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# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE SELF  
**MEMBERS:** Ms A Donaldson  
Miss B Brown

**BETWEEN:**

Sandra Agbakwue

Claimant

AND

Oduma Cameron

Respondent

**ON:** 11, 12 and 13 January 2017

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Mc C McDevitt, Counsel

## **JUDGMENT**

The unanimous Judgment of the Tribunal is that:

1. All Claims of direct discrimination and harassment on the ground of the Claimant's sex and/or Race are dismissed

## **REASONS**

1. By a Claim Form received on 4 May 2016 the Claimant asserts that she was directly discriminated against on the ground of her sex and/or her race and further or in the alternative she was subjected to harassment on the ground of her race and sex. The Mrs Oduma Cameron (the Respondent) denies all allegations against her.

2. There was a case management hearing on 13 July 2016 wherein the specific heads of claim were identified between paragraphs 8 and 21 of the order that emanated from that hearing. We will specifically refer to the specific heads of claim when we deal with each in turn in the course of this Judgment.
3. At the Case Management Hearing there was an issue over the identity of the Respondent that was not dealt with. It should be noted that the other potential Claimant was the Respondent's Husband Mr Cameron whose capacity to conduct litigation without a litigation friend was raised and indeed the Claimant's contract actually cited him as the employer. I have seen from the file that the Claimant applied for Mr Cameron to be joined but for reasons that are not clear that application was not dealt with.
4. On the first day of the hearing the issue became clear in the pre-reading and the Claimant confirmed that she would wish to renew her application for Mr Cameron to be joined. We confess that the Tribunal would have been minded to grant that application but had we done so then the hearing which was listed for three days would have had to have been adjourned at great expense to the parties and would not have been listed until the tail end of 2017 thereby causing great delay. There could also have been the issues that flowed from confirmation that Mr Cameron did not have capacity and we were told that he would be unable to attend in any event on account of his condition which includes dementia.
5. There were no specific allegations against Mr Cameron himself and it seemed clear to the Tribunal that Mrs Cameron was a properly named Respondent on account of section 110 of the Equality Act 2010 in that she was clearly an agent for Mr Cameron if he was the employer or alternatively she was the employer herself.
6. We were satisfied that we had all the evidence before us to make factual determinations and having consulted the parties everybody agreed that they wished to proceed with the hearing to the extent that there would be full findings of fact made and then, if necessary, at the end further consideration could be given to whether or not Mr Cameron was the employer and so jointly liable for any contraventions of the Act. Although an unusual course it was one that seemed to best fit the overriding objective and one that was consented to by all the parties.
7. We have heard oral evidence from the Claimant on her own behalf and we heard oral evidence from the Respondent and Glenna Greenaway, the Respondent daughter. There was also a statement tendered from Anthony Bode, who was referred to as Pastor Bode throughout the hearing. Whilst we read that statement

and noted its contents we gave it little weight as the Claimant did not have a chance to cross examine him.

8. As well as the parties' written witness statements as amplified in oral evidence we also had an agreed bundle of 140 pages which we read when taken to a document in written or oral evidence. The parties were specifically enjoined to take us to any relevant documents that they wished to rely upon and if our attention was not directed to them we would not look at them. We also considered the closing submissions of both parties.
9. The Respondent was represented by counsel and the Claimant represented herself. Throughout the course of the hearing reasonably regular breaks were taken so that the Claimant could either compose herself when she was upset or gather her thoughts together when asking questions and/or preparing for her closing address. At times the Employment Judge assisted by reformulating questions or more often statements that the Claimant made so as to make them clear to the witness. The Employment Judge also from time to time reminded the Claimant of the issues that the Tribunal needed to decide in order to assist her in focussing in the right areas. The above should not be seen as a criticism of the Claimant but merely as a record of the assistance she was given in order to ensure that the overriding objective was met as far as was possible.
10. The relevant statutory provisions so far as are relevant are as follows:

**Section 13 (1) Equality Act 2010**

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

**Section 26 Equality Act 2010**

- 1) A person (A) harasses another (B) if—
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of—
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- 4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
  - (a) the perception of B;

- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

### **Section 136 Equality Act 2010**

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

11. The Claimant is a care worker and has been for a number of years. She had been working successfully for a care agency called Cross Road for many years before she decided to accept a job caring for Mr Osmond Cameron. The Claimant is Nigerian.
12. Mr Osmond Cameron is 79 years old. We were told by the Respondent and her daughter that he had mobility problems, type 2 diabetes, very poor eyesight and dementia. His condition was such that a power of attorney was granted to the Respondent and the parties' daughters Alicia and Glenna some 4 years ago. His dementia was said to be variable from day to day but would affect his short term memory. We formed the view that Mr Cameron's lucidity would vary from day to day and that his mood could be unpredictable. The Claimant was steadfast in her belief that Mr Cameron did not have dementia and could conduct his own affairs.
13. It is difficult for us to make an assessment on Mr Cameron's capacity. We are prepared to accept that he has some form of dementia because that diagnosis is supported by a Care Plan which we have seen that we have been told was created by somebody with access to Mr Cameron's medical notes. We prefer that evidence to the Claimant's assertions about Mr Cameron's state of health but have little doubt that there are times when he can perfectly well express himself. The Claimant herself described that Mr Cameron could lash out at times because of his "condition" but she knew he did not mean it.
14. Mr Cameron is married to the Respondent who is 72 years old and who, from our observations at the tribunal, appears to be in good health. Mr and Mrs Cameron have four children of which two, Glenna Greenaway and Alicia, play a part in this case. As stated above both of these daughters share the power of attorney.

15. From the outset it should be noted that the Claimant was employed to provide care to Mr Cameron in his own home. That is a highly personal role and one that impacts upon the home lives of the person being cared for and also others living with him. The personal relationship with everybody is an important one especially when there is the stress and worry of the ailments the person being cared for has and the pressures that brings upon the household. The Tribunal believe that one of the key roles of a carer in such circumstances is to undertake their role in such a way so as to assist in diminishing the stress and worry within the household. Whilst the relationship with the person being cared for is important so is the relationship with others who are close to that person.
16. The Tribunal finds the following further facts. Mr Cameron had been in need of care and the Local Authority were able to provide funding for 21 hours of care per week. We were told that in reality he needs far more than that but there is funding for no more and so the family and in particular the Respondent deals with the additional care needs. For a period of time the care was being sourced through the Cross Road Agency and that was how the Claimant first became involved in Mr Cameron's care from November 2014 when she did so as agency staff. Pastor Bode had been providing 6 hours care a week from 14 April 2014 but we were told that he often exceeded those hours.
17. The Claimant clearly has great pride in her work and we have no reason to doubt that her caring skills are excellent and that she is a highly compassionate individual who takes her role as carer seriously and always seeks to discharge her duties to the best of her ability. On the evidence we have heard we have no reason to doubt that she maintained these high standards when caring for Mr Cameron. This case has nothing to do with the Claimant's abilities as a carer or her dedication and willingness to work.
18. Equally we do not doubt that Pastor Bode was also a competent and caring worker. We can infer the same by his long service with the family and their desire to welcome him back to work. The Claimant was critical of Pastor Bode but we sensed that her estimation of him may have been coloured by the events that took place and were not satisfied that her view of him was wholly objective.
19. Pastor Bode went away from his work on an extended break. The intention from the Respondent appears to be that he would return to his role at the end of that break and his contract continued. Leave was unpaid and appears to be in the nature of a sabbatical. The Claimant stepped in via the agency and her work was deemed to be satisfactory and it appears that she was offered the role of Personal Assistant to Mr Cameron which would start when the Camerons returned from a holiday.

20. It is suggested by the Respondent that the Claimant was expressly told that Pastor Bode would be returning to his role after his time off. She may or may not have been but we find that the Claimant was certainly not told that when Pastor Bode returned he would relieve the Claimant of some of her hours. We think that the most likely thing is that she was told that Pastor Bode would return but that nobody gave any thought as to what the ramifications of his return would be on the Claimant's work.
21. We note that the contracts of employment for the Claimant and Pastor Bode differ to a small degree but not in a way that materially places the other at a detriment and perhaps more importantly the job descriptions and the tasks that were within their remit were identical.
22. The Claimant's contract commenced on 28 June 2015 although it appears that in actual fact she appears to have actually started at the end of July as her first pay slip was at the end of August. The duties are expressed as being set out in the job description (para 1.4), The basic number of hours are set at 21 and those hours would be arranged to suit Mr Cameron's needs and were not set (para 3.1), additional hours could be requested if needed and reasonable notice would be provided of those additional hours (3.2). After the probation period of 4 weeks had been passed then the notice period was set at a generous 4 weeks (8.1).
23. There was nothing within the contract fixing the term of the contract and nothing within the contract that indicated that hours would be amended upon the return of Pastor Bode. There was, of course, only funding for 21 hours which had all been allocated to the Claimant. The Tribunal finds that the Respondent simply did not think things through and had no real concept as to what the contractual position she had created would mean in practice. It is from this oversight that the breakdown in the relationship flows.
24. The Claimant began caring for Mr Cameron and did so well and to Mr Cameron's satisfaction but shortly after she commenced Pastor Bode returned to the scene. He too had provided good service in the past and he too had a contractual relationship with Mr Cameron. The Respondent immediately had an issue of two individuals employed to do what was in effect one part time job with limited long term resources to pay them both for the contracted hours.
25. At no point did the Respondent or anybody else within the family consider the contractual position from a legal standpoint. Both carers were quite entitled at law to work and be paid for the hours that they were contracted to do. There was no entitlement on the part of Respondent to unilaterally reduce the Claimant's hours and there was no obligation upon the Claimant to accept fewer hours

although, of course, she could have decided to compromise taking into account the financial position which on any view could not be sustained long term.

26. We find that the solution that the Respondent came to was the one that she perceived to be the fairest between the two employees and the one which she considered treated them equally and that was to split the hours equally so that each worked 1.5 hours each per day or 10.5 hours per week. Although, in fact, contractually that reduced the Claimant's hours and increased those contractually due to Pastor Bode, we accept that such a suggestion was one by which the Respondent sought to bring parity, fairness and equality to the process as well as alleviating the financial problem she found herself in. This specific issue is not one that has been cited as being an allegation of sex discrimination per se but in any event we find that the gender of the carers was completely incidental to the attempt to equalise the hours.
27. This proposal was put to the Claimant in a meeting in September and we find that at that meeting for which she had no prior notice she accepted that she would work 10.5 hours a week and we find that by so doing there was an agreed variation to the contract of employment whereby the Claimant's hours were reduced and that thereafter her contractual entitlement was to work 10.5 hours per week. We reject the Claimant's account that she was told that Pastor Bode's wages would be paid privately and that her hours would not be affected.
28. Very shortly after, however, we also find that the Claimant reconsidered her position and continued from that point onwards to assert that she was contractually entitled to work 21 hours per week. We understand why that would have happened and can see the substantial difference in weekly pay the variation would have made to the Claimant. There was also a suggestion made that the Claimant needed a certain level of income as she was desirous of bringing over a relation from Nigeria who needed to be sponsored in some way.
29. We find that the Claimant continued to do her work diligently and indeed at times assisted by remaining to let the District Nurse in for longer than she was contractually required to. We also find, however that the Respondent did not really know how to deal with the Claimant's insistence that she was entitled to be paid 21 hours a week and the fact that when her 1.5 hour stint was over the Claimant would remain in the house.
30. Contractually there is an argument that over the remaining time of the contract by virtue of the Respondent paying the Claimant for 21 hours per week and the Claimant actually being there for that time there was a variation back to the original hours. Alternatively the contract remained at 10.5 hours per week and the Claimant was paid regular overtime each week. We do not need to make a

finding on that issue, however, as ultimately it is not germane to the claims in this case especially as both parties were proceeding in complete ignorance of what their strict legal rights were.

31. The actual effect however was that the situation destroyed the relationship between the Claimant and the Respondent and more latterly with the extended family. It had a material impact upon the happiness and well-being of the whole unit. The Claimant was upset and distressed at what she perceived was the unfair reduction of her hours and became increasingly insistent on working those hours and being paid for them. The Respondent had to put up with this conflict coming into her own home daily and we accept her evidence that the Claimant was tenacious, whilst working, on this point and kept on returning to the issue of her hours which caused the Respondent stress and anxiety as was the fact that she was effectively having to make substantial payments out of her own pocket to the two carers.
32. Glenna Greenaway told us, and we accept, that she kept telling the Respondent that because of the atmosphere being created and the fact that the same was not conducive to every body's well-being that something needed to be done but the Respondent to some extent sought to bury her head in the sand with the hope that matters would resolve themselves. Instead all that took place was increased agitation and stress and more entrenched polarisation of the Claimant's position. We are quite satisfied that neither party sought nor wanted the conflict but it was simply a natural progression from the issue over the hours.
33. With the background detailed above we can now consider the extent to which any of the specific allegations of sex discrimination are made out. In so doing we have made the following assessment of the witnesses before us. We found the Respondent and Glenna Greenaway to be clear witnesses who were prepared to speak against self-interest when appropriate, but firm in their denials at other times. They made concessions in respect of some areas of importance and the Tribunal find that they sought to deal with matters honestly and to the best of their recollection.
34. The Claimant was a less satisfactory witness who would doggedly stick to her version of events even when documents demonstrated that her position could not be right. Whilst we consider that she did her very best to be honest with the Tribunal our view was that she was at times confused and made errors or recollection and /or had convinced herself of certain events happening on account of the upset she felt. In particular her perception of certain acts were not reasonable taking an objective view and did not, in our view, reflect the reality.



35. In particular the Claimant when pressed struggled to provide any evidence at all from which the Tribunal could reasonably find or infer that any of the conduct she complained about was linked to her gender. In particular we find that all of the stresses and the strains of the relationship flowed from the issue of the number of hours available to be worked and the contractual situation and it would have arisen in exactly the same way had Pastor Bode been female. The few comments that could possibly have suggested that gender was a pertinent issue will be dealt with below. The Claimant was given every opportunity by the Tribunal to explain those matters that she contended supported her assertion of sex discrimination but in reality she was only able to point to the difference in gender between herself and Pastor Bode and take things no further. To the extent to which it was required at law the Claimant failed to prove primary facts from which we could infer that discrimination had taken place and at no point came even close to discharging a prima facie case at stage 1 of the burden of proof process.
36. We deal first with 8.1 of the Schedule of Issues which is an allegation that the Claimant was required to carry out household chores which Pastor Bode was not and that amounted to direct discrimination pursuant to section 13 of the Equality Act 2010 (as do the matters at 8.2 and 8.3). The Tribunal notes that the job descriptions of both individuals were identical. We find that the expectations of both employees was exactly the same in that they were both expected to do precisely what was required when they were in the Cameron home. The one example the Claimant gave was in respect of an alleged comment from the Respondent in respect of emptying bins in which she allegedly indicated that men should not undertake that task. We do not accept that comment was said by the Respondent. Accordingly there was no difference in treatment of the two employees and the Claim fails.
37. At 8.2 it is asserted that the Respondent “arranged the Claimant’s working hours in a way that was preferential” to Pastor Bode. The contract of employment of both employees states that the actual hours they are in working will be determined by the needs of Mr Cameron. There was certainly a change to the hours when the situation moved to a requirement for them to work 10.5 hours each. Whilst we accept that the times and days of the shifts were changed from time to time we find that the sole mover for that was the needs of Mr Cameron which were clearly paramount. There is no evidence that there was any deliberate or accidental preferential treatment of Pastor Bode in the shifts that needed to be worked and we reject this Claim.
38. At 8.3 it is asserted that the Claimant was subjected to a more hostile working environment than Pastor Bode. As a matter of fact we accept that matters were almost certainly more tense when the Claimant was working than when Pastor

Bode was working but that was absolutely nothing to do with the employees' gender and everything to do with the fact that one party was in dispute with her employer and the other employee was not. In any event any atmosphere was caused by the contractual hours' situation and the Claimant's attitude towards that which inevitably affected the situation in the house causing stress and anxiety to the Respondent. Of course the Respondent must also bear some responsibility because it was her error in the first place over the contracts that led to the situation. Had the contractual situation been the same and both employees had have been the same sex we believe the same atmosphere would have pertained. We reject this claim.

39. At 12 of the issues it is alleged that on 7 December the Respondent asserted that she preferred Pastor Bode and that amounted to harassment on the grounds of sex. As a matter of fact we reject the Claimant's evidence on this point and we do not accept that the respondent expressed any such preference. Even if she did then we do not accept that the comment was on the ground of gender. We can fully understand why the respondent as of December after three months of the Claimant going "on and on" as the Respondent described it why she would have preferred Pastor Bode and any preference would have been on that ground alone. The difference in gender is wholly incidental to any preference held. We reject this claim

40. At 13 it is alleged that the Claimant followed the Claimant or stood in the room whilst she was working and stared at her menacingly. The Respondent lived in a modest 2 bed flat. There was a living room, a kitchen, a bathroom and 2 bedrooms. It is inevitable that the Claimant and the Respondent would be in close proximity in the working day and we reject the suggestion that the Respondent deliberately acted in the way alleged. We do not accept that the Respondent stared at the Claimant at all or deliberately followed her around the flat. In any event we can see no link to the Claimant's gender in this allegation. We reject this claim.

41. At 14 it is alleged that the Respondent accused the Claimant in bad faith of stealing things and leaving them in the wrong place. Again we reject this claim in that we do not accept the Claimant was ever accused of stealing but was merely asked where things were or what had happened to items around the home that either Mr Cameron or the Respondent could not find. It was not accusatory merely a request for information. Such incidents could not reasonably have been deemed harassing nor were they in any way linked to the sex of the Claimant. The Claimant has a wholly unreasonable perception of these matters.

42. As December 2015 went on the situation in the home worsened with the Claimant continuing to insist that she did her full hours. Glenna Greenaway

became a sounding board for the Respondent and described how the Respondent was becoming a “nervous wreck”. We accept that evidence.

43. On 19 December the Claimant worked and she described that after that day she felt worthless and had wounded pride and dignity to the extent that she offered her resignation by text to the Respondent’s daughters at 1643. Despite encouragement to ensure that all matters were put to witnesses deliberately or in error the events of that day were not put to either the Respondent or Glenna Greenaway in the four hours of cross-examination the Claimant undertook. As we are completely satisfied that any conduct towards the Claimant was not gender related the precise trigger and the blame for the offer of resignation does not require findings and so that omission is not vital. We do not accept that any feelings that the Claimant held were reasonably as a result of any conduct on the part of the Respondent and/or Glenna Greenaway.
44. We are quite sure that the resignation would have been warmly received because it would have brought an end to the stressful issues within the home, have put financial matters back on the right footing and rectified the mistake that had originally been made by the Respondent. We stress that none of the matters in this case flows from any poor standard of care by the Claimant and we note that she went in and provided quality care over Christmas that year to her great credit.
45. However a resignation needs to be accepted. In their heads the respondent and her family had accepted it but they did not communicate their acceptance. Glenna Greenaway accepted that there was nothing in her text in response that indicated acceptance.
46. The Claimant states that the following day she was persuaded by Mr Cameron not to resign. We accept that evidence. Mr Cameron was to some extent, on account of his condition, insulated from the worst of what was going on. From his perspective the Claimant provided good care. We accept that the Claimant’s caring instinct kicked in and despite what she perceived was unfair treatment she decided to withdraw her resignation which she did in a telephone call the following day. Glenna Greenaway had the Claimant’s account of that conversation put to her by the Employment Judge and whilst she denied any preference for Pastor Bode being expressed did accept the Claimant’s account of the meeting. That being the case the Claimant withdrew her resignation before it was accepted.
47. Thereafter, however, the Respondent erroneously believed that the Claimant had resigned and her employment terminated on 31 December. In legal terms the Claimant was dismissed on that date and did not resign. In any event the reason for dismissal was that the Respondent thought she had resigned and she would

have treated any individual irrespective of their gender exactly the same way and accordingly the suggestion that the dismissal was an act of direct discrimination fails.

48. On 31 December the Claimant asserts she has been harassed by Glenna over the phone asking what the Claimant or “that woman” was still doing there after her last shift had finished (allegation 15). The Tribunal accepts that the words were used but does not accept that this comment is harassing in nature. It was not said in angry or hostile tones and we do not accept that it fulfils the statutory definition of harassment in that it would not be reasonable for the comment to violate the Claimant’s dignity and /or create the environments set out at section 26(1)(b)(ii) of the Equality Act 2010.
49. We are supported in our views that there was no gender issues in this case further by the appointment of a female replacement for the Claimant.
50. The race claim is a single comment made the day after when the Claimant turned up for work although her contract had terminated and made a nuisance of herself. We accept that it is capable of being heard by this Tribunal as it is caught by section 108 of the Equality Act 2010 being an act closely connected to the employment but dismiss it because we do not accept that the comment alleged was made and prefer the evidence tendered by the Respondent on this point.
51. In summary all claims are dismissed. The circumstances in this case are very unfortunate and have caused great upset. We wish the parties well and hope that the Claimant can put this matter behind her and utilise her undoubted care skills for the benefit of another person who needs her.

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Employment Judge Self

Judgment sent to the parties and entered in the Register on: 10 February 2017