



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Opoku Agyemang  
**Respondent:** Hatters Hostels Ltd & Others  
**Heard at:** Birmingham **On:** 2 September 2019  
**Before:** Employment Judge Gilroy QC  
**Members:** Mrs D P Hill  
Mr P Deneen

## Representation

**Claimant:** In person  
**Respondent:** No attendance or representation

# JUDGMENT

## The judgment of the Tribunal is as follows:

1. The Claimant's claim of direct race discrimination is not well founded and is dismissed.
2. The Claimant's claim of harassment on the grounds of race is not well founded and is dismissed.
3. The Claimant's claim of unlawful deduction from wages is not well founded and is dismissed.
4. The Claimant's claim in respect of holiday pay is not well founded and is dismissed.
5. The Claimant's claim for notice pay is not well founded and is dismissed.

# REASONS

- (1) The Tribunal convened on 2 September 2019, to consider various claims brought by the Claimant. The Tribunal was very much assisted in terms of the background to the claims and the nature thereof by the Case Management Summary completed by Employment Judge Perry following a Preliminary Hearing on 6 February 2019.
- (2) The list of claims was considerably narrowed at the Preliminary Hearing, with the result that the claims to be determined by the Tribunal were in respect of direct race discrimination and racial harassment, unlawful deductions from wages, holiday pay and notice pay.
- (3) The claim of discrimination related to a single event, said to have occurred on 9 February 2018, it being the Claimant's case that he was dismissed on that date and in being dismissed, that he was subjected to racially abusive behaviour on the part of Mr John Quinn, General Manager of the premises where the Claimant worked, namely its hostel at Livery Street in Birmingham.
- (4) The Tribunal heard evidence from the Claimant and was provided with a range of documents. No separate bundle was provided, and the precise documentation the Tribunal considered is not simply recited here, save to say, that the key documents referred to below were provided.
- (5) The Claimant was originally directed at the Preliminary Hearing on 6 February 2019 to particularise his specific financial claims, namely the claims in respect of wages, holiday pay and notice pay. The Claimant did not comply with that direction, but at the hearing on 2 September 2019 he did produce a sheet of figures headed "wages discrepancies", setting out what he maintained were his various financial claims.
- (6) The Tribunal was also provided with a statement in the name of the Claimant and certain correspondence. Perhaps the key items of correspondence were a letter dated 19 March 2018 from the West Midlands Victim Support Service to the Claimant, a letter dated 9 February 2018 from Mr Quinn to the Claimant, and a letter dated 20 February 2018 from the Claimant to Mr Karl Kinsella, the Respondent's Operations Director.
- (7) The essential complaint about the incident on 9 February 2018 was that the Claimant was approached by Mr Quinn, who was rude and aggressive towards him and it was the Claimant's case that Mr Quinn physically pushed him and then addressed him by the thoroughly offensive term "nigga".

- (8) The Tribunal examined the evidence surrounding this alleged incident with care and, without dissecting that evidence in full detail, there were certain features of the evidence which caused the Tribunal to hesitate before accepting the Claimant's account of the relevant events.
- (i) In his letter dated 20 February 2018 to Mr Kinsella, Operations Director, when describing the events of 9 February 2018, the Claimant made no reference whatsoever to Mr Quinn having used the 'N' word during the alleged incident. The Tribunal regarded that as a very surprising omission. The Claimant's explanation for not including it was that he wanted to keep his job. The letter in question makes no reference to the Claimant having that desire, and in any event, even if he did wish to keep his job, the Tribunal found it hard to understand, why such a graphic and offensive term should not be mentioned in this piece of correspondence written on the basis that it was a complaint about the very events of the morning in question, and written so soon after relevant events.
  - (ii) The incident described by the Claimant in the above letter was an instance said to have occurred on 16 February 2018, not 9 February 2018. The Claimant said he had simply made a mistake about that date, but it is another feature of the evidentially unsatisfactory position concerning the relevant incident.
  - (iii) The times specified by the Claimant in relation to the relevant incident simply did not stack up. They were not consistent. The Claimant told one of the Tribunal members that he had arrived at work at 5.20 am; he then said that in fact, it was 6.30 am, and in another part of his evidence he said that he had left the premises at 6.00 am. This evidence did not marry with the evidence that was set out in the documents and in particular, the evidence contained in the correspondence.
  - (iv) Another member of the Tribunal asked the Claimant the pointed question as to whether he had considered requesting of the Respondent that it supply CCTV footage of the area where the incident was said to have taken place, in order to provide the most cogent independent evidence to corroborate his account. The Claimant said that he had not requested such material, and that the reason for not requesting it was, again, because he wanted to keep his job and that, essentially, he did not want to "rock the boat" with his employer. Again, the Tribunal found it hard to understand, even if that was the sentiment felt by the Claimant at the time, why he did not see fit to go straight to the heart of the matter, and obtain the best

evidence as to what actually happened, by going straight to source and obtaining the first hand video material.

- (v) Another slight concern, was that in the Victim Support letter provided by the Claimant during the course of the Hearing, there was a manuscript amendment on the letter, so that the date in manuscript married up with the date that the Claimant contended was the date upon which the incident occurred.
- (9) The Employment Tribunal is not a criminal court. It decides factual issues on the civil standard of proof, namely the balance of probabilities. The Claimant bore the initial burden of establishing that the sole incident of alleged race discrimination occurred. The Tribunal was simply unable to conclude on the balance of probabilities, that the event described by him, occurred in the way he described and that being the case, the inevitable conclusion for the Tribunal, was that the allegation of direct race discrimination, at the hands of Mr Quinn, on 9 February 2018, must be dismissed.
- (10) Precisely the same applies, in relation to the claim of racial harassment because the factual basis of that claim is identical. It relates to the same incident.
- (11) The notice pay claim must fall away, because the Tribunal is not satisfied that the Claimant was dismissed in breach of contract. The Respondent's case was that the Claimant was dismissed for being asleep on duty. The Tribunal was not satisfied that he was dismissed in breach of contract. Had there been a claim as to notice pay, that claim would have been for one week's pay under s.86(1)(a) of the Employment Rights Act, "ERA", but that is academic, given the Tribunal's findings that the claim for notice pay is not made out.
- (12) As far as the claim for unpaid wages is concerned, the Tribunal listened with some care to the way in which the Claimant articulated that claim, and concluded that it was simply unable to agree with the Claimant, that there was a valid wages claim, having looked at the material provided by him and in particular the schedule, headed "wages discrepancies". To test the matter, the Claimant was invited to indicate what the wages' shortfall was. He indicated the sum of £702.10 minus £56.25 in respect of holiday pay, making a sub total of £645.85. Immediately upon testing that factual claim, and on reviewing the relevant wage slip, for the very first example of a deduction pursued by the Claimant, that claim was simply not made out. The Tribunal was driven to the conclusion that on the balance of probabilities, the Claimant had failed to prove that he was entitled to an award for unpaid wages under s. 13 of the ERA.

- (13) The position with regard to holiday pay was similarly unsatisfactory. The Claimant provided a staff handbook which did not state what the contractual annual holiday entitlement was. That was by no means fatal to his holiday pay claim. However, the Claimant's oral evidence was that he had taken no holiday in the relevant period, which flew in the face of the detail provided in his schedule, which indicated that on two occasions, he took "2 days' holiday". Once again, therefore, simply on the balance of probabilities, and applying the relevant evidential tests, the Tribunal was unable to accept, that there was a valid claim for unpaid holiday pay.
- (14) In all of the circumstances, the Tribunal concluded that each of the Claimant's claims must be dismissed.

**Signed by: Employment Judge Gilroy QC**

**Signed on: 09 September 2019**