EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms E Groman (Née Woolf)	**v**	(1) Universal Science (UK) Limited; (2) Mr James Stratford.

Heard at: Cambridge **On**: 6 September 2019

Before: Employment Judge Cassel

Members: Dr S Gamwell and Mr B Smith

Appearances
For the Claimant: In person
For the Respondent: Mr J Heard, Counsel

JUDGMENT

1. The Tribunal assesses the damage for injury to feelings to the Claimant at **£20,000**. This is a debt which is jointly and severally liable to be paid by Respondent (1) and/or Respondent (2).

2. Interest thereon is payable at **£666**, which is also jointly and severally payable by Respondent (1) and/or Respondent (2).

3. For loss of earnings arising from the acts of sexual harassment we award **£2,441**. That is a net sum payable jointly and severally by Respondent (1) and/or Respondent (2).

REASONS

1. In our judgment promulgated following the hearing in tribunal and our discussion in Chambers on 15 March 2019, we confirmed that the

adjourned date agreed at the earlier tribunal hearing was to take place for argument and evidence as to Remedy on 6 September 2019.

2. Before us today were the Claimant who represented herself and Mr Heard of Counsel who acted for both Respondents.

3. Mr Heard submitted that the claim against the Second Respondent was out of time and referred to his skeleton argument, for which we are grateful, in which he submitted that the Tribunal should consider the provisions of Section 207B(4) of the Employment Rights Act 1996 and as such, bearing in mind there were two Early Conciliation Certificates, one against each Respondent, that the Tribunal had no jurisdiction to proceed against the Second Respondent.

4. In our judgment, the second Early Conciliation Certificate is in many ways a red herring. The issue as to whether the Second Respondent was an appropriate Respondent should have been raised at the beginning of the substantive hearing for determination by the Tribunal. It had been identified at the Case Management Hearing, but there was no such application in respect of the Second Respondent and he was represented throughout by Mr Heard.

5. In any event, this is a matter that could have been raised at any time following the promulgation of our Liability Judgment, but has not been. It was only today, after a hearing which lasted four days, a deliberation in Chambers that lasted one day and the promulgation of the Judgment which had been with the parties for many months, that this issue was pursued. We do not accept the submission and the Second Respondent remains a respondent

6. In our judgment, even if the application had been made at the appropriate time, bearing in mind that there was no issue as to whether part of the claim against the First Respondent was in time, the Tribunal would have considered its power under Rule 34 and it is highly likely would have added the Second Respondent as a party to the proceedings. It is of course a hypothetical situation, but that is the most likely outcome.

7. As far as the acts of sexual harassment themselves are concerned, if there is any doubt in our Liability Judgment, and that seems to be one of the submissions made by Mr Heard, we clarify the position here. The acts which we have found took place were all committed by the same perpetrator against the same Claimant. They were all committed by the Second Respondent, who is the business owner, in the course of the employment of the Claimant. She found the environment so intolerable she commenced her search for alternative employment very shortly after the first act.

8. We are surprised at this submission, as in our judgment, there had been no doubt from the outset that her claim was brought on the basis of a breach of Section 26(1)(b)(ii) that the Second Respondent engaged in

unwanted conduct related to relevant protected characteristic and the conduct had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for her which continued, in fact, until her last day of employment.

Injury to Feelings

9. We heard evidence from the Claimant, who was cross examined by Mr Heard. Before moving to assess the quantum of damages for injury to feelings, we bore in mind that there were a number of factors entirely beyond the control of the Respondents, namely that the case had apparently received some publicity and caused the Claimant stress. We also discount the stress that the proceedings in themselves had caused the Claimant and discount work place stress which related to her dispute as to unpaid commission, so it was argued, and also those factors of a domestic nature that evidently impacted on her emotional well being.

10. However, the Claimant was entirely clear in her evidence that she felt uncomfortable when being in a room with the Second Respondent, and tried to distance herself and to rely on others, and that was specifically down to his inappropriate behaviour. We also bore in mind her evidence that she felt stressed, suffered sleep deprivation and those matters that were raised in the letter from Jewish Women's Aid on 15 August 2019 which she asked us to consider on her behalf. Among other things, it was said that having disclosed the suffering she received from sexual harassment that she is the sole bread winner for herself and her young daughter and having to find alternative employment, as well as being responsible for the running of the family home and taking care of her daughter in the pursuit of finding an alternative job, had caused her stress which was described as *"immense"*. We accept her evidence and the description she gave of the feelings that she suffered.

11. We assess the injury to feelings fall within the mid band of Vento damages and we assess it at £20,000.

12. Interest is payable which we calculate at £666 taking account the date of the last act and the date of today's Hearing.

13. We also find that as a result of the treatment that she faced, she had to find alternative employment and for that period of time she was unemployed, her losses were £2,441.

14. We accept the submission of Mr Heard, there should be no uplift for any failure to follow a procedure and also, bearing in mind his submissions and referring to Commissioner of Police in the Metropolis v Shaw [2012] IRLR 291 that aggravated damages are not appropriate in this case.

15. Having found that the Second Respondent is a respondent in these proceedings, we conclude that the sums owing and due to be paid, may

be paid by either party and for the sake of completeness, we make it clear that the debt is a joint and several one, although if one party makes payment of the debt it extinguishes the liability of the other. The loss of earnings is a net amount, taking into account a deduction for Tax and National Insurance and any deduction must be accounted to both the Claimant and to HMRC.

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Employment Judge Cassel

Date: 10 September 2019

Sent to the parties on: .....

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For the Tribunal Office