



EMPLOYMENT TRIBUNALS

Claimant: Ms S Beadle

Respondent: HCUK Resourcing Limited

Heard at: Leeds by video link

On: 3, 4 and 5 February 2021

This was a remote hearing by CVP video link which was agreed in advance by the parties.

Before: Employment Judge Shepherd

Members: Dr Bright

Mr Dowse

Representation:

Claimant: In person

Respondent: Ms Levene, counsel.

REASONS

1. The claims brought by the claimant were dismissed in a unanimous decision of the Tribunal and an extempore judgment was given on 5 February 2021. The written judgment was sent to the claimant on 9 February 2021. The claimant has requested written reasons for that judgment and these are provided pursuant to rule 62 (3) of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013.

2. The claimant represented herself and the respondent was represented by Ms Levene.

3. The Tribunal heard evidence from:

Sinitta Beadle, the claimant;

Samantha Roberts, Customer Services Team Leader;

Sarah-Jane Satchwell, Customer Services Manager;

Sarah Kerwin, Assistant Principal;

Maxine Murray, HR Business Partner;

Lizann Lawson, Deputy Principal.

4. The names of people referred to throughout the hearing who were not witnesses or had attended the hearing, have been anonymised.

5. The Tribunal had sight of a bundle of documents which was numbered up to page 337. A number of further documents were admitted during the course of the hearing. These were provided electronically and, when discussed, their internal numbering was used. This included an updated statement from the claimant. The Tribunal considered those documents to which it was referred by the parties.

6. The issues to be determined by the Tribunal were discussed at the start of the hearing and agreed to be as follows:

Incident 1

Harassment on grounds of sexual orientation - section 26 of the Equality Act 2010

1. Did the Respondent or those acting on its behalf engage in conduct unwanted by the Claimant?

The conduct relied upon by the Claimant is:

a. That she was called "Sinitta the maneater" from 5.12.18 until June 2019 by a colleague, CE.

2. If so, was that conduct related to the Claimant's protected characteristic of sexual orientation?

3. If so, did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4. In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Time/limitation issues.

5. Does the Claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such accordingly in time?

6. If not, was any complaint presented within such other period as the Tribunal considers just and equitable?

Incident 2

Harassment on grounds of perceived sexual orientation - section 26 of the Equality Act 2010

7. Did the Respondent or those acting on its behalf engage in conduct unwanted by the claimant?

The conduct relied upon by the Claimant is:

a. There was an incident at the Christmas 2019 meal in which the witnesses (TH and AH) said they heard the claimant being called a lesbian.

b. That the witnesses of the meal incident told the claimant that they have been “told I am a lesbian” while we were all at work. The witnesses whom informed the claimant were TH and AH. The incident was reported to the claimant in the week commencing 16 December 2019.

8. If so, was that conduct related to the protected characteristic of sexual orientation?

9. If so, did the conduct have the effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

10. In considering whether the conduct had that effect, the Tribunal will take into account the Claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Reasonable Steps Defence - section 109(2) of the 2010 Equality Act

11. Did the Respondent take all reasonable steps to prevent harassment of the Claimant in relation to incident 1 and/or incident 2?

7. It was agreed at the commencement of this hearing that those were the issues to be determined by the Tribunal. However, a dispute arose with regard to issue 7b as explained in the conclusions below.

Findings of fact

8. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions. Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of the Tribunal’s findings are also set out in its conclusions in an attempt to avoid unnecessary repetition and some of the conclusions are set out in the findings of fact.

8.1. The claimant has been employed by the respondent as a Customer Services Advisor from 6 August 2018.

8.2. The claimant sent an email to her line manager, Samantha Roberts on 12 June 2019. In that email she raised a grievance and stated that there had been constant name-calling since January 2019. She referred to having been called names which were highly unpleasant and untrue. She said it all related to the idea of a perceived sexuality. Samantha Roberts met with the claimant

together with Sarah-Jane Satchwell, Customer Services Manager on 14 June 2019. The claimant said that she had been called "Sinnita the maneater".

8.3. Investigations took place. The alleged offender confirmed that she would stop referring to the claimant in this manner. This was reported back to the claimant verbally on 18 June 2019 and she agreed that she was happy with the steps that had been taken and that she did not wish to take the matter through the formal grievance process.

8.4. The claimant confirmed on a number of occasions throughout the subsequent grievance investigations that she was not called a maneater again and these investigations were in respect of a separate incident which was the subject of the second grievance that she raised in December 2019.

8.5. During the course of cross examination in the Tribunal hearing the claimant, for the first time, indicated that there might have been another time when she was called a maneater, but she was unsure about this and could provide no date or further information. The Tribunal is satisfied that the first incident was entirely separate and had been resolved to the claimant's satisfaction in an informal grievance procedure.

8.6. On or around 19 December 2019 the claimant had a discussion with Sarah-Jane Satchwell and Samantha Roberts in which she said that a member of staff had informed her that someone had called her a lesbian. She believed this comment had been made at a Christmas meal which she had not attended.

8.7. There was an investigation in which every team member who had attended the Christmas meal was interviewed. Although they all confirmed that they had not witnessed the alleged incident, one said that she had heard the claimant's name mentioned and the word "lesbian" being said at the Christmas meal.

8.8. On 15 January 2020 the claimant raised a grievance. This grievance was investigated by Sarah Kerwin, Assistant Principal.

8..9. On 9 March 2020 Sarah Kerwin wrote to the claimant indicating:

"I have thoroughly investigated the issue that you raised within your written correspondence on 15 January and during the meeting you attended with myself and AM.

The process has involved meeting with the staff members you identified and based on the evidence and witness statements, I am unable to determine who may have made the comment raised within your grievance. It is for this reason that I am unable to uphold your complaint.

Although I am unable to identify who may have made the comment, I will be recommending that this is referred to the Manager of the Department to address professional standards within the team.”

8.10. On 30 March 2020 the claimant sent an email indicating that she wished to appeal against the decision not to uphold her grievance. She stated:

“The reasons for my appeal are twofold;

1) I would like to know the identity of the person who has told at least 2 of my colleagues that I am a lesbian, as this is a crime under the Equality Act (2010). I believe the two witnesses who informed me of the incident must have lied to Sarah Kerwin as they categorically know the identity of the perpetrator.

2) I want an end to the abuse I have been suffering. By this I mean that nobody has been properly disciplined for any of the name-calling over the last 14 months. It has become a vicious cycle of perpetrator strikes, no discipline, repeated over and over again. This lack of discipline has enabled the nasty behaviour of a few people to descend into criminality, which cannot go unpunished.”

8.11. On 27 April 2020 the claimant presented a claim to the Employment Tribunal. She brought a claim of sexual orientation discrimination.

8.12. Lizann Lowson, Acting Deputy Principal and Deputy CEO, was appointed to hear the appeal. After carrying out further investigations she wrote to the claimant on 15 June 2020 providing the outcome of the claimant’s formal grievance.

8.13. In that letter it was stated, amongst other things:

“Despite thorough questioning, I have been unable to confirm whether any of your colleagues has told any of your other colleagues that you are a lesbian. As I have been unable to determine whether the alleged comment was made, it therefore follows that I’m unable to identify the person that may have made the comment.

We have one witness who overheard your name being mentioned at a Christmas meal in December 2019 and this was followed with ‘could be a lesbian’. In speaking to the person that said this for a second time, they confirmed the same recollection. The individual stated that they believed it was a female voice that said it which came from the middle of a long table where they were sat at the end. This person could not confirm who said this the context in which it was said.

The individual whom you identified to us as informing you of the alleged assertion that you were a lesbian has denied they heard any comments about your sexuality or about you at all at this meal.

When questioned, all the other witnesses have confirmed that they have not heard any comments being made in relation to you being alleged to be a lesbian, either at the college or, elsewhere, including the Christmas meal.

For all of these reasons, I'm unable to conclude whether this comment was made or who made it....

Given the information I have from you, including that you did not pursue your first grievance further than the informal stage and that you were content with the steps taken in relation to that grievance until the subsequent alleged issue arose in December 2019, and having interviewed a wide range of colleagues none of whom report that continuous name-calling....

In addition to concluding that constant name-calling did not occur, I have not seen any evidence that the college's actions, whether via disciplinary processes or otherwise, has facilitated and/or continues to facilitate "nasty behaviour" or that criminal behaviour was and/or is being allowed to occur within the workplace. I have therefore concluded that the College has acted in accordance with its internal policies and procedures and its statutory obligations and, on behalf of the College, I strongly refute any breaches of legislation and/or any criminality occurring...."

9. The Law

S.26 Harassment

- (1) 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—
 - (i) Violating B's dignity, or
 - (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if—
 - (a) A engages in unwanted conduct of a sexual nature, and
 - (b) The conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if—

- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
 - (b) The conduct has the purpose or effect referred to in subsection (1)(b), and
 - (c) Because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) The perception of B;
 - (b) The other circumstances of the case;
 - (c) Whether it is reasonable for the conduct to have that effect.

S. 109 Liability of employers and principals

- (1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.
- (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
- (3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.
- (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—
 - (a) From doing that thing, or
 - (b) From doing anything of that description.
- (5) This section does not apply to offences under this Act (other than offences under Part 12 (disabled persons: transport)).

S. 110 Liability of employees and agents

- (1) A person (A) contravenes this section if—
 - (a) A is an employee or agent,
 - (b) A does something which, by virtue of section 109(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and
 - (c) The doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).

- (2) It does not matter whether, in any proceedings, the employer is found not to have contravened this Act by virtue of section 109(4).
- (3) A does not contravene this section if—
 - (a) A relies on a statement by the employer or principal that doing that thing is not a contravention of this Act, and
 - (b) It is reasonable for A to do so.
- (4) A person (B) commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (3)(a) which is false or misleading in a material respect.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) Part 9 (enforcement) applies to a contravention of this section by A as if it were the contravention mentioned in subsection (1)(c).
- (7) The reference in subsection (1)(c) to a contravention of this Act does not include a reference to disability discrimination in contravention of Chapter 1 of Part 6 (schools).

S.136 Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

10. Guidance was given by the Court of Appeal in the case of *Guidance* has been given to Tribunals in a number of cases including ***Igen Limited and others v Wong [2005] IRLR 258*** and ***Madarassy v Nomura International Plc [2007] EWCA Civ 33***. Although these cases involved sex or race discrimination, the Court of Appeal in ***Igen*** made it clear that they applied to all the discrimination strands.

11. The claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation, that the respondent has discriminated against the claimant. If the claimant does this then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case which will require the Tribunal to get evidence from the claimant and respondent to see what proper inferences may be drawn. The burden of proof shifts to the respondent to disprove the allegations, which will require consideration of the subject reasons that caused the employer to act as it did.

12. The Tribunal also considered the case of ***Grant v HM Land Registry [2011] IRLR 748*** with regard to harassment in which the court of appeal said

“Tribunals must not cheapen the significance of the words “intimidating, hostile, degrading, humiliating or offensive environment”. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

13. **Time limits**

Section 123 of the Equality Act 2010 states:

- (1) ...Proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- ...
- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) a failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

14. The Court of Appeal made clear *in Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686*, that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what she has to prove, in order to establish 'an act extending over a period', is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs'. The focus of the enquiry should be on whether there was an “ongoing situation or continuing state of affairs” as oppose to “a succession of unconnected or isolated specific acts”. It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

15. The Tribunal has discretion to extend time if it is just and equitable to do so, the onus is on the claimant to convince the Tribunal that it should do so, and *'the exercise of discretion is the exception rather than the rule'* (**Robertson v Bexley Community Centre [2003] EWCA Civ 576** per Auld LJ *at para 25*).

16. The Tribunal's discretion to extend time under the 'just and equitable' formula is similar to that given to the civil courts by section 33 of the Limitation Act 1980 for extending time in personal injury cases (**British Coal Corp v Keeble, [1997] IRLR 336**). Under section 33, a court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances.
17. Time limits are short for a good purpose- to get claims before the Tribunal when the best resolution is possible. If people come to the Tribunal promptly when they have reached a point where the employer has said it will not take a step which the claimant believes should be taken, then, if it agrees with the claimant The Tribunal can make a constructive recommendation. Left unresolved, even minor omissions by employers often have devastating consequences which it is too late to remedy in that way.
18. The Tribunal had the benefit of written submissions from Ms Levene, on behalf of the respondent. The claimant provided written submissions. Each party was provided with the opportunity to comment on the other's submissions. The submissions are not set out in detail but both parties can be assured that the Tribunal has considered all the points made even where no specific reference is made to them.

Conclusions

19. There was a list of issues provided to the Tribunal and it was confirmed at the commencement of this hearing that those issues had been agreed. It was only when the claimant's written submissions were provided on the last day of this hearing that it emerged that the issues were not actually agreed. The claimant had included issue 7b and that had not been agreed or understood by the respondent. The claimant had indicated that she accepted the proposed list of issues subject to amendments. It was not appreciated that by the respondent that 7b was an issue to be determined by the Tribunal.

20. It was submitted by Ms Levene that this did not accord with the pleaded case and would not have been agreed as an issue. The claimant pointed to a discussion during a Preliminary Hearing by telephone in which it is stated that the claimant complained that the conduct of her colleagues during week commencing 16 December 2019 was unwanted conduct relating to sexual orientation. This does not entirely clarify the matter in that the conduct of the claimant's colleagues does not specifically refer to the alleged providing of information by the witnesses as a specific allegation of harassment.

21. The Tribunal has considered the issues as follows:

22. Incident 1

Harassment on grounds of sexual orientation - section 26 of the 2010 Equality Act

1. Did the Respondent or those acting on its behalf engage in conduct unwanted by the Claimant?

The conduct relied upon by the Claimant is:

a. That she was called "Sinitta the maneater" from 5.12.18 until June 2019 by a colleague, CE.

23. This allegation was made by the claimant in a complaint to Samantha Roberts, Customer Services Team Leader in June 2019. It was investigated by Samantha Roberts and Sarah-Jane Satchwell. The Customer Service Advisor admitted saying it and confirmed that she would stop referring to the claimant in this manner.

This incident was dealt with in informal manner and the claimant did not escalate the matter to the formal grievance procedure.

2. If so, was that conduct related to the Claimant's protected characteristic of sexual orientation?

24. The admitted conduct did relate to the claimant's protected characteristic of heterosexual orientation.

3. If so, did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4. In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

25. It was Submitted by Ms Levine, on behalf of the respondents that the evidence revealed that there was a light-hearted atmosphere at work and the Claimant had a sense of humour and enjoyed having a laugh. It was submitted that the Claimant joined in with this remark, said it herself and made jokes about it. The relevant circumstances include that the Claimant spoke openly about being interested in men. She accepted under cross-examination that she did speak about liking men and about men who walked past. 'Maneater' rhymes with the Claimant's name, which reinforces that it was light-hearted and friendly, and said simply in response to the Claimant's own comments about finding men attractive.

26. It was submitted that it was not reasonable for the comment to have the necessary 'effect'; the comment was a response to what the Claimant said about men herself. This is further reinforced by the fact that the Claimant did not object to the comment being said and laughed along with it. We know that the Claimant is someone who is able to speak up when she is unhappy or dissatisfied; had she found it upsetting in any way, it is likely that she would have complained after it was said the first time.

27. Also, the Claimant referred to another employee as an 'orange goth' because she wore a tan. Under cross-examination, the Claimant accepted that it was more likely than not that she did make this remark. This highlights that the Claimant participated in a culture where vivid imagery/colourful language was used between colleagues without any intention to offend. Therefore, the Claimant cannot reasonably take offence to "Sinitta the maneater".

28. The Tribunal finds that the conduct did not have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. She raised the issue informally but did not take it to any formal grievance procedure. It was light-hearted remark and there was no evidence that it was anything other than something that had been repeated on a number of occasions to the claimant's irritation.

Time/limitation issues

5. Does the Claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such accordingly in time?

29. The conduct was dealt with and there were no further complaints by the claimant. The claimant agreed during the course of the internal procedure that this incident was not connected to incident 2. During the course of the grievance investigation she referred to the two incidents as "polar opposites". It was not established that there was conduct extending over a period. The claimant said that she had not included incident 1 in her claim because it was out of time. This was recorded in the reasons for the judgment of Employment Judge Wedderspoon on 14 August 2020.

30. The claim to the Tribunal was not issued until 27 April 2020. The complaint in respect of incident 1 was not presented within three months starting with the date of the act to which the complaint relates.

6. If not, was any complaint presented within such other period as the Tribunal considers just and equitable?

31. The claim is out of time and there was no evidence provided as to whether it would be just and equitable to extend the time and the Tribunal has no jurisdiction to hear the claim in respect of incident 1.

Incident 2

Harassment on grounds of perceived sexual orientation — section 26 of the 2010 Equality Act.

7. Did the Respondent or those acting on its behalf engage in conduct unwanted by the claimant?

The conduct relied upon by the Claimant is:

a. There was an incident at the Christmas 2019 meal in which the witnesses (TH and AH) said they heard the claimant being called a lesbian.

32. This was not established. During the investigation TH had said that he did not recall the comment being made. AH's version of events was unclear. The matter was investigated and it was found by the respondent that it was unable to conclude whether this comment was made and who made it. There was a thorough investigation and the Tribunal had sight of the witness statements and evidence that was gathered. There was an appeal process which included further investigation and interviewing of relevant witnesses.

33. The grievance appeal was conducted by the Deputy Principal, Lizann Lowson, and it was directed that further training should be delivered to the Customer Services Team focusing on Equality and Diversity. The Tribunal heard evidence that this training has now taken place.

b. That the witnesses of the meal incident told the claimant that they have been "told I am a lesbian" while we were all at work. The witnesses who informed the claimant were TH and AH. The incident was reported to the claimant in the week commencing 16 December 2019.

34. The inclusion of this issue is disputed by the respondent. Ms Levene submitted that, as a matter of policy, it could not be right that someone who informs the claimant of something that might have been said could be a harasser under the statutory definition.

35. What TH and AH are alleged to have informed the claimant about may have caused some upset, but it did not create an intimidating, hostile, degrading, humiliating or otherwise offensive environment for the claimant. The person who is alleged to have made the statement is A in the wording of section 26 and would be the alleged harasser.

36. It was submitted that this was not within the pleaded case. It was not the subject of the claimant's grievances. It was not investigated by the respondent.

37. The Tribunal finds that this was not an identified issue. However, it has gone on to consider the position as if it had been an identified issue.

38. It was not established that the actions of TH and AH were actions of harassment. TH did not remember the comment ever being made. AH, during the grievance investigation said that TH had asked AH if she had heard that someone called the claimant a lesbian. AH had replied that she did hear that at the Christmas meal but that she didn't know the context and took no interest. It was all very light-hearted at the time.

39. In her statement to the Tribunal the claimant said that he was told by two colleagues, TH and AH that:

“ ..they had been told that I am a lesbian. I am not a lesbian, but I was shocked and humiliated by what they reported to me.”

40. The grievances and investigations did not consider any allegation that TH or AH was alleged to be the harasser. The Tribunal is not satisfied that the claimant had established facts from which the Tribunal could conclude that she was subject to harassment by TH or AH. It was not established that their actions had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It was the reporting of a remark by another person and the claimant had accepted that there was no reason for her colleagues to consider that she was a lesbian. In fact, this was the polar opposite to her being called a man-eater.

41. The claimant said that she was shocked and humiliated by what had been reported not by the conduct of those reporting it to her.

42. The Tribunal is not satisfied, taking into account the claimant's perception and the other circumstances of the case, that it was reasonable for the conduct to have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

8. If so, was that conduct related to the protected characteristic of sexual orientation?

43. It was not established that there was any conduct related to the protected characteristic of the claimant's sexual orientation or perceived sexual orientation.

9. If so, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

44. The claimant was concerned about her sexuality being discussed. However, it was not established that there was conduct which had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It was established that the claimant was informed that a remark had been overheard at the Christmas meal in which the word "lesbian" had been used and the claimant's name. However, the actual remark, who said it and the context in which it was said were never established. The Tribunal does not accept that the information relayed to the claimant had that purpose or effect.

10. In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

45. The claimant did have the perception that there was conduct that had that effect. However, the evidence was so vague and inconclusive, it was unreasonable for the conduct to have that effect. The remarks and the reporting of those remarks were not of the gravity that it would be reasonable to have the effect of harassment of the claimant in these circumstances.

Reasonable Steps Defence - section 109(2) of the 2010 Equality Act

11. Did the Respondent take all reasonable steps to prevent harassment of the Claimant in relation to incident 1 and/or incident 2?

46. The respondent had equality and diversity training in place. They did take reasonable steps to prevent harassment of the claimant. The Tribunal heard evidence in respect of the effectiveness of the training which was included in the induction process and there were interactive online courses and the evidence was that they were refreshed every three years. There was a harassment policy which explained the nature of harassment, the effect of harassment and what should be done about it. These were reasonable steps to prevent harassment.

47. There were no further reasonable steps that could be taken in respect of remarks made during a meal at a restaurant away from the respondent's premises or the mention of a remark to the claimant in a later discussion.

48. In the circumstances the claim is not well founded and is dismissed.

Employment Judge Shepherd

Date: 12 March 2021.