the claimant's evidence in chief in her

witness statement and appears to have occurred to her for the first time in the course of her cross-examination.

47. The claimant was alleging that Ms Ferguson who had offered her the job, had been simultaneously so resentful of the claimant that she had embarked on a Machiavellian and clandestine plot to withhold holiday entitlement from the claimant by falsifying her holiday calculations. That allegation is simply not credible.

48. Furthermore, the claimant's allegations invite the tribunal to conclude that Ms Ferguson, deliberately and with malice, processed holiday entitlement which had then been notified on a regular basis to the claimant. Ms Ferguson would have needed to have been unrealistically optimistic (or stupid) if, in such circumstances, she had ever hoped to get away with such a practice. Any employee would have been able to work out her own holiday entitlement, even if only roughly, and to realise that something might be incorrect. This is exactly what happened in the present case.

    It is simply not credible that Ms Ferguson had acted fraudulently, deliberately or with malice in these circumstances, where any such actions were bound to have been identified and where those actions could only have rebounded to the detriment of Ms Ferguson, as indeed they did do. She was shown to have miscalculated holiday entitlement on more than one occasion.

49. It is irrational for the claimant to allege that Ms Ferguson had acted in this manner.

50. The tribunal unanimously concludes that Ms Ferguson did not fraudulently, deliberately or with malice process the claimant's holiday entitlements as alleged. Ms Ferguson had obviously made a series of mistakes but this had been no more than that.

51. In any event, the claimant's holidays had been corrected when she raised the matter with Human Resources and Mr Douthart had arranged with his own area manager for the claimant to be allowed to carry unused holidays forward, despite the respondents' strict "use it or lose it" policy in relation to holidays. The minor mistakes had therefore been corrected. There had been no loss of holiday entitlement.

    This had been a minor matter which could not form part of a series of incidents which culminated in a "final straw" resignation.

**Campaign of Victimisation or Adverse Treatment**

52. Apart from the two separate issues of training expenses and holiday processing, the claimant alleged that she had been subject to a campaign of "victimisation" or adverse treatment. That allegation again lacks any rational basis and has to be viewed against a background of a relatively short period of employment which lasted for little over one year. In the course of that short period of employment, the claimant had been appointed as an assistant store manager, had been trained and had then been promoted to store manager. That pattern of employment is not a pattern typical of an employee who has been subject to a campaign of "victimisation" or adverse treatment by her employer. It suggests the reverse.

53. The first thing that the claimant complains of is that her training had been "limited" and that her training manual had not been properly completed when she had been an assistant store manager in Castle Court immediately after her appointment. She had started work on 14 November 2016, as the Christmas rush started in a very busy store in the city centre.

54. It is clear that the claimant attended the standard induction training in Great Britain. It is also clear that the training manual had not been fully completed by her then line manager but this had occurred in a course of a very busy trading period. It had not impeded her induction training in any way in Great Britain. The tribunal is satisfied that Ms Ferguson had offered her whatever assistance had been required to complete her training and to move on in her career. For whatever reason, the claimant had gone over Ms Ferguson's head to complain direct to Mr Douthart, her regional manager. He had, in a generous fashion, arranged for the claimant to move from Castle Court, at her request, to the Abbeycentre store for further training. No evidence has been produced by the claimant to suggest that she had suffered any detrimental impact from any alleged failure to conduct her training. Given the tenor of the claimant's evidence in general and its lack of credibility, the tribunal prefers the clear evidence of Mr Douthart that the manager in the Abbeycentre store could not see why the claimant had been sent to that store for further training. She had been regarded by that manager as fully trained and that manager had not known what to do with her in terms of training.

55. The tribunal does not accept the claimant had been badly treated in any significant way in relation to training. After all, she had been trained sufficiently to be promoted to the post of store manager after only one's year employment. That is not indicative of anyone being held back by insufficient training.

56. The claimant's training position at the Abbeycentre store was supplemented from time to time by periods at the Larne store to provide cover. However, during this period her permanent place of work remained at Castle Court and Ms Ferguson remained her line manager. It is clear that Ms Ferguson had wanted the claimant to return to Castle Court. That again is not indicative of any pattern of "victimisation" or adverse treatment by the respondent.

57. The store manager in the Antrim store resigned and the claimant was then offered and she accepted the position of temporary manager in that store. Again, that is not consistent with an alleged campaign of "victimisation" and adverse treatment. The claimant had been given a temporary store manager appointment shortly after having been trained. She had clearly been adequately trained and was being encouraged and enabled to progress in her career.

    Surprisingly, and this is not has not been explained in any way by the claimant, the claimant did not apply for the permanent manager's position in Antrim in the normal way, or at all.

58. The claimant continued to raise complaints direct to Mr Douthart. On 5 August 2017, a trainee, Ms Lauren Douglas, had worked for part of one week in the Ann Street store and for part of that week in the Antrim store, where the claimant had been temporary store manager. Ms Douglas' entire week's wages had been recorded against the Antrim Store by Ms Ferguson. Ms Ferguson states that she had been told to do so by Mr Douthart. Mr Douthart could not remember

the incident and had been unaware that Ms Douglas had worked for part of the week in Ann Street. He accepted however that he could have directed Ms Ferguson to record the entire week's wages against the Antrim store. The claimant refused to accept any innocent explanation for this event. To the claimant, the only rational explanation was that this had again been a deliberate and malicious act by Ms Ferguson to damage the claimant's financial performance in the Antrim store and therefore to damage her reputation as a temporary manager.

The fact that the claimant is able to make such an allegation reflects a marked degree of paranoia on her part. This had been a minor matter. There was a clear and innocent explanation. There was no rational reason why Ms Ferguson would have been so obsessed with the claimant that she would have taken any such action. Nevertheless, the claimant refused to accept any of this and resolutely maintained her accusation of "victimisation" and vindictiveness.

59. The claimant's next area of complaint related to her move to the Coleraine store as an acting or temporary store manager in advance of the interview of which she now complains. It is absolutely clear to the tribunal that in moving her into the temporary post the claimant was being set up by the respondent for appointment to the permanent post. This was again not in any sense consistent with her repeated allegations of victimisation and adverse treatment.

60. However the claimant saw matters in a different light from the start. On her arrival in the Coleraine store as temporary store manager, some two to three working days after the previous manager Ms McKenna had left, the claimant alleged that she had found the store in disarray. In particular, she focussed on the stock room of the store. Instead of trying to sort it out, she immediately sent a series of photographs to Mr Douthart complaining about the state of the store and making various allegations eg that deliveries had not been put away correctly, that rotas had not been done, that notice boards had been out of date etc.

61. It seems clear that Mr Douthart, again in an act of generosity, did not tell her to get on with the job and to sort the store out. He arranged for significant staffing assistance for her. He arranged for Ms McKenna to return to assist and he arranged for other staff and managers from other branches to work in Coleraine. None of this was consistent with the claimant's allegations that Mr Douthart refused to support her.

62. The obvious reason, which would have occurred to any manager in such circumstances, for the stock room being in some disarray and for other matters being allegedly in disarray, was that employees had been somewhat relaxed in the interval between Ms McKenna leaving and the claimant arriving. No-one in such circumstances would rationally have believed that the store had been deliberately left in a mess to do her down. However the claimant held that belief.

63. The claimant continued to raise matters of complaint with Mr Douthart and continued to maintain that Mr Douthart was doing nothing to support her. Again the fact that the claimant can maintain such a position is not credible. For example, the claimant accepts that Mr Douthart gave her advance notice of a forthcoming vacancy as permanent store manager in Coleraine and that he had encouraged her specifically and in writing to apply for that post. Ms Ashleen McKenna had been the manager in Coleraine, but due to health reasons, had applied for the Antrim post in

a less busy store and had been successful in that application.

64. Bizarrely, despite alleging that Mr Douthart had been at fault in not replying to her emails, in not supporting her generally with staff shortages and in generally making her time with the respondent "awful", the claimant proceeded to accuse Mr Douthart of falsifying her interview for the Coleraine post. Anyone reading this decision would at this point automatically assume that the claimant was alleging that Mr Douthart had attempted to block her from appointment to that post and that he had falsified the interview record in that regard. That however is not the case. The claimant actually alleged that Mr Douthart had made up her answers, had falsified the interview and had given her high marks to ensure that she would get the post to the detriment of other candidates.

65. It was put to the claimant that this allegation was one which did not sit easily with her simultaneous allegation that Mr Douthart was not helping or supporting her. The claimant, after some considerable reflection, replied that he had only been doing this for his own benefit. That reply does not make any sense.

66. For the avoidance of doubt, the tribunal should state it does not accept in any respect the claimant's version of the interview which took place between her and Mr Douthart. The claimant's evidence is not credible.

67. The claimant continued to complain about Ms McKenna to Mr Douthart. She claimed that Ms McKenna had been encouraging her former staff to go off on the sick and that Ms McKenna had been continually undermining the claimant in her role. There was absolutely no evidence to support these allegations. There had been no reason for Ms McKenna to have acted in this way. After observing both Ms McKenna and the claimant giving evidence, the tribunal is satisfied that she had not at any stage sought to undermine the claimant and that she had not at any stage encouraged staff to go off on the sick.

68. The claimant further alleged that Ms McKenna, the previous manager who had moved to the Antrim store has "signed into my emails" and had "accessed private emails". The tribunal is satisfied that on occasion Ms McKenna had accidentally logged into the Superdrug system using her previous details. That is the sort of mistake that can occur with anyone moving to a new post. There is no evidence that Ms McKenna had done so deliberately. Furthermore, there is no rational basis for the claimant's assumption that Ms McKenna would have done so. Ms McKenna had neither the time, nor the interest, to 'hack' into the claimant's work emails or into the Coleraine store's accounts. Yet the claimant clearly believes she did so. The tribunal unanimously concludes that that belief is groundless.

69. In November 2017, one of the staff members in Coleraine, named Luke, texted Ms McKenna to indicate that he and another employee named Niamh felt "like handing in our notices". He asked if he could speak to Ms McKenna about this. She advised him not to resign and to telephone her to discuss. She then passed on his concerns, which he had raised with her, to Mr Douthart. She did not raise these matters with the claimant and did not seek to interfere. She took no further part in the matter.

The claimant sought to dismiss the concerns raised by Luke by arguing that they

were not concerns about her but concerns about Superdrug generally. That response cannot be correct. The concerns raised by two members of staff coincided with her arrival as manager.

70. There clearly had been a degree of friction between a junior part-time employee in Coleraine, Mr Keith Stewart, and the claimant. The claimant had been the store manager and Mr Stewart had been an employee on a 16 hour contract. That is the sort of situation which an employer would expect a manager to have resolved herself: if necessary, by instigating disciplinary action. The claimant did not do so.

71. On 7 November 2017, there was an incident in the stockroom. Mr Stewart apparently had an argument with the claimant: the claimant alleged that he had been aggressive and had left the store.

72. Immediately after the incident, the claimant tried to contact Joanna Harrington in HR. She could not contact her by telephone. She left a voicemail for Ms Harrington to telephone her back. Ms Harrington contacted Mr Douthart.

73. The claimant did not make a complaint to HR. She did not seek to instigate the disciplinary procedure against Mr Stewart.

74. The claimant did not report the incident to the PSNI although her evidence to the tribunal was graphic. She had "feared for her safety". She had been in a "vulnerable position" in an area where Mr Stewart knew there had been no CCTV. Mr Stewart had approached her with his "fists clenched" in a threatening manner.

75. Her evidence to the tribunal does not sit easily with the WhatsApp message she sent shortly after the incident, to Mr Douthart. That message reflected a casual approach by the claimant to the incident. It is not the sort of message, that an employee would have sent to her manager in the immediate aftermath of an incident of the type now described by the claimant. It stated:

> *"Ok … just FYI Keith just walked out serious attitude – I know you are busy today so will discuss with you later when I see you! I've contacted Joanna H and left a message for her to call me back – no loss!".*

76. That WhatsApp message portrayed no sense of threat and no indication of any fear for her safety. It did not mention being in a vulnerable position, being in an area without CCTV, or fists being clenched. Given that the claimant had expected prompt responses to other queries, this message also displayed a total lack of urgency; the matter could wait until the claimant met Mr Douthart.

77. Mr Douthart asked her to provide a statement and stated that Joanna in HR might see it. The claimant provided a detailed two page statement later that same day, 7 November 2017 at 14.20 pm. That was some four hours after the alleged incident.

The claimant criticised Mr Stewart's conduct in some detail; referring back to his alleged conduct on the preceding Sunday, on the previous day and earlier on 7 November 2017. She alleged that he "started to get very aggressive and started swearing at me …". She alleged that he "stormed past me".

She did not say anywhere in this statement that she had felt in fear, that she had been in a vulnerable position or that Mr Stewart knew that there had been no CCTV.

78. It was only when Ms Harrington informed the claimant that Mr Stewart had lodged a grievance about her own conduct that she alleged for the first time that she had felt in fear.

79. The tribunal notes that the claimant at no stage made a formal complaint against Mr Stewart. She had at no stage sought to instigate the disciplinary procedure. She had at no stage objected to his move to the Antrim store.

Even though she stated in her evidence in chief that Mr Stewart had also a part-time job with another employer which had involved deliveries to the Coleraine store, she did not seek to have such deliveries stopped. She stated in her evidence in chief that she did not feel safe going to work because Mr Stewart knew the times she came and went, knew where she parked and knew when she would be alone. Yet she did not seek to involve the PSNI at any stage.

80. The tribunal unanimously concluded that this had been no more than a heated row between a junior employee and a manager. There had been no threat. The claimant had not felt in fear. If she had done so, she would have raised that with Mr Douthart in the initial WhatsApp or in her statement that day. She would not have waited until Mr Stewart had lodged a grievance against her. She would have objected to his remaining in employment. She would have objected to him being placed in another store. She would have ensured that he would not have delivered goods to the Coleraine store in his other job. She would have instigated the disciplinary procedure. If she had been as fearful as she now suggests, she would have contacted the PSNI. She did none of those things.

81. The claimant alleged that Mr Stewart attended the store in Coleraine on different occasions after that incident. The claimant alleged that this had been an attempt by him to intimidate her. The tribunal unanimously concludes that the claimant had not felt threatened on any such occasion. She referred to one such incident in a WhatsApp message on 8 November to Mr Douthart.

> *"Just FYI Keith came to the store last night and phoned for Mandy to get in to get his name badge about 8 – just an excuse obviously – she told me there now!"*

That message did not convey any sense of threat or any fear about her safety.

82. Mr Douthart interviewed Mr Stewart about his grievance. That was appropriate. Mr Stewart had been the only employee to have lodged a grievance. Mr Stewart gave details and asked Mr Douthart to interview Luke, another employee. He was said to have witnessed similar behaviour by the claimant. He was on sick leave.

83. On 21 November at 15.16 pm the claimant suggested to Mr Douthart in a WhatsApp message that she should go ahead to recruit a replacement for Mr Stewart. That had been a message which had raised various matters; a new team leader starting, interviews being held, and another person who had been offered a post but had turned it down. In the middle of that message the claimant

stated:

> *"Also can you let me know before Thurs what is happening with Keith because I have all these interviews and if he is not coming back I need to fill the gap!".*

The message did not state the claimant had been in fear for her safety. It did not state that Mr Stewart should be dismissed. It did not rule out the possibility of Mr Stewart returning. It clearly contemplated the real possibility of his return.

The message had stated:

"If he is not coming back"

[Tribunal's emphasis].

84. Mr Douthart replied at 15.17 on that day. He stated:

> *"Keith has stated he wants to come back after his holidays next week – so don't fill the post. Before I can interview you I need to speak to Luke who Keith has mentioned as a witness. Know Luke is off on sick - seeking advice on next steps as to when I can interview you. Likelihood Keith will be in your shop working his contract hours next week, and his grievance will not be concluded before his return.*

Given the tone and content of the claimant's earlier message which had contemplated Mr Stewart's return, that reply was unsurprising. The tribunal does not accept the claimant's evidence that she had been shocked by this reply.

85. The claimant responded immediately at 16.01 pm.

> *"I am not happy about that either – Luke wasn't even in working that day! How am I expected to work with him when he feels he can be that aggressive towards me?*
>
> *If he comes back here next week before this is sorted I am going off.*
>
> *I have had enough with the lack of support with the amount of effort I have put in and been made to feel unsafe in my work environment is the final straw; I am leaving the store now – I've everything documented from I start with Superdrug and it is an absolute disgrace how I have been treated by this company!"*

86. In that Whatsapp message the claimant did not treat it as an absolute fact that Mr Stewart would return to the premises (although she had clearly contemplated that possibility). She stated;

> *"If he comes back here next week before this is sorted I am going off".*
> *[Tribunal's emphasis]*

This had been in the context of Mr Stewart ongoing grievance. The claimant had not sought to instigate disciplinary action against Mr Stewart. It would probably have inappropriate for a manager to bring a grievance against a junior employee,

rather than instigating disciplinary action. However she did not even do that.

87. On the basis of that WhatsApp message, her stated motivation appears to have been twofold. Firstly she states that she had "had enough with the lack of support with the amount of effort I put in". Secondly she states that "being made to feel unsafe in my work environment" was the "final straw".

It is therefore clear that in this contemporaneous WhatsApp message, the claimant was indicating that her employment might come to an end because of a culmination of factors leading to a final straw; rather than because of one single incident on its own.

88. It is also clear from the claimant's evidence in chief in her witness statement that she was putting forward the proposal that she had brought her employment to an end because of a culmination of factors leading to a final straw. She stated on page 7 of her witness statement;

> *"This for me was <u>the final straw</u> with Superdrug. I have put my whole heart and soul into the company and made massive improvements in all the stores which I had been working in -"*
>
> *[Tribunal's emphasis]*

That does not sit easily with the submission made by the claimant which seeks to rely on two alternative and mutually exclusive arguments in relation to constructive unfair dismissal. Firstly that she had resigned because of a culmination of factors leading to a final straw and, secondly, that she had resigned because of a single incident involving Mr Stewart.

89. In any event the claimant left the store promptly, within 40 minutes. She sent Mr Douthart her resignation on the following day 22 November 2017 with immediate effect. That resignation stated;

> *"Hi Steven*
>
> *I wish to tender my resignation from Superdrug with immediate effect.*
>
> *You will be aware of the ongoing issues I have experienced since starting the company November 2016, all of which remain unresolved despite repeated attempts by me to have my concerns taken seriously. You will also be aware that these issues include – but are not limited to – the campaign of victimisation by Catherine Ferguson, a recent course of harassment conducted by Ashleen McKenna, an incident whereby I was subjected to aggression and bullying in the workplace by Keith Stewart and the constant lack of support I have received throughout – most notably you informing me yesterday that the company was in the advance stages of placing me back in an unsafe working environment in Coleraine store.*
>
> *You will be aware that I have raised my concerns regarding all these issues on numerous occasions and at varying levels of management throughout the company – to no avail.*
>
> *You will therefore understand I have been left with no option but to leave*

*Superdrug for the sake of my health and personal safety.*

*Please accept this email as formal notification accordingly."*

90. Again this email could only be consistent with her deciding to resign because of a culmination of factors leading to a final straw; not as the claimant sought to argue in the alternative, that she had resigned solely because of a single incident.

The final straw argument has a major difficulty in that the building blocks in the culmination of incidents do not exist. There had been no breach of contract or improper behaviour in relation to training expenses. There had been no "fraudulent" processing of holidays. There had been no campaign of "victimisation" and no campaign of "harassment". She had been offered support throughout her employment as evidenced by her career progression.

91. On 27 November 2017, Mr Douthart indicated to the claimant that they were going to put her resignation on hold for a further seven days and that she could raise a formal grievance if she wanted to do so. The claimant sought to argue that there was something sinister in the delay for five days after receipt of her resignation. The tribunal cannot see anything sinister in this brief delay. Mr Douthart in the circumstances would clearly have had to take advice and to consider the appropriate course of action for the respondent. The decision not to accept the resignation until a further seven days had expired, and thereby to allow the claimant to put in a grievance, had been a generous action and not one that many employers would have taken. It is entirely inconsistent with the claimant's allegations of "victimisation", "harassment" and "lack of support".

92. In any event, the claimant affirmed her resignation by email on 29 November 2017. She stated;

*"I am standing by Wednesday's correspondence, if I had needed any further confirmation that I was making the right decision then it came in the form of me being underpaid on Friday. After taking on the store manager job officially since the 17 July and receiving no additional payment for my assistant manager's salary even after we had agreed that my salary would increase after my move to Coleraine store and I would have seen the benefits from this month.*

*Re the points raised in my email, I discussed these with you in person on a number of occasions, I also discussed these with Verne Ainsworth on 14 August this year and I also put in an email to HR on 7 November in regards to the most recent incident. From all of the above I was told they would be progressed formally by the people team and I have yet to hear back from HR and any of them and this as you know has been ongoing from the last year.*

*I understand that many of the issues are out of your control and I hold nothing against you personally and I would like to accept your offer to proceed with a formal grievance in relation to all of the above points – I would be happy to meet with you to facilitate same".*

93. In the email of 29 November 2017, the claimant does not seek to get clarification on

if and when Mr Stewart would return to the Coleraine store and if so under what conditions. Steps could have been taken to ensure that the claimant and Mr Stewart had been on different shifts.

94. On 6 December 2017, the claimant submitted a lengthy grievance.

95. That grievance started firstly with the allegation in relation to travelling expenses. That was an allegation without substance.

96. The grievance then raised the allegation of "fraudulently processing me for holidays". That again was an allegation without substance. It had been dealt with and it had been resolved, with the correct amount of holidays being credited to the claimant and with the claimant being allowed to carry out any unused holidays to the following leave year.

97. The grievance then went on to repeat the allegations of an "ongoing campaign of "victimisation" against me by Catherine Ferguson". Again that was an allegation without substance.

98. The grievance then raised an allegation that she had not received her proper pay in Coleraine. That was again an allegation without substance. The claimant had been paid for the entire month even though she had resigned with immediate effect on 22 November 2017. She had subsequently confirmed that resignation. While the pay rise for Coleraine had not yet been processed, the payment for the entire month at the lower salary exceeded any salary due to the claimant for part of the month in respect of her Coleraine post. No money was owed by the respondent to the claimant. This had been obvious to the claimant and yet she had pursued this misconceived allegation.

99. The grievance then went on to make an allegation that Ms McKenna had harassed her after the claimant's move to the Coleraine store. That was again an allegation without substance.

100. The grievance then went on to refer to the incident between her and Mr Stewart. That had been an incident where the claimant had not invoked the disciplinary procedure against a junior employee and where the only grievance raised had been the grievance raised by Mr Stewart. It had also been an incident where the claimant had only raised allegations about fears for her safety, after being told that Mr Stewart had raised a grievance against her. Before she had been told of Mr Stewart's grievance, her attitude to the incident had been markedly casual.

The claimant further alleged that on two separate occasions after the "confrontation" Mr Stewart had tried to intimidate her by return to the store. That is not consistent with the claimant's contemporary emails. This again was an allegation without substance.

101. The claimant then refers to "the final straw" as the text message on 21 November 2017 indicating that Mr Stewart "would" be returning to work with me in the store on the following week. That is an outcome which the claimant had clearly contemplated in her earlier WhatsApp message of that date. The text from Mr Douthart had not definitely stated that Mr Stewart "would" be returning. That had clearly been accepted by the claimant in that she had immediately written back to

Mr Douthart stating that "if he returned to the store", *[Tribunal's emphasis]* she would leave. She left any way and before he had returned and before any return had been confirmed. In any event, the only grievance lodged as a result of the incident had been one from Mr Stewart. The investigation of that grievance had been briefly delayed pending the return of the other employee, Luke, from sick leave and in circumstances where Mr Stewart, the person making the grievance, had asked for Luke to be a witness. In such circumstances, Mr Douthart could have done nothing else but wait briefly for Luke's return, before then proceeding to put both Mr Stewart's and Luke's evidence before the claimant for comment. That would have been the normal procedure for dealing with a grievance.

102. The claimant then proceeded to make complaints about her hours of work. However the claimant had opted out of the Working Time Regulations. This was a retail environment. It was an environment where everyone knew long hours could be asked on occasion. The claimant had never refused to work any such hours. Such hours were common in the industry. Given her previous retail experience she knew that to be the case.

Given the claimant's "opt out", it was difficult to understand why the claimant made this such an issue.

No evidence was presented to the tribunal that there had been a failure to allow appropriate breaks. Such breaks would have, in any event, been up to the claimant to determine in Antrim and in Coleraine as the manager.

103. Again, the claimant made it plain that she was pursuing a "final straw" argument and not an argument based solely on one particular incident. She stated;

> "*As you will be aware, I have been forced to resign with immediate effect as a result of these ongoing issues -.*
>
> *[Tribunal's emphasis]*

104. The claimant was invited to a grievance meeting. That was initially to be held on 12 December 2017. It was cancelled and rearranged for the 29 December 2017. That had been cancelled because the claimant had initially been told that she could have her domestic partner attend the grievance hearing to assist her. Mr Douthart had subsequently checked the position and had then indicated to the claimant that she could only be assisted at the grievance meeting by a union representative or by a staff member. The respondent had been contractually entitled to reach that decision. The claimant had then refused to proceed with the meeting on 12 December.

105. The claimant then stated that she would not be attending the meeting which had been rearranged for 29 December 2017. Joanna Harrington of the respondent's personnel branch wrote to the claimant again on 21 December 2017 to repeat the invitation. The claimant did not proceed with the grievance.

**DECISION**

**Constructive Unfair Dismissal**

106. Looking solely at the incident involving Mr Stewart, the tribunal unanimously

concludes that the claimant had not been entitled to regard her contract as repudiated. The employer, through Mr Douthart, had been correctly considering the only grievance; ie the grievance from Mr Stewart. Mr Stewart had asked that "Luke" be interviewed. It made perfect sense for Mr Douthart to wait for his return from sick leave. There had been no evidence to suggest that would have involved anything other than a short delay.

The claimant knew that Mr Stewart might return to the Coleraine store. In any event, he had been a junior part-time employee engaged for 16 hours per week. If the claimant had been genuinely concerned and if she had wished to avoid contact with him, pending the resolution of his grievance, she could have arranged the shifts accordingly. In any event, the tribunal unanimously concludes that the claimant had not been genuinely concerned for her safety. That alleged concern had only been expressed once the claimant had been told of Mr Stewart's grievance. It had not been expressed contemporaneously.

The incident involving Mr Stewart, and the investigation of his grievance did not justify the claimant regarding her contract as having been repudiated.

The claim of constructive unfair dismissal arising solely out of the incident involving Mr Stewart is also dismissed.

107. The claimant alleged to the tribunal that she had lodged a grievance before she had resigned and that it had not been investigated satisfactorily. The claimant therefore alleged that she had been entitled to resign because of that failure.

108. There are two difficulties with the submission. Firstly, the claimant did not lodge a "grievance" before she resigned. She did not instigate the disciplinary procedure. She had been content for Mr Stewart to work in Antrim. She had contemplated his return to the Coleraine store. The only grievance before her resignation had been that lodged by Mr Stewart. In any event, Mr Douthart had been investigating that grievance in a satisfactory manner. Waiting briefly for Luke's return had been reasonable, since he had been named as a witness by Mr Stewart.

Secondly, it is clear from the contemporaneous correspondence and from the claimant's grievance, that the claimant had not stated that she had resigned solely because of that single incident. She had expressly relied on a "final straw" argument, using that legal terminology.

109. The claimant at the time of her resignation clearly had not felt her concerns about Mr Stewart had been sufficient for her to regard her contract as repudiated. If she had felt that this had been the case, she would have said so. In her resignation, she referred to "ongoing issues" in the plural. She stated, again using legal terminology, that those issues included "but are not limited to" various matters. In her grievance, when it had been lodged after her resignation, she referred to a detailed list of issues and to the "final straw".

110. The final straw argument for constructive unfair dismissal against must fail. The claimant sought to rely on a cumulative list of incidents. Those matters are dealt with in detail above. There had been no promise to pay expenses during her training course. There had been no fraudulent processing of her holidays. Minor mistakes had been made which had been rectified. There had been no campaign

of “victimisation” or of adverse treatment. Training had not been withheld. Her career progression had been significant. The final salary had been an overpayment and had, in any event, post-dated her resignation. Her hours had not been excessive in the context of a retail worker, who had signed an “opt out”, during busy times such as Christmas or refits. There was no evidence that she had been prevented from taking proper breaks. The fact that Mr Stewart had not been allowed to attend the grievance meeting had not been either a breach of contract or improper, and had in any event post-dated the resignation.

111. The final incident in the alleged series of incidents involved Mr Stewart and Mr Douthart’s investigation of Mr Stewart’s grievance. Those matters are again dealt with above. The claimant had been relaxed about the incident on 7 November 2017. She had anticipated Mr Stewart’s return to Coleraine on her WhatsApp of 22 November. Her reaction to Mr Douthart’s WhatsApp of 22 November 2017, which had confirmed that Mr Stewart might return, appears contrived and grossly exaggerated.

112. The tribunal concludes, looking at the whole picture objectively, that the claimant had not been entitled to regard her contract as repudiated. The claim of a “final straw” constructive unfair dismissal is therefore dismissed. There had been no cumulative series of events leading to a “final straw”.

**Training Expenses**

113. For the reasons set out above, any separate claim in respect of these expenses is dismissed as out of time and, in any event, being without merit. There had been no breach of contract and no unauthorised deduction from wages.

**Final Salary**

114. For the reason set out above, any separate claim in respect of her final salary is dismissed. She had not been underpaid. There had been no breach of contract and no unauthorised deduction from wages.

**Holiday Pay**

115. No evidence was presented to uphold any such claim and it is dismissed.

**Breaks**

116. No evidence was presented to uphold any such claim and it is dismissed.

**Statutory Terms and Conditions**

117. In the absence of any successful claim, the tribunal cannot consider that claim.

118. No other claim is apparent from the unamended claim. For the avoidance of doubt all claims are dismissed.

**Vice President:**

**Date and place of hearing:** **19, 20 and 21 June 2018, Belfast.**

**Date decision recorded in register and issued to parties:**