



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 4, 5 and 6 August 2021

Claimant: Ms Thu Lieu Ha

Respondent: Blanc de Provence Ltd

Before: Employment Judge Mr J S Burns
Members Ms L Goodfellow and Mr S Soskin

Representation

Claimant: in person

Respondent: Mr P Gorasia (Counsel)

JUDGMENT

1. The claim of harassment related to sex succeeds
2. The rest of the claims are dismissed
3. The Respondent must pay the Claimant £3500 compensation for injury to feelings by 20/8/21

REASONS

1. The Claims were for direct race discrimination, direct sex discrimination, and harassment related to race and or sex, as set out in a case management summary dated 8/4/21. Other claims for holiday pay and commission were withdrawn and settled respectively before the final hearing.
2. We heard evidence from the Claimant, and her witnesses Livia Morarasu and Malgorzata Bednarz and then from the following Respondent's witnesses: Maria Raluca, Alui Gheorghe (Store Assistant), Evan Charalampous (Head Of operations), Michelle Nyren (People manager) Peter Lush (Director) Vikas Krishandev (Factory Manager) and Ludovik Blanc (CEO). We read the statement of Gintare Danileviciute (ex store manager at the Marylebone store).
3. The documents were in a joint bundle of 288 pages. At the beginning of her evidence the Claimant showed us CCTV video footage of images in the Respondent's Marylebone store on 20/3/20.

Findings of Fact

4. The Respondent is a company in the business of dry cleaning and tailoring.
5. At the relevant time, the Respondent employed approximately 70 employees. The Respondent has a factory in North Acton and four stores which are located in Marylebone, Notting Hill, Chelsea and South Kensington. At the relevant time there was a fifth store at White City which has subsequently closed.

6. The Claimant is a British national woman who was born of Chinese parents in Vietnam. She lived for a short time in Hong Kong before coming to the UK many years ago as a refugee.
7. She has a Chinese name as well as a Vietnamese name. The name she used at work with the Respondent and which she is using in these proceedings is her Vietnamese one. We find that she did not tell any of the Respondent's managers before her dismissal that she was Chinese, nor did they know that she was Chinese. They believed at the relevant time that she was Vietnamese.
8. The Claimant was employed by the Respondent from 28 January 2019 as a tailor. From October 2019 onwards she worked at the Marylebone store only. The Claimant's employment with the Respondent terminated on 20 April 2020, one month's paid notice having been given on 20 March 2020.
9. On 4 March 2020, Malgorzata Bednarz, posted a message on the Respondent's internal communication platform which was critical of colleagues; and it was viewed by other employees. The Claimant responded on the platform to this message by writing the word "Amen".
10. The message and the Claimant's response caused offence to at least one of them namely Albana Hasani who complained to the Respondent's management. The managers had previously (on 4/3/2019) given a written instruction to all staff not to use the platform to express criticism towards colleagues.
11. Mr Charalampous discussed the issue with Ludovic Blanc, and they agreed that the former would speak to the Claimant and Peter Lush would speak to Malgorzata Bednarz to find out why they had made the personal comments on the internal platform and point out to them that they should not do so in future.
12. The Claimant submitted that her line manager Vikas Krishnadev or Peter Lush should have had been asked to talk to her rather than Mr Charalampous who she claimed was "senior management". However, Mr Lush was not the Claimant's line manager and so it was inappropriate that he should speak to her about the matter. Vikas Krishnadev was the Claimant's line manager but was regarded as requiring support in dealing with staff disciplinary matters. Mr Charalampous was the manager of both the Claimant and Vikas Krishnadev and it was therefore appropriate for Mr Charalampous to speak to the Claimant about this.
13. Mr Charalampous asked Vikas Krishnadev to witness his telephone call with the Claimant, because they both had previous experience of the Claimant reacting in an aggressive manner to criticism or suggestions that displeased her. The call on 4/3/202 was on speakerphone and both sides of the call could be heard by Vikas Krishnadev and Mr Charalampous.
14. Mr Charalampous asked the Claimant why she posted the response to the message to which she replied in a rude manner that she did "*not need that question*" from Mr Charalampous. When the question was repeated the Claimant raised her voice, refused to answer the question, said that she did not need to explain to him or anyone else and he could do anything he wanted. She then terminated the call.
15. We found Vikas Krishnadev to be a credible witness – and he supported the Respondent's version of the telephone conversation. We find on a balance of probabilities that Mr Charalampous was not "very irritated" and that he did not act in an "intimidating manner". It

was the Claimant who was rude and abrupt to her manager Mr Charalampous on the telephone and not the other way round.

16. The Respondent was planning on having a formal meeting with Ms Bednarz the following day but this was frustrated by her resignation.
17. As a result of the Claimant's rudeness on the telephone the decision was taken to hold a formal meeting with the Claimant under the Respondent's disciplinary procedure.
18. By email letter dated 9 March 2020 the Claimant was invited to a meeting on 13 March 2020. The letter set out the issues which would be discussed at the meeting and the Claimant was notified of her right to be accompanied by a work colleague or a trade union representative.
19. The Respondent received no response to this email and the Claimant failed to attend the meeting on 13 March. As a result, Mr Charalampous telephoned the Claimant who said that she had not received the email. The invitation letter was resent rescheduling the meeting for Tuesday 17 March 2020.
20. By email of 14 March, the Claimant asked for the meeting to be postponed in order for her companion to attend and also in order for the Claimant to have additional time to prepare.
21. This request was granted by the Respondent. The Respondent suggested three alternative times for the reconvened meeting however she failed to do so. Instead the Claimant asked for further details regarding the allegations which were provided to the Claimant on 17 March.
22. Mr Krishandev had provided a statement by email about the Claimant's rudeness on 4/3/20 which he had overheard. This statement was then copied into a word document and sent to the Claimant as a PDF. We do not find that that this statement was "falsified" as the Claimant has claimed.
23. The Claimant was informed by email on 18/3/20 that as the meeting had been rearranged once already if she failed to attend on 20/3/20, it would take place in her absence.
24. In 19/3/20 the Claimant raised a grievance to Ludovic Blanc (CEO) (page 126) requesting that Mr Charalampous should not conduct the meeting as he was a witness to the telephone call on 4 March. She also stated that the following day was the day off of Gintare, who was her nominated companion for the disciplinary process. Mr Blanc on receipt of the grievance referred it to Ms Nyren who informed the Claimant at 18.43 that the Respondent had agreed to Mr Charalampous being replaced with Peter Lush as the chair of the hearing, but that the hearing would be going ahead the following day at which she looked forward to seeing the Claimant and her companion.
25. Still later at 20h39 on 19/3/20, the Claimant requested another postponement. She claimed that she needed further time to prepare. The Respondent refused to postpone further and the meeting went ahead on 20 March in the Claimant's absence, conducted by Peter Lush and Michelle Nyren. They concluded that it was appropriate for the Claimant to be issued with a first written warning as a result of her abrupt attitude towards her manager following her inappropriate posted message. This was confirmed by letter which was emailed to the Claimant later that morning. This was an appropriate and sensible determination of the disciplinary matter.
26. On 21 March 2020, the Claimant raised a grievance. The handling of this grievance is not one of the issues before the Tribunal so we do not refer to it further save to record that Mr Blanc investigated it and concluded that Mr Charalampous had not been involved in the

content of Mr Krishandev's statement about the Claimant's rudeness on 4/3/20 and he had not been placed under pressure to write it.

27. Separate to the above process, in March 2020, the Respondent's business was impacted as a result of the COVID19 Pandemic. The number of customers wanting tailoring services (where they would physically come into contact with another person) was substantially reduced in a short time frame. Tailoring and alterations were the area of the business where volumes had dropped dramatically.
28. The tailoring sales on a daily basis in Marylebone were approximately 4 to 5 times lower than usual. The Marylebone store was closed altogether in late March until conditions improved.
29. The Respondent decided on a number of cost-saving measures. The Respondent had to negotiate with creditors and its landlords to stop paying its debts and rent. With immediate effect it ceased giving any work to two zero-hours tailors. The Respondent decided that it needed to make one tailor redundant at that stage .
30. The Respondent had five contracted tailors at this stage working across its 5 stores namely the Claimant, Flumi, Imad, Zlatka, and Ahmed. Ahmed had been recruited in February/early March 2020 (prior to the full impact of the pandemic becoming apparent) on a higher salary to the other tailors because it was hoped he would take on the role of team-leader. However in the event he never did so.
31. Mr Charalampous put Flumi, Imad, Zlatka, and the Claimant (but not Ahmed) in a pool for selection and scored them against criteria in a matrix supplied by Ms Nyren. No documentation apart from the matrix has been retained to evidence this process. At the time the Respondent did not have any proper formal procedure for managing redundancies and it was relying on ad-hoc advice from an external HR advisor, given at a time of economic crisis.
32. The Claimant was scored lowest – getting low marks for attitude, commitment, flexibility and agility. The Claimant's refusal since October 2019 to work at any store apart from Marylebone and her rudeness to Mr Charalampous on the telephone on 4/3/20 affected the decision to select her for redundancy dismissal. This decision was made in principle on about 19/3/20 but confirmed after the disciplinary meeting was concluded on 20/3.
33. The Respondent made other redundancies later – 7 in total had occurred between 20/3/20 and the time of the tribunal hearing – and many other staff who left were not replaced such that the Respondent's staff has reduced in number by about 20 in total.
34. On 20 March 20 Mr Charalampous and Mr Lush visited the Marylebone store to explain the redundancy dismissal to the Claimant. We find that Mr Charalampous telephoned the store in advance to make sure that the Claimant was there and she was therefore aware of the visit before they arrived.
35. There were three women working in the store namely Maria, Gintare and the Claimant.
36. Mr Lush attended to act as a company witness but also as the manager of Gintare and Maria, in order to instruct them on his arrival that they should leave the store.
37. On arrival, Mr Lush instructed Gintare and Maria to leave the premises. The reason which the Respondent gives for this is that it was to maintain privacy and confidentiality.
38. The Claimant told the managers she did not want to have a meeting with them. This was consistent with the fact that she had declined to go to the disciplinary meeting earlier that day. Mr Charalampous however insisted on having the meeting.

39. The Claimant in the managers' presence asked Gintare to remain as her companion and that she should not be left alone in the shop with the two male managers. The managers did not allow this and Gintare and Maria were both instructed to leave, and they did so.
40. Mr Lush then locked the shop door from the inside and placed the key in his pocket.
41. The Claimant went down to her work station in the shop basement and sat down behind the table there.
42. We reject the Claimant's evidence in her witness statement that she went down to the basement to try to escape from the shop. This conflicts with her oral evidence that she thought the exit door in the basement was locked. In fact the basement door is a fire door which is always kept unlocked during the day when the shop is open and the Claimant would have known this. She could have used it to leave the store had she chosen to do so. She did not approach the door but submitted to waiting for the managers to come down and speak to her.
43. The managers went down to the basement and stood over her near the Claimant's table. Mr Charalampous spoke to her while Mr Lush stood a little further away as a witness. The Claimant did not show much external sign of upset or anxiety but we find she did find the situation intimidating and somewhat hostile, and she was to some extent scared and upset. She was in the basement of a locked shop and the only woman alone with two male managers standing over her being required to submit and listen to what Mr Charalampous had to say to her. She did not get on well with him and he had arranged matters so that she was alone while he had a witness as he confronted her with her dismissal of which no previous notice had been given.
44. Mr Charalampous told the Claimant that she was being made redundant and would be paid notice which she did not need to work and that she should leave the premises immediately. After a short time the meeting ended and the Claimant took her possessions and returned to the ground floor of the shop, the front door was unlocked and the Claimant departed as the other two woman employees returned.
45. The Claimant's dismissal was confirmed by letter dated 25/3/20. The Claimant was not offered an appeal because the HR advisor had advised that this was unnecessary as the Claimant did not have the requisite 2 years' service to be able to claim unfair dismissal.
46. The Claimant raised a third grievance in May 2020 which was a multipage document culminating in a money claim. While the Claimant made complaints in that document about many matters including what she termed inappropriate displays of male authority especially by Mr Charalampous, she did not suggest she has suffered any race discrimination. That claim was made for the first time in her ET1 which was presented on 8/8/2020 some 4 and a half months after the dismissal notice.

A summary of the relevant law

47. Section 4 Equality Act 2010 (EA) provides that race and sex are protected characteristic and section 9 provides that race includes a person's colour, nationality or ethnic or national origins.

Direct Discrimination

48. Section 13 EA provides that a person discriminates against another if because of a protected characteristic, he treats another less favourably than he treats or would treat others.
49. The requirement is on the Claimant to show less favourable treatment by comparison with an actual or hypothetical comparator whose relevant circumstances must be the same or not materially different.

Harassment

50. Section 26 provides that a person harasses another where he engages in unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating the others dignity or creating an intimidating hostile degrading humiliating or offensive environment for him. In deciding whether conduct has this effect the following must be taken into account : the perception of the other, the other circumstances of the case and whether it is reasonable for conduct to have that effect.

Onus of proof

51. Section 136 provides that if there are facts from which a court could decide, in the absence of any other explanation that a person has contravened a provision under the EA, the court must hold that the contravention occurred, unless the person shows that he did not contravene the provision.

52. The Claimant referred us to Base Childrenswear v OTSHUDI 2010 [2019] EWCA Civ 1648 which held that a tribunal can draw an inference of discrimination if it finds that the employer has put forward a false reason for dismissal.

53. Mr Gorasia referred us to Royal Mail v Efofi 2021 UKSC 33.

Conclusions

Direct race claim

54. We do not find that on 4/3/2020 Mr Charalampous called the Claimant “in an irritated and intimidating manner” regarding her response to the message she had posted. In any event what was said was not because of the Claimant’s Chinese race or ethnic origin – which Mr Charalampous did not know about in any event.

55. Mr Charalampous did dismiss the Claimant but this was not because of the Claimant’s race or ethnic origin. It was because there was a genuine redundancy situation and the Respondent needed to make a redundancy as a cost-cutting measure.

56. The Claimant’s selection for redundancy was not handled in accordance with a fair procedure. Mr Ahmed who was the last to join the Respondent and who was not acting team leader but still a simple tailor should at least have been put in the pool with the other 4 tailors for selection. Clear criteria which matched those in the matrix should have been applied and the evidence of the scoring retained. There was a lack of a proper recorded procedure and no appeal. The Claimant’s selection was influenced by the poor relationship she had with Mr Charalampous and her recent rudeness to him, but we find that that had nothing to do with the Claimant’s Chinese race or ethnicity.

57. The procedural unfairness was wrong but not material in this case for two reasons – there is no unfair dismissal claim and secondly we are satisfied that despite the procedural problems, the reason for the Claimant’s selection for dismissal was not her race or ethnic origin. The Claimant herself did not think it was - if she had she would have mentioned it in her May 2020 grievance.

58. We also do not accept the Claimant's theory that she was set up to be dismissed from the beginning because the Respondent found it embarrassing to have a Chinese employee because of the association in the minds of some people between China and the Covid19 pandemic, and that the Respondent’s managers were all in a conspiracy to achieve this.

59. The Claimant has only herself to blame for the events on 4 March and the disciplinary hearing on 20 March which took place as a result. To the extent that that fed into the dismissal selection, it had nothing to do with the Claimant being Chinese.

Direct sex claim

60. The Respondent did not fail to carry out an investigation into the Claimant's grievance of 19/3/20 – on the contrary it responded to it and replaced Mr Charalampous with Mr Lush as the chair of the disciplinary hearing – it did not re-postpone but that had not been re-requested clearly until late in the evening before the hearing and it was not unreasonable to decide to proceed as a number of prior attempts had been made to hold the meeting and it had already been delayed at a difficult time for the Respondent.
61. The Respondent's response to the Claimant's grievance of 19/3/2020 was determined by Ms Nyren who is a woman. The response to the grievance had nothing to do with the Claimants sex or gender and would have been the same if she had been a man.
62. Hence the Direct discrimination claims fail and are dismissed

Harassment

63. The harassment claim is solely concerned with the visit by Mr Lush and Mr Charalampous to the Marylebone shop on 20/3/20 during which the Claimant was notified of the decision to dismiss her for redundancy.
64. There is nothing to relate the incident to the Claimant/s race/ethnicity so the race harassment claim is dismissed.
65. The Respondent submits that the removal of the two other women from the shop and the locking of the store before the managers spoke to the Claimant was not related to the Claimant's gender, that what was done in that regard was reasonable and appropriate and that the conversation took place in the location chosen by the Claimant – namely her own work-space – where she was not forced to go and that this did not create a hostile environment for her – especially as Peter Lush was there, with whom the Claimant had a good rapport. Hence the Respondent submits there was no harassment related to sex.
66. We find that the Respondent's treatment of the Claimant that day at the shop was inappropriate. The Claimant was knowingly deprived of her female companion and left as the only female in the store, contrary to her expressed wishes. The store having been locked from the inside so no-one else could enter, she was required to go down to the basement and submit to a one-sided process conducted by two managers standing over her. The conduct was the more unwanted because the Claimant was a woman and the two managers were men. We are not convinced that Mr Charalampous would have felt at liberty to treat the Claimant in that way had she been a man. For this reason we find the conduct was related to the Claimant's sex – ie gender.
67. This was unwanted conduct which caused an intimidating and hostile environment for her. That was not the purpose of either Mr Charalampous or Mr Lush but it was the effect of the conduct. In so concluding we have taken account of the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
68. In the circumstances the Respondent should have adopted a more professional and less confrontational method of dismissing the Claimant. For example, the Claimant should have been given proper advance notice of the meeting and its purpose. A neutral location such as a coffee shop or office should have been chosen as the venue. If the shop basement had to be the venue, Mr Charalampous should have taken a woman as a chaperone or witness and not another man. The Claimant should have been allowed a female companion to remain with her and not placed under compulsion to submit to a male-dominated exchange with two male managers standing over her in the basement of a locked shop.
69. For this reason the claim of sex harassment succeeds.

70. Had the dismissal been communicated in a more sensitive and sensible manner ie without the sex harassment - the Claimant would have been dismissed at the same time in any event. Hence the sex harassment has not caused the Claimant any loss of earnings but she is entitled to an award for injury to feelings pertaining specifically and solely to the manner in which she was treated when she was told about her dismissal on 20/3/2020.

Remedy

71. The Claimant told us that she was depressed by the events of 20/3/20 but did not obtain any medical aid or advice in that regard and was fit to seek other work immediately thereafter. We find she has not suffered any personal injury as a consequence.
72. This was an isolated incident and the harassment was not intentional and the Claimant did not manifest many if any visible signs of outward distress. We bear in mind that the award must not be so low as to diminish the seriousness of a finding of discrimination. We find that the matter is within the lower Vento band and that the proper quantum of the award for injury to feelings is £3500 including the interest to which the Claimant is entitled on the award.

J S Burns Employment Judge
London Central
6/8/2021
For Secretary of the Tribunals: OLu

Sent to Parties: 06/08/2021
