

RM



EMPLOYMENT TRIBUNALS

Claimant: Ms J Minchella

Respondent: HotBox London Limited T/a Chuck Burgers (In Liquidation)

Heard at: East London Hearing Centre

On: 4 December 2017

Before: Employment Judge Brown

Representation

Claimant: In person

Respondent: Did not attend and was not represented

REMEDY JUDGMENT

The judgment of the Tribunal is that:-

1. The Respondent shall pay the Claimant a total of **£8,810.21** in compensation for direct age and sex discrimination, calculated as follows:
 - a. **£8,220.93** for injury to feelings for age and sex discrimination, comprised of **£8,000** injury to feelings plus **£220.93** interest;
 - b. **£589.28** for loss of earnings for age and sex discrimination, comprised of **£581.25** loss of earnings plus **£8.03** interest.
2. The Respondent shall pay the Claimant **£183.60, net** on account of unlawful deductions from wages.
3. The correct name for the Respondent is HotBox London Limited T/a Chuck Burgers (In Liquidation).

REASONS

1 By a claim form presented on 16 September 2017, the Claimant brought complaints of age discrimination, sex discrimination and unlawful deductions from wages against the Respondent, her former employer. The Claimant said that she had been dismissed on 30 July 2017.

2 The Respondent did not present an ET3 response by the due date, 25 October 2017.

3 A company search carried out on 2 November 2017 showed that the Respondent company was in liquidation.

4 Employment Judge Gilbert made a Rule 21 Judgment, sent to the parties on 21 November 2017, giving Judgment for the Claimant in her claims of sex discrimination, age discrimination and unlawful deductions from wages.

5 On 23 November 2017 NP Ailyan wrote to the Employment Tribunal from Abbot Fielding Insolvency Practitioners, saying that NP Aliyan had been appointed liquidator of the Respondent company from 24 August 2017. NP Aliyan said that both ACAS and the Claimant knew of their appointment as liquidator, but that the liquidator had not received any documentation from the Employment Tribunal before receipt of the Rule 21 judgment, which had been given to the liquidator by a director of the Respondent Company. NP Aliyan asked that judgment be reconsidered in the light of the assertion that the initial documents had not been sent to the liquidator. The liquidator asked that the documents now be sent to it. The liquidator said that, if this was not possible, the liquidator would not be attending the hearing and said that any award in favour of the Claimant would be a claim in the insolvency, unless any award could be claimed from the Redundancy Payments Service through the National Insurance Fund.

6 The liquidator did not enclose any ET3 response document, nor did it make any application for an extension of time for service of the ET3. While the liquidator may not have been aware of the proceedings before the liquidator was given the Rule 21 judgment by a director of the Respondent company, it seemed to me that no defence on the merits had been indicated, either by the Respondent company, or by the liquidator. It did not appear that the liquidator had given the Respondent company's directors authorisation to represent or act for the Respondent company in the proceedings and the liquidator itself is not a party to the proceedings. Given that there had been no defence indicated and no ET3 document drafted, I concluded that there were no grounds for reconsidering the judgment entered. I decided that the hearing today would proceed as a remedy hearing as the Tribunal had already informed the parties.

7 The Claimant claims age and sex discrimination. In her claim form, she said that, on 18 June 2017, a colleague, Zine EL Abbedine "Zino," had asked the Claimant, "How many kids do you want to have?" and, when the Claimant replied, "None," Zino also said, "Any women who doesn't have kids is not a real woman". He also said, "All guys want kids," and he said that, if the Claimant ever found true love, that the man would sleep with

the Claimant until he got bored and eventually leave the Claimant for someone younger and go and make babies with them. The Claimant is 37. In her claim form, the Claimant said that she complained to the general manager and asked for her grievance to be handled immediately and professionally. The Claimant said that Zino had laughed and smiled and tried to hug the Claimant by way of apology. The Claimant had followed up her grievance on 25, 28 and 29 June 2017 and had sent emails on 30 June, 5 July and 18 July 2017, requesting a reply and update on her grievance. In her claim form, the Claimant contended that her redundancy had been handled differently to other employees' redundancies, in that there had been only 48 hours between the Respondent sending the Claimant a letter saying that she was at risk of redundancy and a letter saying that the Claimant had been made redundant. She said that the Respondent had responded in a terse manner to her queries about redundancy and she said that she was discriminated against in the redundancy process and by being made redundant.

8 This was a remedy hearing today to decide what remedy was due for the Claimant's successful claims of age, sex discrimination and unlawful deductions from wages. The Claimant gave evidence to the Tribunal and confirmed the contents of her ET1 claim form.

9 She said that the Respondent's liquidator had written to her, stating that she was owed £183.60 net by the Respondent on account of unlawful deductions from wages.

10 The Claimant told the Tribunal that, when Zino made his comments to her, she was very upset; particularly so, because she is 37 years old and had a fibroid surgery a year before the comments were made, meaning that the comments were particularly hurtful to her. She told me that, while she had been made redundant, the Respondent company continued to operate and that, when she had called at the Respondent company, she noticed that other employees continued to be employed. She noticed that a male, Andreas, was still being employed at the company.

11 The Claimant told the Tribunal that she has always had two jobs. She said that she had worked for the Respondent company from October 2016. In more recent months, from April 2017 to July 2017, she had not had another full-time job and had been available for all shifts for the Respondent, but had only been given about one each week and had been paid, for that shift, £38.75 each week. I considered that that was the Claimant's weekly financial loss when she was made redundant by the Respondent. The Claimant told me that she had been working full-time Monday - Friday in another job from 12 July 2017, but since she had always had two jobs and could work for the Respondent on weekends and in the evenings, I accepted her evidence that she would have continued to work at the Respondent, even after she started working full-time during the week from 12 July. The Claimant told me that she had obtained other weekend and evening work from 11 November 2017, working for Underbelly, for its Christmas event on Wednesday, Thursday, and Friday evenings and on Saturdays and Sundays. I considered that, after 11 November 2017, the Claimant would no longer have continued to work for the Respondent, because she had obtained other, better remunerated, part-time work, in any event.

12 I considered, therefore, that the Claimant ought to be compensated for injury to feelings arising from the comments Zino made, the failure of the Respondent to address her complaint promptly or adequately and her dismissal, which was handled differently

and less favourably to the way in which other people's redundancies were handled. It was clear that the Respondent had retained other male employees when the Claimant was dismissed. These were all instances of direct discrimination.

13 I also decided that the Claimant ought to receive compensation for loss of earnings at £38.75 gross for 15 weeks from 30 July until 11 November 2017.

14 In assessing the amount of compensation that the Claimant should be given for injury to feelings I took into account the Presidential Guidance issued on 5 September 2017, saying that, taking into account *Simmons v Castle* and *De Souza v Vinci Construction (UK) Ltd*, the *Vento* bands have been amended to a lower band (less serious cases) of £800 to £8,400, a middle band (cases that do not merit an award in the upper band) of £8,400 to £25,200 and an upper band (the most serious cases) of £25,200 to £42,000. I also took into account the case of *Prison Service v Johnson* [1997] IRLR 162.

15 I concluded that the Claimant had been very offended by the words of her colleague and that she considered that the Respondent had not acted promptly or sympathetically in relation to them. I accepted the Claimant's evidence that she felt offended by being dismissed, when other people were not, and in the way that her redundancy was handled.

16 It is correct that the Claimant worked for the Respondent on only one shift a week at the time of the matters in question. The Claimant had already obtained full-time work from 12 July 2017. Therefore, her main employment, going forward from 12 July, was going to be in another location. Nevertheless, it is important for the Employment Tribunal to make awards for which recognise the seriousness of discriminatory actions towards employees and that society has condemned discrimination. It was important for me to recognise the hurt caused by the Respondent's actions. It seemed to me that the discrimination, in this case, took place over a relatively short period of time and that the Claimant, happily, has been able to move on to other, fulfilling employment.

17 I decided, therefore, that this case is one which is at the very upper of the lower band of *Vento*, as updated on the Presidential guidance.

18 I considered that the appropriate award for injury to feelings was £8,000.

19 I also made an award for the loss of earnings from 30 July until 11 November 2017, 15 weeks: $15 \times £38.75 = £581.25$.

20 I calculated interest on those awards at 8% from the date of dismissal for injury to feelings and 8% from the midpoint between date of dismissal and the hearing, for the loss of earnings claim. I also award the figure of £183.60, net, for the unlawful deductions from wages.

21 The interest calculations were as follows. There were 126 days from 30 July 2017 to 4 December 2017.

22 Injury to feelings: $£8,000 \times 126/365 \times 8\% = £220.93$.

23 Loss of earnings: $\pounds 581.25 \times 126/365 \times 8\% \times 0.5 = \pounds 8.03$.

Employment Judge Brown

15 December 2017