



EMPLOYMENT TRIBUNALS

Claimant: Mrs N Weller

Respondent: Wessex Broadcasting Ltd

Heard at: Southampton **On:** 14 and 15 October 2019

Before: Employment Judge Reed
Members Mr P Bompas
Mr N A Knight

Representation

Claimant: Mr G Whitehouse, Solicitor

Respondent: Mr Wheaton, Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The claimant was victimised by the respondent.
2. The claimant was not harassed by the respondent.
3. The claimant is awarded compensation for injury to feelings in the sum of £20,000, together with interest thereon of £2,400.

REASONS

1. In this case the claimant Mrs Weller alleged she had been unlawfully discriminated against on the ground of disability by her former employer, Wessex Broadcasting Ltd ("the Company"). She told us that she had performed a protected act by complaining about disability discrimination to the Company and as a consequence had been subjected to a detriment,

such that she had been victimised. In the alternative she claimed that that detriment amounted to harassment.

2. We heard evidence from Mrs Weller herself and on behalf of the Company from Mr Simmonds, its managing director, Mr Childs, accounts manager and Ms McManus, head of sales. On the basis of their evidence and the documents we were shown we reached the following findings.
3. Mrs Weller began working for the Company in February 2014. The Company operates a radio station, Wessex, and Mrs Weller was a sales executive, then account manager, effectively selling advertising and managing the marketing of customers. Sometimes she would deal direct with customers and sometimes she would deal via agencies.
4. Shortly after she began working for the Company Mrs Weller was diagnosed with Crohn's disease and it was conceded by the Company that she thereby became disabled. She claimed that thereafter she had been mistreated in various ways by the then managing director Mr Bulley and her colleagues, in connection with her disability.
5. In March 2017 Mr Simmonds became managing director of the Company and Mrs Weller told us she also felt he was not sympathetic to her disability. In or around August 2017 Mrs Weller submitted a grievance to the Company about Mr Simmonds. Although not entirely clear, it seemed that was the document at p73 of the bundle. It alleges a number of questionable practices but does not refer to disability. However, by email of 13 November Mrs Weller made further allegations about Mr Simmonds and this time clearly alleged that he had mistreated her in relation to her disability.
6. On 4 December 2017 a settlement agreement was entered into between the parties pursuant to which Mrs Weller settled any claims she had against the Company, including any claims of disability discrimination, and she agreed to leave the Company. That agreement was actually signed off by Mr Simmonds.
7. In January 2018 Mrs Weller began working for an advertising and marketing agency, Lifestyle Media. In early or mid February she had a meeting with Ms McManus at which she disclosed that fact to Ms McManus. Ms McManus then passed that information on to Mr Simmonds. He then produced on 14 March 2018 an email effectively indicating that, with only limited exceptions, the Company would no longer deal with agencies but only with clients direct. It would not enter into contracts with agencies but would expect contracts to be in existence between the Company and the clients themselves. There was some subsequent correspondence on that subject but that turned out to be the settled position of the Company as expanded upon in Mr Simmonds' email of 20 April. It followed that Mrs Weller's new employer could not act as an agent of any customer, although it could advise that customer outside the terms of the customer's agreement with the Company.
8. In the course of these proceedings there were two Case Management discussions but neither had identified with any specificity what the claims

were. That was resolved at the commencement of this hearing where the parties agreed that the claims were of victimisation and harassment.

9. Under s27 of the Equality Act 2010 a person victimises another if he subjects that other to a detriment because that other has done a protected act. A protected act includes making an allegation that that other or another person has contravened the Act.
10. Under s26 of the Act a person harasses another if he engages in unwanted conduct related to a relevant protected characteristic (such as disability) and the conduct has the purpose or effect of violating that other's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that other.
11. Dealing firstly with victimisation, Mrs Weller said she performed a protected act when she complained about disability discrimination. As a result, she said, she had been subjected to a detriment in the form of the edict emanating from Mr Simmonds to the effect that the Company would not enter into contracts with agents such as her then employer.
12. It was conceded on the part of the Company that Mrs Weller's complaint of disability discrimination was a protected act, so the only issue for us was one of causation: was the direction from Mr Simmonds a consequence of that complaint?
13. Mr Simmonds denied that it was. More significantly, he denied even knowing that Mrs Weller had made the complaint about him.
14. It is worth reflecting, in that context, on the way that particular evidence emerged. There was no suggestion in the response that he was ignorant of the fact that Mrs Weller had alleged discrimination against him. Nor is it mentioned in Mr Simmonds' witness statement. He did not give evidence to that effect in chief, or in cross examination. It only emerged as a result of questions from the tribunal panel.
15. In other words, Mr Simmonds claimed he had a complete defence to the allegation but one which, without the intervention of the tribunal, would not have emerged at all. That was an extraordinary state of affairs and we felt caused him some difficulties on credibility.
16. How likely in any event, we were bound to ask ourselves, was it that he could be so ignorant? He signed off the settlement agreement, which expressly referred to disability (so we were told – the parties had not seen fit to include it in the bundle). He certainly knew allegations had been made against him personally but claimed ignorance as to their nature. We remind ourselves that he was the managing director. That seemed extremely unlikely.
17. In short, we did not accept his evidence. We were satisfied he was fully aware that the protected act had taken place and that he had been severely criticised.

18. We then had to ask ourselves whether Mr Simmonds had decided to punish Mrs Weller for alleging discrimination against him by producing the edict of 14 March. A further surprise arose in connection with that document in that it was not produced until after the hearing had commenced and only then as a result of questions from the tribunal.
19. The direction was certainly a departure from the earlier approach of the Company, which had happily dealt via agencies before. Mr Simmonds said there were three reasons for the new policy to be introduced. The first was implicitly referred to in the email and related to the expertise of agencies. The email refers to and appears to countenance the continuation of occasions where “we have a fully qualified accredited third party agent to deal with“.
20. Mr Simmonds was able to expand on that in his evidence. His position was that the Company was content to enter into agreements with accredited agencies because he would have the comfort of knowing that, because of their accreditation, they would have the knowledge, skill and experience to be able to deal with matters professionally. However, if he personally knew that the person within the agency had the requisite level of expertise, his fears would be similarly allayed. He conceded in his evidence he had no reason to believe that Mrs Weller was anything other than competent and indeed if he had any suspicions about that matter he could speak to her former colleagues. He could not have entertained doubts about her professionalism that would sensibly have required the policy to apply to her, as she was told it did.
21. He also told us that there would be commercial advantages for the Company in dealing direct with clients and further that the Company might in some respects be seen to be in competition with Mrs Weller’s new employer. He also said he had had problems with payment from a company associated with Lifestyle Media. We were prepared to accept these were genuine concerns but the rationale in the email of 14 March was clearly intended to convey the fact that concerns about the expertise of agency employees was the explanation. That rationale did not stand up to scrutiny. If that was not the reason, what was it? We remind ourselves that the email was produced very shortly after Mr Simmonds had been told where Mrs Weller was now working – a non-accredited agency.
22. In all those circumstances we concluded that the reason for the email was the allegation of discrimination made against him by Mrs Weller. The directions was clearly a detriment to her (we expand upon this below) and it followed that we concluded she had been victimised.
23. For the sake of completeness, we then turned to the claim of harassment, which was pleaded in the alternative. The direction from Mr Simmonds was certainly unwanted conduct related to a relevant protected characteristic disability but we were not satisfied it had the purpose or effect required. The claimant herself did not give evidence either in her witness statement or orally that it did have that effect, which perhaps is not especially surprising, given that the concept has a more ready application in the context of an ongoing employment relationship. Accordingly, and insofar

as we were required to address the matter, we found she had not been harassed.

24. We then turned to remedy. Mrs Weller claimed compensation falling under two heads, namely loss of commission and injury to feelings. We deal with loss of commission first. Essentially her case in this respect was that because of the direction from Mr Simmonds she was not able to contract business that she had hoped with at least one and up to three clients of her then employers Lifestyle Media. The business that she would have secured would have resulted in the receipt by her commission.
25. She produced a number of documents in relation to this and a calculation of some £4,000 lost. We did not doubt that there was some loss falling under this head but it was simply impossible to tell what the correct figure was. The documents and oral testimony did not support the claim. While it is not unusual for a tribunal to speculate, there comes a point when matters are simply so uncertain that no sensible supportable view can be taken. We therefore declined to make an award under this head.
26. We turned to injury to feelings. We heard Mrs Weller's evidence on that subject, which we accepted in full. She had to leave her job with Lifestyle Media because of Mr Simmond's direction. She was not in a position to offer clients her services in the way she (and they) wished. She had been employed because of her radio expertise which was thereby rendered worthless. Her reputation, built up over 16 years, was seriously damaged.
27. Her confidence was shattered and she suffered from anxiety, which had a particular impact upon her due to her Crohn's disease. Indeed, the impact upon her was so serious that she lost a lot of weight and thought she might have cancer. Her mental health was severely affected and although the possibility of her going on to antidepressants was canvassed, she could not do so because it would interfere with her Crohn's medication. She is undergoing counselling.
28. Mrs Weller cannot work in the industry again and has had to find employment in Devon, where no-one knows what has happened to her and she does not have to deal with the Company again.
29. She had clearly been profoundly affected by these events. The net effect of the Company's behaviour was that she had been driven out of her job, out of her career and indeed out of her county. The stress she suffered had been serious and had undoubtedly affected her more by reason of her disability, but the Company had to take its victim as it found her.
30. In all the circumstances we concluded that only a substantial award would properly reflect the serious and long lasting effect upon Mrs Weller. We concluded that the appropriate award for compensation to represent injury to feelings was £20,000 on which interest runs for eighteen months at 8% producing a further sum of £2,400.

Employment Judge Reed

Date: 9 November 2019