



EMPLOYMENT TRIBUNALS

Claimants: Miss C Dimond

Respondent: MKK Hotels Ltd

Heard at: Cardiff

On: 2 September 2021

Before: Employment Judge Ward
Mr A Fryer
Mrs L Owen

Representation:

Claimant: Ms Davies (NYAS)

Respondent:

JUDGMENT

It is just and equitable to extend time to allow the claim to proceed.
The claimant was sexually harassed on 7 March 2000.

REASONS

The issues and applicable law

1. The claim is one of harassment pursuant to section 26 of the Equality Act 2010 ("EqA").
2. The following issues were identified at Employment Judge Jenkins in the case management order on 25 March 2021:

Time limits

3. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 4 August 2020 may not have been brought in time.

4. Was the claim made within the time limit in section 123 of the EqA? The Tribunal will decide:
 - Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - If not, were the claims made within a further period that the Tribunal thinks is just and equitable?
 - The Tribunal will decide: Why were the complaints not made to the Tribunal in time? In any event, is it just and equitable in all the circumstances to extend time?

Harassment EqA section 26

5. Did the Respondent engage in conduct in the form of its Head Chef asking whether the Claimant would “do it for money”?
6. If so, was that unwanted conduct?
7. Was it of a sexual nature?
8. Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? If not, did it have that effect?
9. 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.

Remedy for discrimination

10. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant?
11. What should it recommend?
12. What financial losses has the discrimination caused the Claimant?
13. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
14. Should interest be awarded? How much?

The evidence

15. The Tribunal heard evidence from the claimant. No witness statements were provided by the Respondent and they did not attend the final hearing. A bundle of 46 pages was submitted.

The relevant facts

16. The Claimant commenced employment as a waitress, on 28 July 2019 and remains employed by the Respondent, a hotel company. This is her first job working a zero hour contract at the Heritage Park Hotel covering weekend shifts whilst studying at college.

17. On 17 March 2021 whilst working a shift in the restaurant she was subject to a comment on entering the kitchen, where a conversation of a sexual nature was taking place between work colleagues. The head chef (male and older than the claimant) asked her "*would you do it for money?*".
18. The claimant was immediately embarrassed and uncomfortable by this comment answered "*no*" and left her shift after finishing her duties in the restaurant.
19. The claimant raised a complaint the next day and the respondent failed to reply, there was no evidence of an investigation or resolution of the claimant's grievance. She tried to resolve her complaint informally with the respondent but the Respondent did not take appropriate action and the claimants was left, confused about what was going on and what to do.
20. The claimant returned to work on other shifts but asked her manager to make sure she did not work with or have contact with the head chef.
21. She heard nothing back from her complaint so decided to seek advice via her social worker who made a referral to the National Youth Advocacy Service (NYAS). As soon as NYAS was involved the claim was made promptly. Early conciliation started on 3 November 2020 and ended on 4 November 2020. The claim form was presented on 12 November 2020.
22. The claimant was placed on furlough leave from April 2020 due to the Covid 19 pandemic and has not returned to work. The Claimant was removed from the "WhatsApp Group" used for shift allocation and advised that there were no hours for her when the hotel reopened in August although, other waitresses returned to work. This situation continues to date.
23. The claimant explained how she felt let down by the respondent and that the impact this had had on her. She has lost her confidence as a young 17 year old and feels difficult to trust managers and others in authority. She is worried this is going to happen to her again in work.

Conclusions

24. The first question for the Tribunal was to consider whether to proceed in the absence of the Respondent. A notice of hearing had been sent to the Respondent and they had attended the last case management hearing. Reasonable enquiries were made at the start of the hearing but no contact was made. The Tribunal decided to proceed in the respondent's absence.
25. At the start of the case the Tribunal had to also consider, as the claim was made outside the statutory 3 month time limit, why the complaint was not made to the Tribunal in time?

26. The delay was caused by the pandemic, the hotel was closed and all staff including the claimant were furloughed until 7 August, when some staff started to return. The claimant was hoping that the respondent would deal with her complaint, but she was really confused with the respondents lack of response and didn't know what to do. In these circumstances the Tribunal decided that it was just and equitable to extend time and allow the claim to proceed.
27. The Tribunal finds that the respondent did engage in conduct in the form of its Head Chef asking whether the Claimant would "do it for money"? This was clearly unwanted conduct. It was of a sexual nature and had the purpose and had the effect of violating the claimant's dignity and creating an intimidating environment for the claimants to the extent that she did not want to work with him again.
28. The respondent did receive a complaint but did nothing to advise the claimant that it was dealing with the complaint and instead have not asked offered her hours of work.

Recommendation and Award

29. Given the unsatisfactory status of the claimants employment it is appropriate that the respondent provides the claimant with her outstanding payslips, P60's and provides the claimant with shifts or take the necessary steps to enable the provision of a P45.
30. The claimant has suffered financial loss as a result of the discrimination. In terms of the shifts that she regularly worked since the incident until the date of the hearing. She still has not been provided with any shifts, though the hotel has remained open. The claimant has not sought alternative employment as yet due to the effect the experience has had on her. The Tribunal assesses and hopes that this situation will be resolved by October 2021 when the claimant will be back in employment.
31. The claimant described her embarrassment when the comment was made and her loss of confidence as a result and fear that such conduct will occur in the workplace. Taking in to account her young age and vulnerability. Her injury to feelings is a middle band of Vento guidelines.
32. The failure to follow the ACAS procedures requires a full 25% uplift and a failure to provide a written statement of employment we are bound to consider. Interest is also payable on the injury to feelings award and in respect of the financial losses incurred to the date of the hearing.

Employment Judge Ward
Dated: 2 November 2021

REASONS SENT TO THE PARTIES ON 2 November 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche