



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4107131/2019**

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**Held in Edinburgh on 9 August 2019**

**Employment Judge A Jones**

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**Miss ME Jurkowlaniec**

**Claimant  
In person**

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**Aykut Gul**

**Respondent  
Not present and not  
represented**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is that:

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1. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of £128 in respect of 3 days wages;

2. The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the sum of £240 being 1 week's pay;

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3. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of £1344 being in respect of 168 hours of holiday accrued but untaken at the date of termination of employment;

4. The respondent subjected the claimant to a course of conduct which amounted to sexual harassment within the terms of section 26(2) Equality Act

**E.T. Z4 (WR)**

2010 and is ordered to pay the claimant the sum of £9,500 as compensation for injury to feelings together with interest at a daily rate of £2.08 which to the date of calculation amounts to £646.88.

- 5 5. The respondent failed to provide the claimant with a statement of particulars in accordance with section 1 of the Employment Rights Act 1996 and is ordered to pay to the claimant an additional amount of two weeks wages amounting to £480 gross.

## REASONS

### Introduction

- 10 1. The claimant worked as a waitress for the respondent from 15 October 2018 until her dismissal on 15 March 2019. She lodged a claim in relation to outstanding payments she claimed were due to her. She also stated in the details of her complaint that the respondent had been touching her from the beginning of her employment. No response was lodged by the respondent  
15 and no communications have been received from the respondent by the Tribunal. A hearing was set for 9 August. The claimant was asked to confirm in advance of the hearing whether her claim included allegations of discrimination. The claimant confirmed that she did believe she had been harassed.
- 20 2. The claimant attended the hearing and gave evidence on her own behalf. The respondent did not attend and was not represented. Having listened to the claimant's evidence, the Tribunal made the following finding in fact.

### Findings in fact

- 25 3. The claimant began working for the respondent on 15 October 2018, having been advised by her flatmate who was working there that the respondent was looking for staff. The respondent operated a café and his wife and son also worked there.
4. The claimant was paid £8 per hour and paid in cash. She was not at any stage provided with a statement of particulars in relation to her employment or

indeed anything in writing which set out the details of her employment. Neither was she provided with pay slips.

5. The claimant was aware from the first shift that she worked that the respondent appeared to touch female waiting staff including herself more than was appropriate. She complained to her flatmate about this.  
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6. The respondent was advised of the claimant's concerns and met with the claimant. The respondent's wife was also present at this meeting. The respondent indicated he was not angry at the claimant's comments, but wanted her to understand that he operated a family business and treated everyone as family.  
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7. The claimant made clear to the respondent that she did not like to be touched. The respondent advised the claimant that he was opening a new shop soon and that she would be promoted to be supervisor of that shop.
8. The respondent continued to subject the claimant to unwanted touching. The respondent touched the claimant on her hips, her waist, her back and her shoulders. This touching was never necessary, for instance to ask the claimant to move out of the way. The shop was not cramped and there was never a reason for the respondent to touch the claimant. The respondent would hold his hands on the claimant for a few seconds when he touched her.  
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20 This made the claimant feel very uncomfortable. The respondent was an older man and the claimant is a 25 year old woman. The claimant told her flatmate that she thought the respondent was 'handsy and shady'. The claimant did not feel she could complain to anyone as the respondent owned the shop and the only other senior members of staff were his family.
- 25 9. When the claimant advised the respondent about her therapy and that she suffered from depression, she made clear to the respondent that she did not like to be touched.
10. The claimant asked the respondent on a number of occasions about her new role but was told by the respondent to stop 'nagging'.  
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11. The respondent was aware that the claimant was undergoing treatment for depression during her employment. The claimant was seeing a therapist every Thursday for 12 weeks and it was agreed that the claimant would only work a half day on Thursdays to facilitate this.
- 5 12. On 13 March, the claimant was alone in the shop with the respondent. The respondent again subjected the claimant to unwanted touching. The claimant said firmly to the respondent that he should not touch her. Shortly after, the respondent said to the claimant that her attitude needed to change and that she was making out that he was a predator when he was not. The respondent then tried to make a joke of the situation by walking round the claimant while leaving a large space between them. The claimant reiterated that she was not ok with being touched by the respondent.
- 10 13. The respondent advised the claimant to take the next day off. When the claimant returned to work on Friday 15 March, the claimant was ignored by the respondent, his wife and son. On that day, the claimant saw the respondent slap another waitress firmly in an inappropriate manner. The other waitress advised the respondent that she was not okay with his behaviour.
- 15 14. The respondent telephoned the claimant after she finished her shift on 15 March and told her that he didn't want to work with her anymore and that he was not the person she said he was.
- 20 15. The claimant put a post on social media about her treatment. She was then separately phoned by the respondent's son and wife who both threatened her with the police and courts if she did not take the post down.
16. The claimant wrote to the respondent seeking to recover the outstanding sums due to her, but he did not respond and did not pay her the sums due.
- 25 17. The claimant was extremely upset by her treatment. She had been undergoing therapy and had suffered from low self-esteem. The respondent's treatment of the claimant had a negative effect on her recovery. She had to pay rent and felt that she was so dependent on her income that she had to put up with the unwanted conduct of the respondent.
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18. The claimant had believed that she would be promoted by the respondent, but instead continued to be subjected to unwanted touching.
19. The claimant could not afford to continue the therapy sessions she had been undergoing. The 12 week program was provided by the NHS and an individual session thereafter was £35. The claimant has only been able to afford to pay for one such session since her dismissal.
20. The claimant has now obtained alternative employment at a higher rate of pay.

### Observations on the evidence

21. The Tribunal heard evidence only from the claimant. The Tribunal found the claimant to be a credible and reliable witness. She did not seek to embellish her evidence in any way. The claimant sought to maintain her composure during her evidence and it was clear to the Tribunal that the claimant had been significantly affected by her treatment. The claimant was crying during her evidence and had to stop on a number of occasions to regain her composure.

### Discussion and decision

22. The respondent did not submit any response to the claimant lodged by the claimant.
23. The Tribunal therefore had no difficulty in finding that the claimant should be paid in respect of the accrued holiday pay, notice pay and outstanding pay which were claimed by her. The claimant was paid £8 per hour and was entitled to 1 week's notice and as she normally worked 30 hours a week, this amounts to £240. The claimant was also due 3 days' pay which amounted to £128. The claimant did not take any annual leave during her employment and was therefore entitled to 16.8 days accrued holiday pay which amounted to £1344.
24. The Tribunal then considered whether the treatment to which the claimant was subjected by the respondent amounted to either sexual harassment or harassment related to sex. The Tribunal concluded that the treatment

amounted to sexual harassment for the purposes of section 26(2) Equality Act 2010.

5 25. The Tribunal considered firstly whether the conduct of the respondent was unwanted conduct of a sexual nature. The Tribunal had little hesitation in concluding that the touching of the claimant by the respondent was both unwanted and was of a sexual nature. The Tribunal accepted the claimant's evidence that the touching was unwanted and that the claimant had advised the respondent more than once that he should not touch her when it was not necessary. While the touching was not overtly sexual in that the respondent's touching of the claimant was of her shoulders, hips and body, the Tribunal was nonetheless satisfied that this amounted to conduct of a sexual nature. It was deliberate touching of a female junior member of staff by her employer in circumstances where it had been made clear to the respondent that she did not welcome his attention in this regard and that he should stop touching her unless it were necessary.

10 26. The Tribunal also considered whether the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, offensive or degrading environment for the claimant. The Tribunal had little hesitation when considering the claimant's evidence before it that the conduct had the effect of violating the claimant's dignity and creating a hostile working environment for her. The claimant felt that she had to continue to work due both to her financial situation and the promise that she would soon be promoted and be working away from the immediate attentions of the respondent.

15 27. The claimant did not seek any compensation in loss of earnings as a result of the respondent's conduct as she has now obtained alternative employment. However, the claimant's evidence was that she was greatly upset by the conduct.

20 28. When considering the amount of any award of injury to feelings, the Tribunal bore the following factors in mind;

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- a. that the respondent was aware that the claimant was undergoing therapy for depression during the period of her employment, yet did not act on her requests not to be touched,
- b. that the conduct of the respondent persisted throughout the claimant's employment (being a period of 5 months), despite the respondent being made aware from the beginning of the claimant's employment that his conduct was unwelcome, and
- c. That the claimant had felt under financial pressure to continue tolerating the respondent's conduct in the hope that a promised promotion would be achieved

29. In all of these circumstances, the Tribunal concluded that compensation for injury to feelings in the sum of £9,500 should be awarded to the claimant, being in the middle band of the Vento guidelines (***Vento v Chief Constable West Yorkshire Police*** [2002] EWCA Civ 1871).

30. The Tribunal found that the middle band was appropriate as the conduct was not one off, and indeed continued over a period of 5 months, that the claimant was already vulnerable, given that she was suffering from depression and undergoing treatment. The fact that the respondent was aware of this and did not desist from the treatment despite the claimant asking him to on a number of occasions was an aggravating factor as was the false promise that the claimant would be promoted. All of these factors added to the impact of the conduct on the claimant and therefore the Tribunal found that an award in the middle band was proportionate and appropriate.

31. Interest is payable this sum at a rate of 8% per day from the date of the act complained of until the date of the calculation of the award. Interest is therefore calculated on the basis of £2.08 per day (being £9,500 x 8% divided by 365).

32. Therefore, as the Tribunal has found that the unwanted conduct commenced on the first day of the claimant's employment, interest is payable on the award of injury to feelings from first day of the claimant's employment to the calculation date Thursday 21 August is  $311 \times £2.08 = £646.88$ .

33. Finally, the Tribunal considered the issue of whether the claimant had received a statement of particulars as required by section 1 Employment Rights Act. This requires that an employer provide an employee a written statement of particulars of employment within two months of commencing employment. The statement must set out various matters such as pay, hours of work, notice required, holidays and the date on which employment commenced. It must by definition, be particular to the individual employee.

34. Section 38 of the Employment Act 2002 states that where a Tribunal has made an award to an employee in terms of a claim under Schedule 5 of that Act, which includes a claim under the Equality Act and a claim for unlawful deduction from wages, and when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) of the Employment Rights Act, the tribunal **must**, subject to section 5, increase the award by the minimum amount (which is two weeks' pay) and may if it considers it just and equitable in all the circumstances, increase the award by the higher amount (being four weeks' pay).

35. In the present circumstances, the Tribunal concluded that it would be appropriate to increase the award to the claimant by the minimum amount. The Tribunal bore in mind in particular that the respondent is a small employer, and that the claimant had only been employed for five months. In addition, there was no suggestion from the claimant that she had asked for but been refused a statement of particulars. Therefore, the Tribunal orders that the award to the claimant be increased by two weeks' pay being £480 gross.

36. In summary, the respondent is required to pay to the claimant:

a. Unpaid wages	£128
b. Notice pay	£240
c. Holiday pay	£1344
d. Injury to feelings	£9500
e. Increase in award for failure to provide statement of particulars	£480

Total award	<b>£11,692</b>
Together with interest accruing at a rate of £2.08 per day (as at 21 August 2019)	£646.88



**Date of Judgment: 21 August 2019**  
**Employment Judge: Amanda Jones**  
**Entered Into the Register: 27 August 2019**

5 **And Copied to Parties**