



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms A. Stretch  
**Respondents:** (1) UNTUCKit Ltd  
(2) Mr M. Barrett

**Remote Hearing (CVP) at London Central**

**On: 2 June 2021**

**Before: Employment Judge Goodman**

**Representation:**

**Claimant:** Ms Joy Warren, no practicing barrister

**Respondents:** did not attend and had not responded to the claim

## JUDGMENT

1. The claims of discrimination because of race and harassment related to race succeed. The victimisation claim fails.
2. The respondent is ordered to pay the claimant compensation and interest in the sum of £ 8,400.

## REASONS

1. This is a claim for race discrimination, harassment and victimisation arising from events at work in December 2019. The first respondent is the business that employed her at their shop in Covent Garden. The second respondent is a director of the company.
2. Neither respondent has entered a response to the claim. The address given for the first respondent is the shop at 25 Long Acre. The address for the second respondent is 175 Wardour Street, London W1F 8WU, the address listed for him on the Companies House register. There was a hearing of this claim before Employment Judge Deol on 28 January 2021 at which in view of the doubt as to service during Covid lockdown he ordered re-service of the claim at both these addresses. I have to

assume that was done although HMCTS staff have not been able to send me the copy letters. I have seen copies of the letters sent on 28 and 29 May which notify today's hearing. The tribunal service has had to use the post as no email address is available for either respondent. I asked the claimant if the shop was still trading. She told me she had phoned before the December 2020 lockdown, and it was, and friends had rung last week, and told her it was still open at 25 Long Acre. This suggests no reason to believe that proceedings posted to these two addresses have not reached the intended respondents.

3. Where a respondent does not respond to a claim, rule 21 applies:

**Effect of non-presentation or rejection of response, or case not contested**

21.—(1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.

(2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone. [Where a Judge has directed that a preliminary issue requires to be determined at a hearing a judgment may be issued by a Judge under this rule after that issue has been determined without a further hearing.](b)

(3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.

4. Employment Judge Adkin considered the claim and decided there should be a hearing on whether judgment should be entered and to assess remedy.
5. For today's hearing I have the claim form, some correspondence between the parties for December 2019 and January 2019, a schedule of loss, and a short witness statement for the claimant about injury to feelings.

**Conduct of the Hearing**

6. At 10 am the claimant's representative was present, but not the claimant. As she was expected, I put that start time back to 10.30. The claimant was now present but not her representative, although her camera was on and showed her desk. The claimant was asked to text or phone her. By 10.36, when the claimant had been unable to make contact, I agreed to postpone the start to 10.45. There was still no

news then of the representative, whose camera was now switched off – though still in the hearing, but not responding to voice. The claimant said she would prefer to go ahead with her representative, so I postponed the start to 11.30 so she could find out what the difficulty was. The hearing started at 11.30. The claimant could be heard and seen, although she was occasionally asked to repeat an answer as she is softly spoken. Ms Warren's connection was sub-optimal, in that she occasionally froze and there was a delay synchronising speech and picture, but by asking her to repeat (and on one occasion disconnect and reconnect) I understood what she said in submission.

7. I asked questions of the claimant on oath to elucidate some uncertainty as to the sequence of events in the narrative claim form and documents.

### **Factual Summary**

8. The first respondent's business is selling a US brand of men's clothing in shops in London. The claimant was employed a shop assistant at 25 Long Acre, Covent Garden, starting 4 November 2019 and working 24 hours per week, hours worked are published from time to time, with the usual shift running from 11 a.m. to 7.30 p.m. The claimant is black. Other staff and managers were white.
9. On 13 December 2019 she sent a text to the Vittoria Puccetti, the shop manager. She asked for a meeting over the weekend to discuss an incident at work that had made her feel uncomfortable and upset, without giving more detail. She got a reply saying the manager was away but would investigate, and was given her personal email for contact.
10. On 14 December she emailed Vittoria Pucetti about incidents that had occurred on 13 and 14 December. As a part-time member of staff to be seen she had been embarrassed in front of her peers, by Steffi and Silvia constantly telling her to do things differently. Steffi was very bossy. On 13 December the claimant had constantly been told to do a number of tasks in a hostile way, and to move to different places in the shop. She had arrived 5 - 8 minutes late for work due to a hospital procedure and been told to put boxes of stock away, then questioned on where she had been, when she had been in the stockroom. She sent to stand at the front of the shop. When she asked Sylvia if she could rotate, she was told she could go home she liked, but would not be paid. On the 14 December she had said that she needed to leave work on time, and as she was processing a sale of goods totalling around £720 at the time, asked if Steffi could take over, but was told he had to work over because she had been late the previous day. Then that morning, Silvia had barely spoken to her, and said something as the claimant had drawn her name in a secret Santa. The claimant said it was getting out of hand and unbearable.

11. This is a summary of the lengthy email the claimant read out to me in the hearing, as neither this text or email, or any later text or email from the claimant, was in the hearing bundle.
12. On 15 December the claimant arrived for work at 9.55 a.m. and texted to say she had arrived. She was told to wait in the staff room, and she did for 10 minutes, when Silvia arrived she told her to grab a bucket to wash the floor. She mispronounced the first syllable of the claimant's name, the claimant corrected her, and Silvia replied: "I can call you whatever I like, shut up" and told her she was stupid. The claimant was holding a kettle in the kitchen to fill the bucket, and says Sylvia lunged at her, pushed her and then headed off to her office. She told Vittoria this behaviour was "poor", and her attitude disdainful towards black people.
13. The claimant explained in the hearing that she knew this was why Silvia acted as she did because on 13 December some black men had walked past the shop and Silvia had commented that she found them loud and intimidating, and said she found Woolwich, where her sister lived, frightening because so many black people lived there. The claimant says sent a text and email to Vittoria about this incident on the morning of 15 December, but it is not in the bundle, and if she meant the email she read out, this is not mentioned there.
14. Silvia Georghe's account appears in written form in the hearing bundle. She said, referring to the CCTV : "you can clearly see Aaliyah had quite a reaction to me not saying her name correctly by totally invading my personal space in order to make a point which I found threatening and intimidating. I have asked Aaliyah to leave the store right away to which she responded: "you are a disgrace to the management".
15. Later on 15 December Silvia and the claimant were invited to a meeting with Vittoria, who showed them the CCTV footage of the incident in the kitchen, and asked if they had anything to say. Silvia denied trying to grab the kettle, and describe the claimant as loud, aggressive, and that she was scared of her. The claimant said that saying she was aggressive was unwarranted, and a racial stereotype of black women, perceived as loud and aggressive. It showed her distaste for black people. Vittoria said she could also see from CCTV footage of the claimant that she had had to sit in the staff room for some time that morning waiting for instructions. Silvia told Vittoria that this is because she had not wished to speak to the claimant, which Vittoria said was unacceptable.
16. On 19 December the claimant was setting off for work when she suffered a panic attack about recent events, and did not come in. On 20 December she returned to work, but there was no news of Vittoria's investigation. Around 2 p.m. she was handed a letter by Mark Barrett,

the second respondent, Victoria having by now gone home. Mr Barrett told the claimant that he had watched the CCTV, and it seemed to him that *both* had been aggressive. He suggested it was best that she resigned to avoid disciplinary action. Immediately following the meeting she was sent a further rota for the coming days on which her name did not appear, a suspension in fact if not in name.

17. The letter he handed her begins :“I am writing to advise you that, unfortunately, the company is considering dismissing you.” The alleged conduct consists of failing to carry out reasonable order given by manager, using foul, abusive or aggressive language delivered in an aggressive manner, and failing to begin her shift on time. There is then a short description of 15 December incident and that her demeanour and body language are considered aggressive, the assistant manager felt intimidated and had to leave the kitchen and the claimant was then “seen continue to argue the assistant manager on stairs before being guided through the property by keyholder”. The letter went on: “however, before a decision is taken by the company, you are invited to attend a meeting with Mark Barrett on 23 December 2019 at 175 Wardour Street, where the proposal to dismiss will be discussed further. She was given a copy of Silvia Georghe’s witness statement (which says nothing about being late for work). She was offered the right to be accompanied at the meeting.
18. The claimant says the meeting did not go ahead because she had asked a colleague, Laura, to accompany her, but Laura was then asked to attend for the respondent. The meeting was therefore postponed to 28 December. The claimant arranged for a colleague called Ben to attend with her. He agreed, but late the evening before, Vittoria Puccetti messaged him saying he was not needed at head office (Wardour Street) any more. The claimant’s mother drove her down from Birmingham for the meeting and hoped to accompany her. Mark Barrett told the claimant this was the opportunity to state her case. There was no notetaker present, just the two of them. The claimant said that she wanted the company to investigate Silvia’s micro aggression. She felt she had been discriminated against because no action had been taken against Sylvia, while the claimant was being removed from the workplace.
19. At this point I asked the claimant if by discriminated she had told him that she thought she was being discriminated against because she was black. I asked because in my experience some claimants believe that discrimination always means discrimination because of their protected characteristic, and it was important that she was explicit about this. Her answer was yes.
20. The claimant says at this meeting Mark Barrett asked how she would feel about being reinstated to work alongside Sylvia. The claimant replied that this would be totally unacceptable, as she had been

assaulted by her, and consequently she would resign with a week's notice.

21. The claimant was then sent another letter dated 29 December 2019. Unfortunately this is not in the hearing bundle prepared by the claimant's representative, though some of the content can be deduced from the claimant's letter in reply on 2 January 2020. There was an invitation to a further meeting on 3 January, "to enable (her) to respond to the letter dated 20 December 2019", because she had not had a work colleague with her on 28 December.
22. The claimant explained in her letter that she had not been accompanied because her colleague Ben had had a last-minute text from Victoria saying he was not needed at the head office meeting. The 29 December letter must have told the claimant that she was not suspended from work, and should attend her scheduled shifts as normal, as the claimant pointed out in reply that her shifts had been removed from the rota, and only restored an hour so after she had left the hearing on 28 December. The claimant then restated her account: the 13 and 14 December complaints of bullying (but without detail), the meeting with Vittoria on 15 December at which she had informed her that being described as loud, aggressive, intimidating and scary, and having attitude were racial stereotyping, with Silvia apparently describing her as "filth of society". She said the refusal by Mark Barrett and Vittoria Puccetti to acknowledge discrimination on the part of Silvia, left her without confidence in the company or its values. She was resigning. There was also a complaint about her recent payslip. She added that when she had told Mark on 28 December that she had reported the matter to the police, he had replied that if the police were involved he did not need to investigate, as the assault allegation was now a police matter. She was therefore declining the invitation to the grievance meeting on 4 January, where she anticipated she would be again intimidated, and the version of Mark Barret, Vittoria Puccetti and Silvia Georghe would be preferred.
23. The company replied on 3 January that they would like to meet on 8 January for a renewed grievance hearing on the issues she had raised, which were then listed. The list in this letter makes no mention of race stereotyping or race discrimination.
24. The claimant says she did not attend the meeting on 8 January because she had already made up her mind, and had resigned.
25. There is no claim for loss of earnings, and she confirmed she was properly paid on termination. The claimant now works in advertising and because of lockdown works from home.
26. She describes suffering with anxiety ever since this episode, which she calls an "ordeal". She is fearful of authority, and hurt that her

complaint has been ignored. She has become introverted and concerned about meeting new people in case she is negatively judged. Immediately after the episode she found it difficult to leave the house to find work. The deliberate mispronunciation of her ethnic name is she says extremely hurtful as she takes great pride in her name and its meaning and she is disheartened to be told the mispronunciation is insignificant. She has not suffered anxiety in the past. She saw her doctor once in December 2019 because she found it hard to sleep, but not since, in part because she has gone to live with her parents in Birmingham during lockdown and has not yet registered with a GP there. She is awaiting counselling. There are no letters or documents about this. She said her symptoms have not improved with time and if anything have got worse.

### **Equality Act – Relevant Law**

27. The Equality Act 2010 at section 13 provides that “a person (A) discriminates against another (B) if, because of a protected characteristic, a treats be less favourably than a treats or would treat others”. Sex and race are protected characteristics.
28. The word “because” requires the tribunal to examine the reason why an employer acted as he did, and whether the protected characteristic had “a significant influence on the outcome” – **Nagarajan v London Regional Transport (2001) AC 501**.
29. Because people rarely admit to discriminating, may not intend to discriminate, and may not even be conscious that they are discriminating, the Equality Act provides a special burden of proof. Section 136 provides:

“(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.”
30. How this is to operate is discussed in **Igen v Wong (2005) ICR 931**. The burden of proof is on the claimant. Evidence of discrimination is unusual, and the tribunal can draw inferences from facts. If inferences tending to show discrimination can be drawn, it is for the respondent to prove that he did not discriminate, including that the treatment is “in no sense whatsoever” because of the protected characteristic. Tribunals are to bear in mind that many of the facts required to prove any explanation are in the hands of the respondent.
31. Section 26 of the Equality Act prohibits harassment, defined as in this way:
  - (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.

- 32. In order to decide whether conduct has the effect in 26(1)(b), tribunals must take into account: the perception of B, the other circumstances of the case, and “whether it is reasonable for the conduct to have that effect” – section 26 (4).
- 33. The special burden of proof also applies to harassment claims, but as a matter of law, an action cannot be both discrimination and harassment.
- 34. “Related to” a protected characteristic is looser than “because of”, as it can be an association rather than requiring strict causation, but the protected characteristic must have played some part in the mind of the alleged harasser.

## **Discussion and Conclusion**

- 35. On the claimant's account the tribunal accepts that the conduct of Silvia Georghe on the morning of 15 December amounted to harassment. Keeping the claimant in the staff room because she did not want to speak to her, the calling the claimant stupid and refusing to apologise for mispronouncing her name is offensive and humiliating, the more so as it came from a manager. It came against a background of more minor unpleasantness the previous day. Plainly both behaved aggressively in this episode in the kitchen, but at least on the claimant's account it appears she was provoked. In Silvia's account, she found the aggression frightening.
- 36. It is less clear that this was related to the claimant's race. The claimant made no mention of race in her text and email on 13<sup>th</sup> and 14<sup>th</sup> of December. She referred to it verbally in her meeting with Vittoria Burchett on the afternoon of 15 December, and again to Mark Barrett at the meeting on 20 December. She said the perception of her as aggressive was stereotyping, but in context this may be taken as a denial that she was aggressive. There is no written statement from the claimant about events as there was from Silvia Georghe. It does not appear in anything written until her letter of resignation of 2 January, which is explicit about stereotyping, but does not mention Silvia's comments about people passing by or her fears in Woolwich. Just because bullying and harassment is unpleasant and acceptable does not mean that it is related to the protected characteristic. White people are bullied and harassed by other white people and women by women for example.
- 37. I also observe that the claimant, angry at her treatment, may well on this occasion have been both loud and aggressive in fact.
- 38. I am also aware of a perception in England that black people are



(unnecessarily) loud, and of studies (for example) showing that black schoolboys are more likely to be perceived as aggressive by teachers than white classmates showing the same behaviour.

39. I conclude that the claimant is unlikely to have made up her description of Silvia's comments about black people, and that the comment about being the "filth of society" did betray the claimant's race operating on Silvia's mind in her hostility to her, hostility manifest in events on 13 and 14 December, and coming to a head on 15 December. This episode was harassment related to race.
40. I do not conclude that the respondent's investigation, or invitation to a disciplinary hearing, was harassment. Clearly something had happened which had to be investigated by an employer, and behaviour of this kind towards a manager could be a disciplinary offence. Harder to justify is a letter telling the claimant she was likely to be dismissed - though it could be a clumsy way of conveying that dismissal was one of the options - let alone the invitation to resign. It also very puzzling that her intended companion was stood down on 28 December.
41. It is however less favourable treatment that the claimant was taken off the rota while Silvia seems to have continued to work, and that the claimant was to be disciplined for aggressive behaviour when according to Mr Barrett both appear to have been aggressive. The procedure was inept - she was said to have been late, though the statement in support was silent on this, for example, and she was told she would be dismissed if she could not persuade Mr Barrett otherwise, and that she should resign, but it is not clear that such mistakes could not have been made with any other employee. The claimant says she resigned because the respondent would not investigate her complaints about bullying.
42. Was this inept procedure and failure to investigate complaints because of race? The respondent seems studiously to have avoided the claimant's accusation of racism in the 2 January letter, which is hard to explain, unless they had not in fact received it when the 3 January letter was written. It could suggest that they deliberately wanted to avoid consideration of an element of race provocation in the conduct of which the claimant was accused. This in turn could suggest similarly deaf ears on earlier occasions when the claimant raised race stereotyping in the meeting with Vittoria Puccetti, or with Mark Barrett on 28 December. She did not however explicitly accuse Silvia of race bias, only that her own behaviour was being viewed negatively in an unwarranted way. The claimant still had an opportunity to raise this at the meeting on 8 January.
43. I conclude that the claimant has proved facts from which I can conclude that the decision to discipline her and not Silvia was discriminatory because of race. On the CCTV evidence both were

aggressive, but the claimant was not believed, and Silvia was. The claimant had raised the difference in race, and the respondent seems to have chosen to take no notice. They may have feared the claimant was using the difference in race to avoid the consequences, but in that case the right thing to do was to consider the allegation. It is difficult to reach a conclusion as to the mind of the discriminator when he has chosen not to participate, and of course there is no explanation, but here is sufficient material on which to make a determination under rule 21 that the claims of discrimination and harassment succeed.

44. There is also a claim of victimisation. As often happens it is not clear the claimant understands that in law she must do more than show she was a victim, and must show what is set out in section 27 of the Act. The grounds of claim paragraphs 26-29 make no mention of a protected act until paragraph 30 which is not explicit as to what complaint is relied on, and only repeat a discrimination claim. It is possible that overlooking the complaint of stereotyping accelerated the respondent's decision, but that is not clear, especially as they had not by the date of resignation dismissed the claimant, and still wanted to have a meeting with her. The victimisation claim has not been established.

### **Remedy**

45. The claimant in her schedule of loss seeks compensation for injury to feelings at the lower band of **Vento v Chief Constable of West Yorkshire Police (number 2) (2003) IRLR102** for the discrimination and harassment, including the failure to investigate. A sum of £9,100 is suggested. She also seeks a further £1,500 for victimisation for protected act, said, despite the sum of money sought, to be in the middle band of Vento. Even had I found for the claimant in the victimisation claim, I would not have made separate awards. The award is intended to compensate the claimant, not punish the respondent, and it is better to assess the overall effect of events, unless they can clearly be separated.
46. The current Presidential Guidance (2020) uprating the Vento bands indicates the lower band runs from £900 to £9,000.
47. I place compensation for these events in the lower band. The episode was unpleasant, though fortunately short-lived. I am sure it will have affected the claimant's self confidence and trust in others, especially if she had never experienced discrimination before (she is now in her mid 20s). She is still able to work, and her symptoms have not been so severe as to require medication. It can be hoped that counselling will help to restore her courage and self confidence.
48. Taking these all into account, the award is £7,5000.
49. Interest runs on that at 8% from 2 January 2020, a period of 18

months, so £900.

### **Increase in Award for Breach of ACAS Code**

50. The claimant contends for an increase because the respondent failed to follow the ACAS Code on Discipline and Grievance, as permitted in section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992. In submission, the claimant's representative identified the breach as not holding a meeting before the claimant resigned. In the grounds of claim the claimant added the lack of a companion at the first meeting which was adjourned in consequence.
51. The Code on discipline requires an employer to investigate and hold a meeting to discuss the allegations with the employee. The respondent held a meeting, and decided to repeat it as she was not accompanied by a colleague, only her mother. As for a grievance, they should reply. They had appointed a meeting for 8 January, though the claimant decided not to attend. There is no reason why a meeting cannot be held after employment had ended, and one outcome may have been for the claimant to rescind her resignation. If the claimant means Vittoria Puccetti not investigating her complaint of 14 December, that seems to have been overtaken by the events of 15 January, but could still have been discussed on 8 January. The process in this case may have been unsatisfactory, but there was no breach of the Code that merits and increase in the award.

### **Note on Representation**

52. At the start of the hearing, by way of clerking, I asked the claimant's representative if she was a solicitor or a barrister. She replied she was a non-practising barrister, "though I'm not supposed to say that", but would shortly be returning to chambers. I then asked if she was here as a professional or representing the claimant as a friend. She answered she was an employment law specialist. I have since searched the FCA register of claims managers, both in her name and that of Harwood Law Ltd, where she is listed on the internet as having her own consultancy. She lists her organisation as representative as WEAS on the claim form. I could not find that she was registered claims manager and so an authorised person (a barrister with a practising certificate is authorised). I apologise if she is registered and I have overlooked this, I have not enquired further in view of the potential criminal liability imposed by the Act, but she should be aware that under the Financial Services and Markets Act 2000 and Claims Management Activity Order 2018 she may not lawfully advise or represent *claimants* in an employment claim unless she is authorised, or exempt, or "an individual acting otherwise than in course of a business". If she is not already registered as a claims manager she should take steps to do so to continue to advise and represent claimants in the course of business.

Employment Judge Goodman

Date: 02/06/2021

JUDGMENT and REASONS SENT to the PARTIES ON

03/06/2021...

FOR THE TRIBUNAL OFFICE