



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Y Ruban

**Respondent:** EBR Media Ltd

**Heard at:** London South      **On:** Thursday 11 April 2019

**Before:** Acting Regional Employment Judge P Davies

**Members:** Ms S Campbell & Ms N O'Hare

## **Representation**

**Claimant:** In Person

**Respondent:** No attendance

## **JUDGMENT**

The unanimous judgment of the Tribunal is:

- 1) The Respondent subjected the Claimant to harassment contrary to section 26(2) of the Equality Act. The Respondent is ordered to pay £1,000 to the Claimant together with interest of £158 pursuant to regulation 6(1)(a) of the Employment tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. Total amount awarded is £1158.
- 2) The Respondent victimised the Claimant contrary to section 27 of the Equality Act 2010 and the Respondent is ordered to pay the sum of £5,000 to the Claimant together with interest of £770 pursuant to regulation 6(1)(a) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. Total amount awarded is £5770.

Judgment having been sent to the parties on **4 May 2019** and written reasons having been requested by the Respondent on the **13 May 2019**, in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## **REASONS**

This is a claim that was made on **8 September 2017**. It was a claim for unlawful deduction from wages and also a claim in respect of harassment and victimisation. The wages element of the claim was determined on **8 February 2019** when a Judgment was given for the sum of **£1500**.

Today is the further hearing to allow the Claimants to orally give evidence regarding her claim of harassment and victimisation, and for the Tribunal to consider assessing the injury to feelings award which is being sought by the Claimant.

The Claimant has given evidence and the Respondents have not been present or represented and that has been the position throughout the proceedings. It is not the intention of the Tribunal to recite all the evidence that was given by the Claimant. It is sufficient for our findings to say this:-

The claim of harassment, as set out in the Case Management Order of **21 March 2018** involves an incident on **15 April 2017** when the owner/director of the Respondent Company made a proposal or pass in relation to the Claimant about the Claimant having a flat in the Philippines and an arrangement of a sexual nature being made between them. The Claimant says that this was something which she refused. She was distressed about that matter, because the parties had been married many years previously, having divorced in 1994. The Claimant was concerned about whether there were going to be ramifications in relation to her employment.

We accept the evidence by the Claimant about the distress that she had at that time and the fact that she felt it was humiliating what was suggested. These were genuine feelings.

The Claimant said that when it came time for payment in the United Kingdom of her wages for **April** and **May 2017**, that there was a refusal by the Respondents to make that payment which caused an exchange of emails and eventually an April payment was made but not for May. During the exchange of emails the Claimant was told to store computers belonging to the Respondents because the business was winding down in the United Kingdom. In response to that, the Claimant took the computers to a storage place in Brixton and subsequently informed the Respondents that they could be collected. There was further tension between the parties at that time such that in **August 2017** the Claimant received a phone call to go to the police station where she was interviewed under caution because Mr Ruban has reported their computers as being stolen. At the police station the Claimant showed the police an email which showed that Mr Ruban did know where the computers were stored. No further action was taken in relation to that matter.

The Claimant she said that she found it a humiliating and shameful matter to go to the police station such that she has not shared it with her children who are now adults or her friends. It is something that she describes as a most embarrassing thing to do.

Although she is now sixty years old and describes herself as someone of resilience, this was something that was completely devastating for her because it was not

something she thought she would ever experience at all and was outside her anticipated life experiences.

We accept the evidence of the Claimant that she found all these matters humiliating, distressing and to herself, shameful. The Claimant undertook counselling for about eight to twelve months to the end of 2018, weekly counselling, for which she paid. The counselling was linked to her feelings of humiliation and shame in relation to these matters.

We find, for the avoidance of any doubt, the matters which are set out more particularly in the Case Management Order of **21 March 2018** namely the non-payment of the monies and then the allegation concerning the theft of the computers were matters which arose out of the rebuffing of the sexual proposition that was made to the Claimant and the Claimants accusations of sexual harassment arising from that. They are all linked together.

Therefore we find that the Claimant has been harassed in respect of what happened on **15 April 2017**. By making the protected act of complaining about sexual harassment the claimant has been victimised in the way that is set out.

Harassment is defined in section 26 of the Equality Act 2010 , and victimisation in section 27 of the Act.

In short, we find the Claimant was a credible witness and she has, in her own way, had to deal with the events which occurred in 2017 and for example she was using Nytol in order to assist with her sleep but that was discontinued last year and that she undertook counselling.

Against those findings we have to consider what awards should be made by the Tribunal. We will make separate awards for the harassment and the victimisation, but we bear in mind we have to have regard to the totality of the award in this case based upon the evidence that we have accepted from the Claimant.

In considering what is the appropriate award, we have had regard to guidance set out in the **Prison Service and Others v Johnson 1997** ICR, page 275 in which the Employment Appeal Tribunal summarised general principles that underlie awards for injury to feelings. They include the fact that awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party, and that they should not be inflated by feelings of indignation at the guilty party's conduct. The award should not be so low so as to diminish respect for the policy of the discrimination legislation. On the other hand, they should not be excessive to be regarded as untaxed riches. They should be broadly similar to the range of awards in personal injury cases. Tribunals should consider the value in every-day life for the sum that they are contemplating awarding, and also bear in mind the need for public respect for the levels of the awards that are being made.

That guidance for awards for personal injury claims means that we have had regard to the Judicial College Guidelines for the Assessment of General Damages in Personal Injury cases. it seems to us the most useful of the guidelines is in respect of post-traumatic stress disorder which is something which is the most similar but not the same

of course in relation to the evidence in this case. We have had no medical evidence of any kind put before us but the awards suggested in the Guidelines for cases where virtually full recovery would be made within one to two years and only minor symptoms would persist over any longer period is within the bracket of **£3,460 - £7,100**.

In addition, we have had regard to the guidelines which were issued under Presidential Guidance on **5 September 2017** (three days before this claim was made) and we note paragraph 10 says that in respect of claims presented on or after **11 September 2017**, there are three bands. A lower band of **£800 - £8,400** for less serious cases; a middle band of **£8,400 - £25,200**, cases that do not merit an award in the upper band and an upper band of **£25,200 - £42,000** for the most serious award. Whilst this claim was issued a few days before **11 September**, we consider that those are the best guidance for us to take into account bearing in mind that they are only guidance to be followed in the assessment of injury to feelings.

It is the effect upon the individual that we should have particular regard to and, in particular, to the evidence which has been given by the Claimant.

It is necessary for there to be clearly set out by the Tribunal the two awards.

The first is in relation to the harassment. We note that this appears on the evidence to be a single incident, a distressing, humiliating incident, something that the Claimant clearly found repugnant but it was not repeated. Other cases of sexual harassment can sometimes go on for a number of incidents over a period of time but this was not of this type. We consider the assessment for injury to feelings to be **£1,000** in respect of the harassment.

In relation to the victimisation, we have accepted the evidence of the impact upon the Claimant and we have considered all the various factors that we are required to put into the balance particularly having regard to the effect upon the Claimant. Our award is **£5,000**.

The total award is **£6,000** and to that award will be added interest which will be calculated by the Tribunal and recorded in the Judgment. As indicated at the beginning, this is the unanimous decision of the Tribunal

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Acting Regional Employment Judge Davies

Date 4<sup>th</sup> July 2019

