EMPLOYMENT TRIBUNALS

Claimant: Ms M Albusel

Respondent: (1) Abdul Mannan
(2) Montpellier Bar and Grill Ltd (In Liquidation)

Heard at: **Bristol** **On:** **14 February 2020**

Before: **Employment Judge Midgley**

Representation
Claimant: Mr D Florin, lay representative
Respondent: Mr Mr F Currie, Counsel

JUDGMENT

ON APPLICATION FOR RECONSIDERATION

1. The Respondent's application for an extension of time to apply for a reconsideration of the Judgment dated 4 October 2019 is rejected on the grounds that the Respondent has not demonstrated on the balance of probabilities that it did not receive notice of the hearing.

2. Of the Tribunal's own motion, in accordance with Rule 73, the Judgment dated 4 October 2019 is varied with the effect that:

   2.1. The name of the First Respondent is amended to "Abdul Mannan."

   2.2. The Montpellier Bar and Grill Ltd (in Liquidation) is joined as a Second Respondent.

   2.3. The Second Respondent is ordered to pay the Claimant **£332.90** for unlawful deduction of wages (section 13 ERA 1996) and **£960.00** in respect of a failure to provide a written statement of employment particulars (section 38 EA 2002);

2.4. The First and Second Respondents are jointly and severally liable for the unlawful discrimination of the Claimant contrary to s. 18 EWA 2010 and are ordered to pay the Claimant compensation of **£9,000** in respect of injury to feelings and interest of **£609.53**.

3. The Respondent's application for the Rule 21 Judgment to be revoked is dismissed because there is no reasonable prospect of the decision being varied or revoked and it is not necessary and in the interests of justice for the Judgment to be reconsidered.

4. No award is made for aggravated damages.

REASONS

The Application

1. The Respondent has applied for a reconsideration of the Rule 21 Judgement dated 4 October 2019 which was sent to the parties on 22 October 2019 ("the Judgment").

2. The grounds are set out in his solicitor's letter dated 25 November 2019, which was received that day in the Tribunal office and may be summarised as follows:

2.1. Application for an extension of time to seek reconsideration:

2.1.1. The Respondent had no knowledge of the claim until receipt of the Judgment because:

2.1.1.1. The Respondent is the director of Montpellier Bar and Grill Ltd (the "Company"). At the material times the registered office of the Company was the business premises at 9 Montpellier Terrace, Cheltenham, GL50 1US (the "Premises"), but the Respondent did not reside at that address and engaged Mr Ali Habib as a general Manager of the Company. Mr Habib had responsibility for the day-to-day running of the Company and the Respondent did not regularly attend the premises.

2.1.1.2. The Company ceased to trade in March 2019, and the Premises was then sublet to another business, Chelsea Brasserie. On 25 April 2019 the Respondent applied to Companies House using form DS01 to strike the Company of the Register. On the 14th May 2019 the Company was struck off and dissolved.

2.1.1.3. The Respondent did not receive the Judgment from Mr Habib or from Chelsea Brasserie. He first became aware of the claim on or about the 12 November 2019 when his partner, Samaya Badat, visited the Brasserie in a social capacity and was given a plain white unfranked envelope with a copy of the Judgment in it.

2.2. Application for reconsideration:

2.2.1. The Respondent repeats the matters at paragraph 2.1.1 above and relies upon the following additional grounds:

2.2.2. The Respondent did not personally employ the Claimant, rather all employees were employed by the Company, and the Respondent did not have any personal involvement in their recruitment, leaving such matters to Mr Habib.

2.2.3. The Company should therefore be substituted for the Respondent as the correct Respondent to the action, alternatively the Judgment against the Respondent should be revoked.

Procedure, hearing and evidence

3. By a claim form presented on the 15 February 2019 the Claimant made claims of unlawful deduction of wages, pregnancy or maternity discrimination and failure to provide written particulars of employment against the Respondent, Abdul Mannan.

4. Early conciliation began on 1 February 2019 and a certificate was issued by ACAS on 14 February 2019. The Respondent identified in the certificate was 'Montpellier Bar and Grill.' The address for the Respondent identified in the ET1 and the ACAS certificate was 9 Montpellier Terrace, Cheltenham GL50 1US (the "Premises").

5. On 19 February 2019 the Tribunal requested that the Claimant should provide the Tribunal with the correct identity of the Respondent, as the name on the claim form differed from that on the ACAS certificate. The Claimant replied on 19 February 2019 stating that Mr Mannan was the owner of the restaurant but failed to identify who the correct Respondent was.

6. On 21 February 2019 Employment Judge Harper MBE directed that the claim should be served on "Abdul Mannan trading as Montpellier Bar and Grill". In consequence the notice of claim was sent by post on 22 February 2019 to the Premises.

7. No response was received and on 2 April 2019 upon a rule 21 referral Employment Judge Livesey directed that the Claimant should clarify whether

the claim was brought against Abdul Mannan or against Cheltenham Bar and Grill Limited.

8. The Claimant replied the same day indicating that employer was Abdul Mannan and that Montpellier Bar and Grill was the location where she worked. In that email the Claimant raised concerns that as she still resided at the Premises Mr Mannan might intercept any correspondence sent by post and so requested that correspondence should be sent by email.

9. Because the claim was one of discrimination it was listed for a Rule 21 remedy hearing. On the 16 May 2019 notice of the hearing on 4 October 2019 was sent to the Claimant by email and to the Respondent at the Premises. The Respondent's notice was returned to the Tribunal with a note reading "please return to sender, no longer at this address."

10. On 4 October 2019 the Respondent did not attend the hearing and, having heard evidence from the Claimant in person, during which she adduced documents and confirmed what they were, I entered Judgment in favour of the Claimant in respect of all claims in the sums set out in the Judgment. The documents which the Claimant produced on 4 October 2019 which are relevant to the current application were as follows:

    10.1. a letter dated 16 October 2018 addressed "To whom it may concern" and signed by the Respondent stating:

    > "Re Dobre Florin
    >
    > I am writing to confirm the above named persons reside at 9 Montpellier Terrace, Cheltenham, GL50 1US. They both occupy a bedroom. They both moved in on 8 October 2018. The above address is their main residence.
    >
    > Please contact me if you require further assistance on xxxxx xxx505" [the Respondent confirmed that this was his telephone number]

    10.2. a diary with entries for the period 4 October 2018 to 28 October 2018 recording the hours of the Claimant and Mr Florin

    10.3. a stocktake form completed by the Claimant dated 20 November 2018

    10.4. a MED3 form dated 18 January 2019 covering the period 18 January to 25 January 2019 for the Claimant indicating that she had been vomiting

11. On 25 November the Respondent applied for reconsideration of the Judgment.

12. The Claimant was directed to provide a response to the Respondent's application which she did on 14 January 2019. In her response the Claimant identified that Mr Florin had been present when the Respondent had opened the letter containing the notice of claim. The Claimant therefore asserted that the Respondent therefore knew both of the claim and of the Judgment but had not responded within time and it would not therefore be in the interest of justice to extend time.

13. On 22 January 2020, I ordered that the matter should be set down for hearing on 14 February 2020 and that the parties should serve and exchange witness statements limited to the issue of the Respondent's knowledge and/or receipt of the claim which should not exceed 1500 words. The parties complied with that order.

14. The Respondent relied upon two witnesses, each of whom produced a statement in accordance with the order and who gave evidence and answered questions on oath at the reconsideration hearing:

    14.1. the Respondent;

    14.2. Ms Samaya Badat.

15. Attached to the statements was a bundle of documents running to 51 pages which included:

    15.1. the certificate of incorporation for the Company dated 16 April 2018

    15.2. an Employer Claimant Summary for the Company;

    15.3. a letter from Companies House dated 14 May 2019 confirming that the Company had been struck off the Register and would be dissolved;

    15.4. bank statements for the Company covering the period 24 May 2018 to 2 February 2019;

    15.5. Invoices addressed to the Company;

    15.6. Letters from the Pensions Regulator to the Company making reference to the PAYE reference dated respectively August 2018, November 2018 and January 2019;

    15.7. PAYE documents covering the period January to February 2019 in respect of Mr D Florin;

    15.8. The Company's Payroll Summary for the period July 2018 until March 2019 identifying the workers of the Company, which did not include the Claimant.

16. The Claimant relied upon the evidence of Mr D Florin, who produced a statement by email dated 3 February 2020 and who gave evidence and answered questions on oath.

17. The Respondent's evidence, contained within his statement, was that Mr Habib would collect the post delivered to the Premises and would leave any letters addressed to the Respondent relating to the business for the Respondent or his partner, Ms Badat, to collect when they next visited the premises. The Respondent maintained that he had never heard of the Claimant, and on receiving the Judgment, telephoned Mr Habib, who told him that the Claimant was the girlfriend of Mr Florin, who worked in the kitchen. Mr Habib maintained that the Claimant had never worked for the Company. The Respondent therefore argued that he had never employed the Claimant or offered her any work, and that he had never had a discussion with her relating to her pregnancy.

18. The Respondent had not received the evidence which was provided to the Tribunal at the Rule 21 hearing in October 2019. In consequence copies were provided to Mr Currie and the hearing was adjourned for half an hour so that he could take his client's instructions on them.

19. Having considered the documents, the Respondent gave evidence on oath and confirmed that his statement was true to the best of his knowledge and belief. During his evidence he again stated that he had never heard of the Claimant and had never in fact met her.

20. He was cross-examined by Mr Florin who suggested to him that on 5 October 2018 he and the Claimant had attended an interview with the Respondent for work at the Montpellier Bar and Grill. The Respondent denied that. Mr Florin suggested that he had an email from the Respondent inviting them for interview, having received their CVs. The Respondent stated that he had not sent an email of that sort. In respect of the letter dated 16 October 2018, the Respondent stated that he had not written it but was given it by Mr Habib, who had written it, and signed it with the intention of assisting Mr Florin to set up a bank account. The Respondent accepted that he knew that Mr Florin was staying in the flat above the Montpellier Bar and Grill. Finally, Mr Florin read a text message dated 7 October 2018 from the Respondent to Mr Florin's aunt which read "hello, please accept my apology for sending you a message late. Your nephew and niece are working from 1 O'Clock tomorrow, thank you and good night." The Respondent stated that he did not believe he had sent that message.

21. In answer to the Judge's questions the Respondent confirmed that he was responsible for any matter relating to the financial aspects of the business, including paying the staff and suppliers. He made those payments on the basis of the information provided to him by payroll, who in turn had received information from Mr Habib. The Respondent stated that he had seen the

Claimant in the premises of the Company on "a few occasions to say hello" but he never spoke to her beyond that. He could not recall whether she was working at the time he saw her but confirmed that he did not introduce himself.

22. Mr Florin gave evidence and was cross-examined by Mr Currie. Mr Florin maintained that the Respondent would attend the premises once or twice a week on average. He said the Claimant had not brought the claim against Mr Habib as he was not directly involved in firing her and they did not know his real name. He maintained that he had been present in January when the Respondent had been given the sick note and been told of the Claimant's pregnancy. He also maintained he was present when the Respondent had attended the premises and opened the letter containing the Judgment and stood by the comments in his statement about the remarks the Respondent made on opening the Judgment. He denied that he was exaggerating or lying in his evidence.

23. The Employment Judge ascertained that Mr Florin had copies of the email and text messages, which he had referred to in his cross examination, and subsequently arranged for the Respondent and the Tribunal to be provided with copies of them. The hearing was again adjourned to enable the Respondent to consider the documents. On reconvening the hearing, the Respondent was recalled to address the documents.

24. The Respondent stated that the mobile number in the email of 5 October 2018 was not a personal number but a business number, and maintained that on the 5 October 2018 there had been an Internet outage at the Respondent's premises with the result that he had had to give his business mobile to Mr Habib.

25. He initially stated that Mr Habib had sent the email of 5 October 2018 at his instigation and that Mr Habib attended the interview and the Respondent did not. He later stated that he had sent the email because Mr Habib was unable to do so given the Internet outage at the premises. He said that Mr Habib had informed him after the interview that he had offered a job to Mr Florin but not to the Claimant on the grounds that she did not have any experience and had poor English, but she was later offered a voluntary role as she was bored and Mr Habib sought to help her get some experience so that she could apply for an alternative role. The respondent could not explain why none of those matters were contained in his witness statement.

26. In relation to the text message dated 7 October (sent to Mr Florin's Aunt), he stated that Mr Habib had sent the message using the Respondent's business mobile telephone because the landline in the Premises was reliant on the Internet and so could not be used on that occasion.

27. Mr Florin was recalled to address the new evidence of the Respondent. He maintained that the interview for the role had taken place in the restaurant and was attended both by Mr Habib and the Respondent, describing where it had taken place. He said that during the interview both he and the Claimant had explained that neither of them had experience, but the Respondent had said that Mr Habib could train them. He said the interview lasted for approximately 20 minutes and at the end of it the Respondent offered them a job and asked Mr Habib to show them the kitchen and the roles. He said that during the interview it was the Respondent who asked the questions and Mr Habib did not say anything until showing the Claimant and Mr Florin how the kitchen worked.

28. The parties then made oral submissions on the applications.

29. The Employment Judge adjourned to consider the parties' representations and gave an extempore oral Judgment at the end of which he raised the prospect of varying the award of injury to feelings with Mr Currie on the grounds that if the Respondent's conduct was deemed to be heavy-handed and oppressive an award of aggravated damages might be appropriate. The Employment Judge directed that the Respondent should provide written submissions on that issue by 6 March 2020 and that the Claimant should be permitted to reply in writing.

30. The Respondent's representative requested written reasons for the Judgment on the application but agreed that it was appropriate that the written reasons should be provided after receipt of the Respondent's written submissions, so that all matters could be encompassed in the single Judgment.

31. The Respondent's written submissions were received on 6 March by the Tribunal and the Claimant's reply on 10 March. Regrettably the written submissions were not referred to the Judge, and on 11 March the Judge requested that the parties should forward the written submissions. The Respondent's written submissions were provided to the Judge on 11 March.

Findings of fact

32. There was a direct conflict of evidence between the Respondent and the Claimant. The Claimant's case was that she was employed by the Respondent following an interview which he had arranged and conducted, and that he had dismissed her directly upon being informed of her pregnancy. In relation to the instant application, the Claimant's case was that the Respondent had received the Judgment and, rather than taking appropriate action and filing a response, had elected to threaten the Claimant if she proceeded with the claim.

33. The Respondent's case was that he had limited involvement with the company, had no involvement with the Claimant's recruitment, and was only

involved in paying individuals who were shown on the payroll. His account was that he had "no recollection of the Claimant's name" prior to receiving the Judgment and had "never met her," although he conceded that he had seen her in the Premises on two or three occasions without realising who she was.

34. The two accounts cannot be reconciled.

35. The followings facts are not in dispute:

    35.1. Mr Florin was employed as a chef by Montpellier Bar and Grill Ltd following an interview on 5 October 2018;

    35.2. The Claimant had been present at that interview.

    35.3. Between 8 October 2018 and the end of March 2019 the Claimant and Mr Florin occupied one room above the restaurant in the Premises, and Mr Habib occupied another room. All three individuals ate in the Premises and could make use of the kitchen.

    35.4. Mr Florin was shown on the pay roll of Montpellier Bar and Grill Ltd between January and February 2019 and received PAYE;

36. It was necessary therefore to make provisional findings of fact on the balance of probabilities to determine the applications for an extension of time and for reconsideration. My findings are cannot bind any future Tribunal in relation to these matters. My findings were as follows:

37. Where there a direct of evidence between Mr Florin and the Respondent I preferred the Mr Florin's and the Claimant's evidence. That is because the Claimant's account of events contained in the claim form, the response to the applications and in the Claimant's evidence on 4 October 2019 and Mr Florin's evidence before me were consistent, both in their accounts also but, crucially, with the contemporaneous documents which were produced during the proceedings. In particular, they were consistent with the email, text messages and letters accepted to have been written by the Respondent.

38. In contrast, whilst the Respondent had explanations for the documents that were produced, in my view, those explanations came somewhat piecemeal and were not entirely consistent or plausible.

39. The most telling evidence before me, in my view, is the email of 5 October 2018 which the Respondent accepts he sent. Initially when asked about it he said that he had not sent such an email to Mr Florin, subsequently when recalled to give evidence he said he had no recollection of the email, although given the date, he was able to recall that that was the time that the Premises had had technical difficulties with Internet and its landline facilities, and that he had sent the email on behalf of Mr Habib at his request so that Mr Florin would attend for interview with Mr Habib.

40. That latter account is inconsistent even with the wording of the email itself. The email states:

> "Dear Florin,
>
> Thank you for coming to the Bar and Grill and leaving your CV. I tried to call you for interview but I think the number is not right. Please can you call me on the number given so that we can arrange a time and date for interview.
>
> Look forward to hearing from you,
>
> Regards Mannan"
>
> (emphasis added).

41. The Respondent's evidence was that he did not attend the interview and he played no part in it. Mr Florin's evidence was that the interview was conducted with four people present: himself, the Claimant, the Respondent and Mr Habib. On the basis that that account is consistent with the email that the Respondent accepts that he sent, I have concluded on the balance of probabilities that Mr Florin is right firstly in relation to the circumstances in which he was called to attend interview, secondly in relation to the individuals who were present at interview and finally in relation to the matters in dispute namely that Mr Florin and the Claimant were offered work from 8 October 2018.

42. In support of that matter, I bear in mind that the text message of 7 October 2018 refers to "both" coming to work the following day on the 8 October, which is inconsistent with the Respondent's account that the Claimant was not offered work because she became bored and was subsequently offered work by Mr Habib on a voluntary basis. That account is utterly inconsistent with the content of the text message and inherently implausible. It is implausible that that the Respondent we be content for an individual who was not engaged in productive work for the Company to occupy a room in the Premises, to make food in the Bar and Grill's kitchen and more generally to wander around in the restaurant unchecked, particularly where there was no further relationship between the Claimant and the Company, save for her being the partner of a worker there. Secondly, it is inconsistent with the Claimant's practice of keeping a note of her hours in a diary.

43. On that basis, which I find goes to the heart of the Respondent's credibility, I prefer Mr Florin's account in respect of the occasion where Mr Florin states he was present when the Respondent opened the notice of claim. I bear in mind that when he was pressed on that issue in cross examination, he stated that he believed the incident had occurred in February and there were one or two occasions thereafter where he had seen the Respondent with documents from the Tribunal, which the Respondent had subsequently thrown away.

That evidence is consistent with the Tribunal procedure that I have described, namely that on 22 February 2019 the notice of claim was sent to the parties.

The Law

44. I remind myself of the relevant law:

45. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received outside the relevant time limit.

46. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

47. It is for the applicant who seeks such an extension of time to establish that they were not aware of the claim within the prescribed time limit. In that context, the rule of deemed postal service applies so that so that where the Tribunal has used the correct postal address the document is deemed to be have been delivered within two days for first class post and within seven days for second-class post. It is for the individual who seeks to establish that they did not receive the document in question to prove on the balance of probabilities that that assumption should not be made.

48. It is imperative that I should determine the application for an extension of time as a preliminary issue before moving on to determine the application for reconsideration itself (see Practice Surgeries Ltd v Srivatsa unreported).

49. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

50. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by reconsideration.

51. In addition, in Fforde v Black EAT 68/60 the EAT decided that the interests of justice ground of review does not mean "that in every case where a litigant is unsuccessful he is automatically entitled to have the Tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order."

Aggravated damages

52. An award for aggravated damages should not be made merely to demonstrate the Tribunal's disapproval of a party's conduct, and ought therefore to punish that party in any way. The Tribunal should be careful not to allow the award to be inflated by any feeling of indignation or outrage towards the respondent (see Commissioner of the Police for the Metropolis v Shaw [2012] IRLR 18 at para 20; approved in ICTS (UK) Ltd v Tchoula [2000] IRLR 643, EAT, and Base Childrenswear v Otshudi [2019] EWCA Civ 1648).

53. Damages for aggravated damages are really an aspect of the injury to feelings, therefore, the Tribunal should ensure that the overall sum is properly compensatory and not excessive (Shaw para 21).

54. On the other hand, the award should not be set so low as to diminish respect for the policy of the anti-discrimination legislation (see Armitage Marsden and HM Prison Service v Johnson [1997] ICR 275)

55. Any award for post-dismissal conduct should only be made in the most exceptional cases (see Zaiwalla & Co v Walia [2002] IRLR 697 at para 28) and the Tribunal should always bear in mind that the ultimate question is "what additional distress was caused to this particular Claimant, in the particular circumstances of this case, by the aggravating features in question?" (Shaw at para 24).

56. A Tribunal should be careful not to double count any element of aggravated damages which had already fallen to be considered for the purposes of the initial injury to feelings award (Shaw at para 23).

Conclusions

Application for an extension of time

57. I am not persuaded that the Respondent did not receive the notice of claim or the notice of the remedies hearing.

58. Firstly, I accept the evidence of Mr Florin that he was present on the occasion when the Respondent received the notice of claim, and that the Respondent opened the correspondence from the Tribunal and reacted to it. The Company was still operating from the Premises when the notice of claim was sent.

59. Secondly, I have concluded that the Respondent received the notice of the remedy hearing in May 2019. Whilst I accept that the Company applied to be wound up in March 2019 and ceased to trade then or thereabouts, which is corroborated by the documents produced by the Respondent and accepted by Mr Florin, and that it was dissolved in July 2019, the Company was still operating from the Premises in late February when the notice of claim was sent and in April 2019 when the rule 21 Judgement was issued.

60. The Respondent's evidence was that after the business was wound up, he visited the Premises somewhere between once a week to once every two weeks to check the post. He remained the proprietor of the Premises but leased it to another company which operated from it. In those circumstances, I am not persuaded by the Respondent that it did not receive the notice of the Rule 21 remedy hearing which was issued on the 16 May 2019. The notice itself was returned to the Tribunal marked "return to sender. No longer at this address". That must indicate that the notice was received at the address.

61. I bear in mind that at that time the Respondent was still attending the premises to check the post, and the notice was addressed to "Abdul Mannan", at the Premises' address. In those circumstances it is difficult to conceive why the post would not have been passed to the Respondent or collected by him. In my view the notice was received at the Premises and, subsequently, would have come to the Respondent's attention by the end of May at the latest.

62. Consequently, I reject the Respondent's application for the reconsideration application to be presented out of time.

63. If I were wrong in that conclusion, then I would have refused the Respondent's application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked in light of the conclusions that I have reached above as to the circumstances in which the Claimant was employed following an interview with the Respondent.

Rule 73 - reconsideration of the Tribunal's own motion

64. Of my own motion, in accordance with rule 73, I considered whether it was necessary in the interest of justice for me to reconsider the Judgment in light of the new evidence which was presented in support of the application.

65. In my view it is necessary and in the interest of justice to do so, to reflect the correct identities of the Respondents to the claim. There is clear evidence presented by the Respondent that the Company is the correct Respondent for the claims of unlawful deduction of wages contrary to section 13 ERA 1996 and the claim for failure to provide a written statement of employment particulars contrary to section 38 of the Employment Act 2002. The company was registered with Companies House and operated from the Premises at the time of the Claimant's employment and her dismissal. The Company was still operating when the claim was presented in February 2019 but was subsequently subject to voluntary liquidation. "Montpellier Bar and Grill Ltd (In Liquidation)" will therefore be added as a Second Respondent.

66. However, I am not persuaded that that is the only Respondent in respect of the discrimination claims. The evidence before me both in the claim form,

given at the rule 21 Remedy hearing on 4 October 2019, and reiterated during this hearing before me in Mr Florin's witness statement and cross examination demonstrates that the individual who took the decision to dismiss the Claimant on the grounds that she could no longer work because she was pregnant was not Mr Habib, but rather the Respondent acting in his capacity as the Director and majority shareholder in the company; he was therefore an agent for the Company. The Claimant had always maintained that it was Mr Mannan who was the appropriate Respondent to her claims. It is appropriate in those circumstances that the Respondent's title should be amended to "Mr Mannan", rather than "Mr Mannan T/A Montpellier Bar and Grill." It is in the interest of justice that he should be joined to the proceedings as he is jointly and severally liable with the Company for his acts of discrimination.

Aggravated Damages.

67. In my judgement, the Respondent has acted in a high-handed, insulting and oppressive manner in pursuing an application for reconsideration on an entirely false basis both that he did not receive the claim form, but more particularly, that the Company had never employed the Claimant and that the Respondent and the Claimant had never met.

68. However, I must consider, applying the principle enunciated at paragraph 24 of Shaw above, what injury the Claimant has suffered because of that conduct. The Claimant did not herself give evidence or produce a witness statement describing what the impact of the grounds of the application were upon her. In her response to the Respondent's application she made no reference to any injury to her feelings.

69. In those circumstances, in my view, were I to increase the award for injury to feelings to reflect an element of aggravated damages I could only be doing so on the basis of my own views as to the likely injury to the Claimant's feelings, and that approach would risk censuring the Respondent on the basis not of the Claimant's injury to feelings but rather the Tribunal's disapproval of the Respondent's actions. That approach is expressly forbidden.

70. I therefore decline to increase the award for injury to feelings to reflect an element of aggravated damages.

Employment Judge Midgley

Dated: 3 April 2020

Judgment sent to parties: 20 April 2020

FOR THE TRIBUNAL OFFICE