**CASE NO. TBC**

**IN THE YORK EMPLOYMENT TRIBUNAL**

**B E T W E E N:**

**A FICTITIOUS PERSON**

**Claimant**

**and**

**A MASSIVE COMPANY**

**Respondent**

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**GROUNDS OF CLAIM**

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1. The Claimant commenced her employment with the Respondent at their Otley store (the “Store”) on Otley Road, Entirely MadeUpVille, HG1 1LX in April 2011. The Claimant resigned from her employment on 11 November 2013, and worked her notice period. The Claimant’s last day of employment was 11 December 2013.

1. The Respondent operates over 2,000 stores across the United Kingdom, employing approximately (a large number) of staff. The Respondent employs approximately 100 staff at the Store.
2. The Claimant was employed as a Deputy Manager at the Store. The Claimant’s job role included managing staff on the shop floor and organising the restocking of shelves.
3. In June 2013 the Respondent dismissed two managers for assaulting each other at work. Before the dismissals in June 2013, the Claimant was already working 44-45 hours per week.
4. To the best of her knowledge, the Claimant did not opt out of the Working Time Regulations 1998.
5. The Claimant was required to use a card to swipe in at the beginning and end of each shift. The Claimant expects that disclosure will be provided by the Respondent, in due course, in respect of the Claimant’s working hours, as evidenced by her time sheets.
6. After June 2013, the Claimant’s responsibilities and workload increased substantially as a result of the dismissals.
7. From July 2013 the Claimant frequently complained to Donald Trump (General Manager), Tony Blair (Assistant General Manager) and Teresa May (Deputy General Manager) that there were too few staff working nights. The Claimant complained at least twice per week until her effective date of termination.
8. As the Claimant’s oral grievances were not being actioned the Claimant decided to write to the Respondent’s Head Office to raise a formal grievance. The letter was dated 2 November 2013. In the letter, the Claimant complained about her long working hours. In addition, the Claimant complained that too few staff were on duty at night, stating that this was putting enormous pressure on her. The Claimant stated that, “*I’m currently having to work 12 hours per night with little help or breaks.... Even on Sundays I haven’t received the extra pay as was quoted in my contract....The situation has now become so enormous that I can’t continue like this anymore as I’m working so much that the only thing I can do when I’m not at work is sleep. I have had to work through all my breaks... I need support in resolving this situation before I have to consider finding employment elsewhere as I cannot continue this way much longer.”*
9. The Claimant did not receive a response to her grievance letter, no investigation took place and she was not provided with a grievance outcome.
10. In early September 2013 two other night managers were recruited by the Store. One of the managers recruited had worked for one of the Respondent’s major competitors and left after one month because he found the pressure intolerable. Another manager from one of the Respondent’s other stores was asked to work at the Store on nights, but due to the high workload at the Store she asked to return to her previous store. The Claimant was again left being the only manager at the Store at night with the concomitant responsibilities which ensued.
11. The Claimant was under such pressure to accomplish tasks that she was rarely able to take a break. The Claimant was exhausted at the end of each shift, having to sit in her car in the car park because she felt unable to drive home.
12. As a result of the excessive hours, lack of breaks and night-time work the Claimant’s health deteriorated. Due to working the forced additional hours the Claimant was often unable to see her children.
13. The Claimant submits that she worked in excess of 48 hours per week from around April 2013 to the EDT in breach of the Regulation 4 of the Working Time Regulations 1998.
14. Furthermore, from April 2013, the Claimant, a night worker, nearly always worked in excess of eight hours per shift in breach of Regulation 6 of the Working Time Regulations 1998.
15. Despite the huge increase in hours and responsibilities from April 2013 the Claimant did not receive any additional pay. Contractually, the Respondent’s night staff earned additional pay. As the Claimant was not paid for the additional hours she worked, whilst she was often the most senior employee working nights, she became the worst paid employee in the Store per hour. After April 2013 the Claimant’s hourly wage equated to just above National Minimum Wage.
16. On 11 November 2013, as a result of frustration caused by the excessive workload, long shifts, few breaks, low pay and the failure to respond to her grievance, the Claimant handed in her letter of resignation to Donald Trump. Given all the above-mentioned issued combined, the Claimant regarded there had been a fundamental breach of the implied term of mutual trust and confidence. The Claimant resigned in response to the Respondent’s breach of contract.
17. The Claimant stated in her letter of resignation that, *“the last few months has been impossible, with the lack of staff and the hours I’ve had to work*”. The Claimant notified the Respondent that her last working day would be 11 December 2013. Donald Trump tried handing the letter of resignation back to the Claimant, but the Claimant, who did not have alternative work to go to, handed the letter of resignation back to Donald Trump.
18. On 22 November 2013 the Claimant wrote again to the Respondent’s Head Office to chase a response to her grievance letter. Amongst other things, the Claimant requested that the issues raised in her grievance be investigated and resolved. The Claimant received no written response from the Respondent to this letter.
19. Kim Jong, Area Personnel Manager, contacted the Claimant by telephone in late November 2013. Kim Jong noted that the Claimant was working an average of 58.8 hours per week and told the Claimant that this was “*unacceptably high*”.
20. The Claimant’s last day of employment was 11 December 2013. The Claimant claims that she was constructively unfairly dismissed.
21. The Claimant notes that after her dismissal the position was filled by two managers.
22. The Claimant claims for the additional Sunday pay owed. Further, the Claimant claims for the substantial overtime she was forced to undertake at her standard rate of pay. The Respondent has details of the additional hours worked by the Claimant.
23. The Claimant commenced Early Conciliation on 2 January 2014. The Early Conciliation certificate is dated 1 February 2014.
24. In the circumstances, the Claimant contends that she was automatically unfairly dismissed and/or, in the alternative, that she was constructively unfairly dismissed. The Claimant seeks:
25. Compensation for unfair dismissal.
26. Compensation for breach of contract.
27. Compensation for the multiple breaches of the Working Time Regulations 1998.
28. An uplift to the compensation awarded by the tribunal of up to 25% due to the Respondent's unreasonable failure to comply with the ACAS Code, namely the failure to respond to grievances.
29. Compensation for unlawful deduction from wages.