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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107766/2019

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Held in Dundee on 6 December 2019

Employment Judge I McFatridge

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**A
43 Castle Street
Dundee
Angus
DD5 2EH**

**Claimant
Represented by
Ms Curran
Friend**

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**Bonmarche Limited (in administration)
Per FRP Corporate Finance Limited
110 Cannon Street
London
EC4N 6EU**

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

35 The judgment of the Tribunal is that the respondent unlawfully discriminated against the claimant on grounds of age and sex. The respondent shall pay to the claimant compensation therefor in the sum of Twenty Seven Thousand, Nine Hundred and Seventy Five Pounds (£27,975).

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REASONS

1. The claimant submitted a claim to the Tribunal in which she claimed that she had been unlawfully discriminated against by the respondent. She claimed discrimination on the basis of her age and sex. She stated that over a continuous period she had been subjected to harassment and abuse by her manager based on her being a female going through the menopause. The respondent submitted a response in which they denied the claims. There was a degree of case management including a preliminary hearing which took place on 4 October 2019 following which the claimant provided the Tribunal and the respondent with a table populated with the details of the various incidents on which she relied and her classification of these incidents in terms of being direct discrimination, harassment and/or victimisation. I have referred to this document in the Judgment below as the "Schedule". The claimant also produced at the same time a document which she referred to as a Schedule of Loss but is in fact a statement setting out what the claimant alleges were the effects the discrimination had on her health and wellbeing over the period. I referred to this in the judgement below as the "statement". The claimant also provided her GP medical records.
2. Shortly after this the respondent went into administration. In a letter dated 20 November 2019 the administrator wrote to the claimant confirming that they consented to the proceedings continuing in relation to her claim for unfair dismissal and discrimination. There was in fact no claim for unfair dismissal before the Tribunal at this time. The sole claim was of discrimination. The claimant lodged this letter with the Tribunal. On 3 December the Tribunal also wrote to the respondent's administrators asking them to confirm if they were resisting the claim or agreed for it to proceed in their absence. On 4 December 2019 the respondent's replied stating

"Bonmarche Limited is not resisting the claim and agrees that the claim should proceed."
3. The hearing took place on 6 December. The claimant attended and gave evidence on oath. Reference was made to the statement, the schedule

and the claimant's medical records. The claimant confirmed the truth of what was in both documents and gave further oral evidence in relation to these matters. I consider that it is appropriate that I set out my findings as regards the facts which I found established in relation to the claim.

5 **Findings in fact**

4. The claimant worked in retail for 37 years. She considered herself to be very good at her job. She was one of the top sellers with the respondent. In her previous employment, where she had been with another retail company for 11 years, she had won a number of awards as being top seller. The claimant worked as supervisor for the respondent's and began employment with them in or about 2006. She reported to the Store Manager CB. She initially got on well with CB. Things changed in or about May 2017 when the claimant was going through the menopause. The claimant considered that CB's attitude towards her changed. He would demean her and humiliate her in front of other staff. Other members of staff were younger and would laugh at CB's remarks. The claimant found this humiliating and upsetting.

5. At some point CB started suggesting to the claimant that she should apply for a job elsewhere. He suggested that she apply for a part time job in another store and that she should apply for a job in Marks and Spencer. He continued to make offensive and humiliating remarks to the claimant. The claimant found these difficult to deal with. One of the tasks which the claimant required to start doing was using an iPad to take online orders from customers. CB would often intervene with the claimant and called her a dinosaur in front of other customers. He continued to criticise the claimant unreasonably. On one occasion he criticised her for failing to staple together two pieces of paper and related this to her being menopausal.

6. In or about May 2018 the respondent went through a restructuring exercise which involved staff requiring to reapply for their own jobs. Shortly after applications closed the claimant discovered that she was the only applicant for her job. The claimant was pleased at this as it meant she would stay on without requiring to go through any further process.

Shortly thereafter she discovered that CB had been asking other members of staff to apply for the claimant's job. The claimant felt that CB did not value her and wished to push her out of the business. CB made numerous comments relating to the claimant being menopausal and for her performance. In December 2017/January 2018 the claimant tried to discuss the issues around her menopause with CB but he refused to discuss them with her. CB refused to adjust the temperature in the shop to take account of the claimant's requirements.

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7. At one point the claimant contacted the respondent's management and raised the issue with them. They told her not to take the issue any further but that they would deal with it. No action was taken. The claimant understood that CB was made aware of her approach and felt that his treatment of her became even worse after this.

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8. The claimant's health suffered as a result of her treatment by CB. In or about November 2018 the claimant suffered a breakdown. She suffered a serious panic attack which required paramedics to be called. The symptoms of the panic attack were similar to those of a heart attack and were extremely alarming for the claimant and her family. The claimant's GP suggested that the claimant may wish to be referred to Carseview for a period of respite but the claimant did not want to do this. She remained at home. The claimant was treated by her GP with anti-depressants (Mirtazapine). She was prescribed sleeping pills to sleep at night.

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9. The claimant contacted HR about the situation following her breakdown in November. It was agreed that she could return to work working four hours per day. The claimant returned to work. She found that CB was extremely cold and threatening towards her. On the first day she was back she asked if she could have time off the shop floor in order to have a drink with which to take her medication. CB indicated that she was "pushing her luck". Towards the end of that week the claimant noticed that despite the fact HR had agreed that she could return to work for four hours per week she was rota'd to work her full hours for the following week. She raised this with a member of the admin staff who stated that the manager had said that if she wanted to only work four hours per week then she would require

to take the time off as holidays. The claimant resigned and left her employment around 4 December.

10. By this time the claimant was in a terrible state. She was weepy. She suffered from low mood. She remained at home for the next six months. She broke off all her social contacts. She would occasionally leave the house at night under cover of darkness to walk the dog. She remained under the care of her GP. Her GP prescribed her Citalopram in addition to the other medication she was on. The claimant was diagnosed as suffering from anxiety and depression. The claimant was unable to pay her mortgage payments or meet other payments due as a result of being out of work. This caused her further anxiety and depression. The claimant has required to rearrange her mortgage term with her mortgage provider. This has had the effect of extending the term of her mortgage. The claimant has also had to make arrangements with other creditors and borrow money from family and friends. The claimant has felt humiliated and upset as a result of this. The claimant adopted as her evidence the facts as set out in the schedule and the statement which had been prepared by her representative with her input and on her behalf. The claimant has been actively trying to improve her situation over the last period of months. She was successful in obtaining a part time job as a Deputy Manager of a charity store near where she lives. This job started on 9 September 2019. It is a paid post. In her new post the claimant earns around £7.50 per month. She earned approximately £765 per month net from her employment with the respondent. The claimant is still receiving treatment from her GP for anxiety and depression. She attributes the anxiety and depression to the effects of her treatment by CB. The claimant has also suffered difficulties with her marriage and she also attributes this to the way she was treated by CB.

Matters arising from the evidence

11. Clearly, in the absence of the respondent, the claimant's evidence was entirely untested. I asked such questions as occurred to me to be relevant to ask but clearly I did not have the benefit of hearing from any other witnesses. The claimant had set out the meat of her allegations in the schedule which was provided. This statement also provided information

as regards the way the treatment impacted on her. In general terms her oral evidence simply expanded on what was in these statements. The claimant is still suffering from anxiety and depression and was clearly upset during the course of the hearing. I was in no doubt that she was giving genuine evidence as to how she felt about matters. It was her position that she had been the subject of a lengthy course of conduct of harassment by CB in relation to being menopausal. She spoke graphically of CB calling her a dinosaur in front of customers. She also referred to him making fun of her in front of other younger staff who laughed at her. She stated that as a result of this treatment she had lost all confidence and she had suffered a mental breakdown. As noted above I considered that her evidence was strongly felt and there was nothing before me to gainsay it. I have essentially accepted what she told me as being the basis of my findings in fact.

15 **Discussion and decision**

12. It was the claimant's position that her treatment by CB amounted to harassment and or direct discrimination on grounds of age and sex. The definition of direct discrimination is contained in section 13 of the Equality Act 2010.

20 "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

13. The claimant did not name a specific comparator however I understood her to be comparing her case with another employee who was not a female of menopause age. I found it established on the facts that the respondent, by the actings of CB for whom they were liable, had treated the claimant less favourably than he would treat someone who was not a female of menopausal age. The comments were specifically related to the claimant's protected characteristic and in my view the remarks would not have been made to someone who did not have those characteristics.

14. The definition of harassment is contained in section 26 of the Equality Act 2010.

“A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of –

5 (i) violating B’s dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”

10 I had absolutely no doubt that in this case the respondent in the person of CB was guilty of harassing the claimant. It was quite clear from the claimant’s evidence that she felt he had created a hostile environment for her and that this was related to her status as a woman going through the menopause. I consider this to amount to unlawful harassment on grounds of age and sex.

15 15. As noted above, there was no claim of constructive dismissal in this case. It was however the claimant’s position that she had resigned as a result of the discrimination against her. I find that that was indeed the case. She resigned because she had become mentally unwell as a result of CB’s treatment of her and she believed that this treatment would continue. The claimant’s evidence was that she had been unable to work from 20 4 December until she started work with the charity on 9 September 2019. I accepted the claimant’s evidence that during this time she was extremely unwell and avoided social contact of all types. I accepted her evidence that she did not leave the house. It was also her evidence that she had missed out on a number of family occasions. She had been in the habit of 25 looking after her grandchildren but could no longer do this because of the way she felt. Her marriage had suffered various difficulties with her husband and her having a number of trial separations. I also find that the claimant had ongoing issues with anxiety caused by her no longer having an income which was directly related to the discrimination.

30 16. Taking the issue of wage loss first of all I considered the claimant is entitled to her wage loss for the period from 4 December 2018 to 9 September 2019. I am unclear as to what notice pay the claimant had so will treat this in broad terms as nine months’ loss of earnings. The claimant’s evidence

was that she was paid at the rate of £965 per month gross. She is therefore entitled to £8695 for the period to 9 September. The claimant continues to suffer a wage loss of around £215 per month. Her evidence was that she found the work in the charity shop to be congenial and, given her current fragile health, she is not seeking other employment. The opportunities for working additional hours with the charity are not great. I considered that in all the circumstances it would be appropriate to award her a further six months' wage loss amounting to £1290. The total figure for wage loss is therefore £9975.

17. On the question of injury to feelings I note that the claimant has suffered a substantial reduction in her mental wellbeing as a result of her treatment. It is clear that this is a case which amounts to a course of conduct over a substantial period. The claimant became more and more ill over that period and this eventually led to a breakdown in November 2018. I note that the claimant's GP recommend that the claimant in fact be hospitalised at that stage although the claimant did not agree to this. I also note that for a period of about six months after her resignation the claimant was housebound and for a period after that remains socially isolated. The claimant is still suffering from stress and anxiety she attributes to the unlawful discrimination she suffered.

18. I considered the relevant authorities on the issue of compensation for injury to feelings including *Vento v Chief Constable of West Yorkshire Police No. 2 [2003] IRLR 102 CA*, *Da'Bell v NSPCC [2010] IRLR 19 EAT* and *De Souza v Vinci Construction (UK) Limited [2017] IRLR 844 CA*, *Durrant v Chief Constable of Avon and Somerset Constabulary [2018] IRLR 263 CA*. I also referred to the Presidential Guidance issued in relation to this matter by the Joint Presidents of the Employment Tribunals in England and Wales and Scotland on 5 September 2017.

19. It is my view in this case that the middle band identified in the *Vento* case referred to above. Whilst I considered that this is a serious case but does not merit an award in the highest band. That said I considered that the amount which falls to be awarded should be towards the upper end of the middle band and having taken all the circumstances into account I would

award the sum of £18,000 in respect of injury to feelings. The total compensation is therefore £27,975.

20. I order that the claimant's name be redacted from the copy judgment published on the internet as the judgment contains private and sensitive medical information.
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25 **Employment Judge:**
Date of Judgment:
Date sent to parties:

Ian McFatridge
19 December 2019
19 December 2019