



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J Bedford

**Respondents:** (1) Black Mouse Cheese and Wine Emporium Ltd (in creditors voluntary liquidation)  
(2) Mr A Wheeler

**Heard at:** Leeds

**On:** 18 August 2021

**Before:** Employment Judge Maidment  
**Member:** Ms S Scott

**Representation**

**Claimant:** In person  
**Respondents:** (1) Did not attend  
(2) Did not attend

**JUDGMENT** having been sent to the parties on 20 August 2021 and written reasons having been requested by the second respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant brings a claim against the first respondent for unfair dismissal. The claimant was employed by the first respondent from 26 October 2016 until her employment terminated with effect from 1 August 2020. She therefore has the right to bring a complaint of ordinary unfair dismissal. In addition, she maintains that her dismissal was automatically unfair pursuant to Section 103A

of the Employment Rights Act 1996 in that the principal reason for her dismissal was a protected disclosure contained within her grievance of 17 July 2020.

2. The claimant also seeks a statutory redundancy payment.
3. The claimant further brings a complaint of victimisation in respect of her dismissal being because of a protected act – again reliance being placed on her grievance of 17 July 2020.
4. There is then a complaint of breach of contract arising firstly out of her being required to work during a period of furlough and secondly being put on furlough without her agreement, whether verbal or in writing. These are raised alternatively as an unlawful deduction from wages in respect of unpaid wages/furlough pay since January 2020 and unpaid overtime.
5. The claimant separately brings complaints of breaches of the Working Time Regulations in respect of an alleged failure to provide her with the required 20 minute rest breaks, daily rest of 11 hours and her accrued holiday entitlement as at the termination of her employment.
6. All of these complaints are against the first respondent only which went into liquidation on 15 July 2021. The first respondent was the claimant's employer and the second respondent cannot be liable for any of the above-mentioned complaints.
7. The claimant however separately brings complaints of harassment against both respondents. These are allegations regarding alleged detrimental treatment by the second respondent who may be personally liable as the individual perpetrator and in respect of whose actions the first respondent may be vicariously liable.
8. As regards age related harassment, the claimant maintains that the second respondent said on numerous occasions that the claimant was taking a long time to heal because she was old after she had broken her ribs in July 2019 and at various times until about January 2020. She then says that on or about 15/19 May 2020, the second respondent said in a post on Facebook in relation to the claimant wearing a Star Wars mask: "oh she doesn't mind, it hides her lines". It is further alleged that on 17 June 2020 the second respondent told the claimant that she was "thick and old" for not being able to use iCloud.
9. In terms of sexual harassment, the claimant alleges that in about June 2020, the second respondent said to her: "go down into the cellar, drop your knickers and bend over the table and I'll be down in a minute." It is said then that on 3 occasions in about May/June 2020, the second respondent hit the claimant on

the bottom, once when she was cutting cheese, once when she was in the shop and once outside the back of the shop.

10. The complaints of sexual and age-related harassment are alternatively pursued on the basis that they amount to direct sex and age discrimination. The claimant was at material times 57 years of age and her age group is defined as people in their mid-to-late 50s in circumstances where she compares herself of people in the under 50s age group.
11. The first and second respondent defended the claims and had been professionally represented at an earlier preliminary hearing. Neither respondent attended today's hearing. The claimant gave evidence confirming the contents of her tribunal application. She brought with her a large bundle of documents from which the tribunal extracted relevant enclosures. The tribunal took her through her claims, sought an explanation from her of the basis of her claims and raised questions for clarification and where further explanation was deemed necessary. Due to a confusion over listing, the tribunal sat as a panel of 2, with just one non-legal member, with the claimant's agreement, which she confirmed in writing. The tribunal sets out its findings below.
12. The tribunal was referred to the aforementioned grievance letter which was addressed to the second respondent and his partner in business and life, Marie. This set out the claimant's wage payments in circumstances where she said that she believed that she had not been paid everything she was owed. It said that she had been working during the furlough period and had not signed any documentation agreeing to be furloughed so that she was entitled to 100% of her pay for those months. She said that when she raised her concerns about working while furloughed, the second respondent shouted at her saying that, if she did not, she would not have a job to come back to. She referred to her Working Time Regulations entitlement to breaks and her holiday entitlement saying that she had been told by the second respondent that if she wanted time off she would not receive pay for any such day. She had never taken any leave during her employment.
13. She said that finally she was not happy that nothing had been done regarding the second respondent's "behaviour" and the way she had been treated by him. She said, amongst other things, that: "there have also been numerous occasions when he has made some very inappropriate remarks which I will not repeat in the letter but will be able to discuss on request. I've yet to receive an apology and this is partially the reason I'm uncomfortable returning to work."
14. By letter of 29 July 2020 the first respondent terminated the claimant's employment. This was said to be due to a restructure of the business due to the coronavirus pandemic and the conclusion that they could not avoid making her redundant as of 1 August 2020. There was reference to the claimant being offered reduced hours to avoid this, but the claimant's grievance then stating

that she did not agree to this change. It was said that this had nothing to do with “the disagreement” with the second respondent.

15. The tribunal has been shown a Facebook entry with a picture of the claimant in a Star Wars mask (whilst at work and in the respondent’s uniform) and confirming the alleged comment posted by the second respondent referred to above.
16. The tribunal has also been provided with extracts from the claimant’s bank account showing payments made to her together with handwritten schedules of the hours she said that she worked. A number of copy wage slips have also been provided.
17. In terms of the complaint of unfair dismissal, the respondent wrote to the claimant purportedly dismissing her by reason of redundancy. The tribunal has however no evidence from the first respondent of a redundancy situation. The claimant’s oral evidence which the tribunal accepts, no challenge being made to it, is that she had in fact been told that she would receive an increase in pay and become responsible for the first respondent’s store, whilst the second respondent concentrated on e-commerce. A dispute, however, had developed over payments (as reflected in her grievance letter) and the other issues the claimant raised as part of her grievance. The letter terminating her employment came shortly after that grievance, without any advance warning. No potentially fair reason for dismissal having been shown by the first respondent, the claimant’s complaint of ordinary unfair dismissal is well-founded and succeeds.
18. Furthermore, the claimant in her grievance had made a protected disclosure in that she provided information that in her reasonable belief the respondent had not complied with its legal obligations in terms of furlough in that it was a breach of the Coronavirus Job Retention Scheme for an individual to work in the relevant period whilst the employer was at the same time claiming back the furlough pay. The claimant also reasonably believed that her disclosure was in the public interest given the allegation of misuse of public money. The timing of the grievance and the dismissal (without prior warning) call out for an explanation to be provided as to an alternative non-proscribed reason for termination of employment. None has been provided by the first respondent such that the tribunal concludes that the claimant was automatically unfairly dismissed by reason of her having made a protected disclosure.
19. As compensation for unfair dismissal the tribunal declined to make a basic award in circumstances where the claimant had received a purported statutory redundancy payment in an equivalent amount. The claimant had a period of loss which ran from 1 August 2020 until 20 May 2021, a period of 42 weeks. She worked an average of 40 hours per week giving a gross sum of £356.40 per week which amounted to a net weekly payment of £312. That amounted to

a net loss of £13,104 to which had to be added an additional amount of a week's pay as compensation for loss of statutory rights giving a total compensatory award payable to the claimant of £13,460.40.

20. The claimant's complaint of victimisation, however, fails and is dismissed. In the grievance, the claimant does not make allegations of discriminatory treatment. She refers to inappropriate behaviour but that is not with reference to any form of unlawful discrimination such that no protected act was raised by her.
21. The claimant was able to show a (uncontested) schedule of hours worked that she ought to have been paid wages for during her employment in the sum of £4207.58 from 2 January 2020 until 25 March 2020. From that fell to be deducted the sum of £1492.24 received into her bank account – as shown by her bank statements. This left a shortfall of £2715.34. To this there was to be added a further shortfall shown by the claimant in subsequent weeks of £884.84. There was, therefore, a total gross amount of £3600.18 remaining outstanding and as yet unpaid by the first respondent to the claimant in respect of her wages.
22. The claimant's evidence that she sought holidays in the holiday years 2016/2017, 2017/2018 and 2018/2019 is accepted. She had been paid only an amount in respect of the final holiday year after the termination of her employment. She was told during her employment that she was not entitled to holidays and took no days off. With an entitlement to 5.6 weeks in each holiday year and a gross weekly wage of 197.04 that gave an annual sum of £1103.42 and a total due from the first respondent in respect of accrued but unpaid holiday entitlement of the gross sum of £3310.27.
23. The claimant's complaints in respect of a breach of the Working Time Regulations in respect of rest breaks and daily rest are dismissed. Those complaints were brought after the applicable three month time limit, where an earlier claim would have been reasonably practicable, the claimant providing no evidence of any particularly long day after February 2020 and no evidence of dates in terms of specific days where the required rest breaks were not provided.
24. An additional order of compensation was made in the claimant's favour in recognition of the fact that the first respondent had not provided her with a written statement of particulars of employment. In the circumstances and award of 4 weeks' pay (calculated on the basis of her having normal hours of work) amounting to a further sum of £788.16 was appropriate.
25. As regards the complaints of harassment, the tribunal understood from the response submitted on behalf of both respondents that the alleged comments

of the second respondent were denied, save that the aforementioned Star Wars mask comment was said to have been made over social media outside of the employment relationship. The acts of sexual harassment were completely denied.

26. The tribunal heard from the claimant her evidence about each of the comments and acts of alleged harassment relied upon as set out above. She gave that evidence convincingly and without embellishment. Corroboration for inappropriate behaviour on the second respondent's part, albeit not specific, was found in her grievance letter. In terms of the age-related comments she said that she had been called thick and old with reference to her not having an iCloud account. She said that the comment was made in front of customers and she had told the second respondent that she did not find it amusing. She did not believe that the other comments had been made in a joking manner. She did not consider the subject matter to be one to be joked about and considered that the second respondent had been trying to demean her. The Star Wars comment was sufficiently connected to her employment given the context described above.
27. She gave particularly convincing detail regarding the allegations of sexual harassment. As regards the incident where the second respondent was said to have told the claimant to go down to the cellar, she described how this had happened on an evening when the second respondent was drunk and had spilled wine. She said that she felt trapped at work and that the second respondent was not joking and had sworn at her. He had texted her the next day asking if she was coming in. There was no reason for this other than, she said, him realising that he had overstepped the mark. She had subsequently written a text message saying that she felt that she was walking on egg shells at work – reflecting she said her fear of the second respondent's unpredictability.
28. As regards the allegation of physical contact she said that she had been cutting cheese in circumstances where she had to lean over a cabinet. The second respondent had smacked her bottom causing it to be bruised. She described this as a forceful hit. On another occasion he had done this when she was doing paperwork and on a final occasion in a gazebo. She said that she had said to him that he had no right to touch her, yet after she had said this after the first occasion of physical contact, he had done it on two further occasions.
29. The tribunal obviously has had no evidence to rebut such events and, on all the evidence, concludes that they occurred and had the humiliating and offensive effect on the claimant that she describes. It was clear from the claimant's evidence that she was upset and disturbed by this conduct. An intimidating working environment had been created by the second respondent's actions. The claimant suffered age related and sexual harassment. Claims of harassment and direct discrimination are mutually exclusive – there is therefore no additional finding of direct discrimination.

30. As regards injury to feelings arising out of the detriment as found to be proven, according to **Prison Service and others v Johnson [1997] ICR 275** the purpose of an award for injury to feelings is to compensate the claimant for injuries suffered as a result of the discriminatory treatment, not to punish the wrongdoer. In accordance with **Ministry of Defence v Cannock [1994] ICR 918** the aim is to award a sum that, in so far as money can do so, puts the claimant in the position he or she would have been had the discrimination not taken place. Pursuant to **Corus Hotels Plc v Woodward [2006] UK EAT/0536/05**, an Employment Tribunal should not allow its feelings of indignation at the employer's conduct to inflate the award made in favour of the claimant.
31. The Tribunal refers to the Vento guidelines (derived from **Vento v Chief Constable of West Yorkshire 2003 ICR 318**) and to the guidance given in that case where reference was made to three bands of awards. Sums within the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory treatment. The middle band was to be used for serious cases which did not merit an award in the highest band. Awards in the lower band were appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. Nevertheless, the tribunal considers that the decisive factor is the effect of the unlawful discrimination on the claimant.
32. The bands originally set out in **Vento** have increased in their value due to inflation and, a further uplift of 10% given to general damages pursuant to the case of **Simmons v Castle [2012] EWCA Civ 1039**. This had given rise to Presidential Guidance which re-drew the bands for claims brought on or after 11 September 2017. That Guidance has since been revised and the sums uprated in respect of later claims. The Tribunal should apply the bands in the Presidential Guidance dated 27 March 2020 applying to claims presented on or after 6 April 2020. This gives a lower band of £900 - £9,000, a middle band of £9,000 - £27,000 and a top band from £27,000 - £45,000.
33. The claimant sought injury to feelings at a level which was at the upper end of the lower/bottom end of the middle band in the sum of £8000 – £10,700. The tribunal considered on balance that an award of injury to feelings at the top end of the lower band was appropriate and in the sum of £8,000. Whilst, on the one hand, there was no medical evidence of particular distress/impact on health and the claimant had continued to work at the respondent, the claimant had been subjected to a number of comments and actions of a serious nature which had clearly caused her a significant degree of upset over a period of time, albeit quite a truncated period. Whilst this was not a case of a one-off occurrence, on balance, an award of £8,000 was assessed by the tribunal as commensurate with the level of injury to feelings shown. The tribunal further awarded interest on such sum from the beginning of June 2020, there being therefore a 63 week

period with interest at the rate of 8% giving rise to an additional sum payable of the claimant of £775.38. The first and second respondent are jointly and severally liable for this award.

Employment Judge Maidment

Date 28 September 2021