



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Ihekwoaba

**Respondents:** Aston Services Group Limited (1)  
Mr M Ahmed (2)

**Heard at:** Bristol **On:** 1 March 2022

**Before:** Employment Judge C H O'Rourke  
Mr H Launder  
Ms M Luscombe-Watts

## Representation

Claimant: in person  
First Respondent: Mr Curwen – counsel  
Second Respondent: Not in attendance or represented

# REASONS

(Having been requested, following Judgment of 1 March 2022 and subject to Rule 62(3) of the Tribunal's Rules of Procedure 2013)

## Background and Issues

1. The Tribunal first heard this claim in March 2019, following which it concluded that both Respondents (the Claimant's then employer and supervisor) had sexually harassed her, in two distinct incidents, but that her claims of racial harassment and victimisation on grounds of race and sex failed and should be dismissed. She was awarded £6,000 plus interest in respect of injury to feelings which, she confirmed, has since been paid by the First Respondent.
2. She appealed to the Employment Appeal Tribunal (EAT), on six grounds and her appeal was heard by His Honour Judge Auerbach on 11 March 2021 (UKEAT/0270/19/00). He concluded that one ground of appeal succeeded and should be remitted to this Tribunal, for our consideration. The Tribunal was directed '*to consider the particular complaints of harassment related to both sex and race, on the occasion when the second respondent is alleged to have made the 'white girls, especially from Poland' remark and whether, depending on the Tribunal's conclusion on that complaint, that affects its view of whether the two other incidents*

*that it has found involved harassment related to sex, were also related to race.'*

3. We therefore set those issues out at the outset of the Hearing, adding that if we found that there was an act or acts of racial harassment, we would need to consider what the appropriate remedy might be.
4. The First Respondent confirmed that they did not seek to rely on the statutory defence in s.109(4) of the Equality Act 2010 (EqA), namely that they had taken all reasonable steps to prevent the Second Respondent from committing such further acts of harassment as may be found to have been committed by him. Effectively, therefore, they accepted liability for any such acts.

### The Law

5. Section 26 EqA states:

*"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 ....*

*(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.*

*(5) The relevant protected characteristics are -- age; disability; gender reassignment; race; religion or belief; sex; sexual orientation.*

6. The case of **Vento v Chief Constable of West Yorkshire Police (No.2)** [2003] ICR 318, EWCA established guidelines for the assessment of awards for injury to feelings, as follows:
  - a top band (not considered further, as the Claimant did not contend that her claim was within this band)

- a middle band of between £8,400-25,200 (as since adjusted for inflation): for serious cases that do not merit an award in the highest band, and
  - a lower band of between £800- 8,400: appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.
7. Mr Curwen referred us to **Al-Jumard v Clywd Leisure Ltd and ors [2008] IRLR 345, UKEAT**, in which the EAT ruled that where unlawful discrimination has occurred in respect of two or more different grounds (i.e. protected characteristics), the compensatory award for injury to feelings should be assessed in respect of each discriminatory act. Each act is a separate wrong for which damages should be provided. However, where more than one form of discrimination arises out of the same facts, asking to what extent each discrete head of discrimination has contributed to the injured feelings can be an artificial exercise, and that it will not be an error of law where the tribunal fails to do that. The Tribunal must stand back and have regard to the overall compensation figure to ensure that it is proportionate and not subject to double counting.

### The Facts

8. We heard evidence from the Claimant. The Second Respondent did not attend. The First Respondent offered no evidence and Mr Curwen did not cross-examine the Claimant.
9. Our previous findings were that on 3 and 4/5 January 2018, the Second Respondent had carried out the following acts, as recorded in text messages by the Claimant, as follows:
- a. 3 January 2018 – the Claimant texted her manager Ms Thompson, stating *'Mustafa (R2) he came to close to my personal space, and it wasn't first time. If you will be able please check on cameras: fourth floor side on the first lady's...Ms Thompson replied the next day. 'I will see if Will can look.'*
  - b. 5 January 2018 - The Claimant again texted Ms Thompson *'again yesterday he used opportunitie (sic) (when he was showing me something on stairs), and was touching my hand. Kadra made me double-worried as she said in him religion and culture man cannot touch in any way woman if she is not his wife. Horrible man. Have a good day and safe journey.'* Ms Thompson replied *'you will have to tell him straight if he does it again. He clearly doesn't see anything wrong.'* Ms Thompson again wrote *'if he gets too close tell him to get out of your personal space.'*

### Conclusions on Liability

10. Accordingly, therefore, based on our previous findings as to preferring the Claimant's evidence over that of the Second Respondent, we consider, on the balance of probabilities that at some point after his appointment as the

Claimant's supervisor, on 14 December 2017, up to the date of the above incidents, the Second Respondent said to the Claimant '*the white girls, especially from Poland, are so pretty, not like my wife*'. This conclusion is also supported by the fact that on 24 April 2018 the Claimant had reported the Second Respondent's behaviour to the Police and that in that police report it was recorded that she had raised with the police her suspicion that the Second Respondent had behaved as she alleged, because she was one of the only white females in the workplace. It also recorded her as saying that she had told the police officer that she was Polish and that all the other women, save one, were Somalian.

11. We are in no doubt that such a comment is both racial and sexual harassment, as it created an intimidating, degrading and humiliating or offensive environment for the Claimant based on her race and that it was also conduct of a sexual nature.
12. Having found that to be the case, it is apparent to us that the subsequent two acts of sexual harassment of 3 and 4/5 January 2018 were also motivated, at least in part, by the Claimant's race/nationality and the Second Respondent's perception as to her appearance because of that race/nationality (and as was accepted by Mr Curwen).

#### Submissions

13. On behalf of the Respondent, Mr Curwen made the following submissions in respect of remedy for injury to the Claimant's feelings:
  - a. Reliant on **Al-Jumard**, where discriminatory acts overlap, the Tribunal should not make separate awards.
  - b. No complaint about the 'white girls' comment was made by the Claimant at the time, in comparison to the immediate complaints she made about the incidents of 3 and 4/5 January 2018 and which were followed up in her subsequent grievance. She made no reference to the racial harassment incident at the grievance hearing.
  - c. Even in her report to the police, on 24 April 2018, she made no specific reference to this incident, merely referring to her suspicions as to being targeted by the Second Respondent for having been one of the few white females in the workplace.
  - d. There is also no reference to this incident in her ET1, indicating that it cannot, therefore, have affected her to the same extent as the acts of sexual harassment.
  - e. As found in the previous Judgment, the Claimant was, in fact, predominantly exercised at that hearing by her perceived loss of, or being overlooked for, the supervisor role, rather than any discriminatory actions of the Respondents.

- f. Accordingly, therefore, any further award should maintain the overall award within the lower band, thus limiting it to approximately £2000.

14. The Claimant made the following submissions:

- a. She was the victim of racial harassment and had been discriminated against right from the beginning of the Second Respondent's commencement of employment, on 14 December 2017.
- b. The appropriate award was in the middle band, bearing in mind that the Second Respondent had also discriminated against other white women.
- c. She had suffered injury to feelings to the extent that she has not been able to work since her dismissal, she suffers from depression and is undergoing Cognitive Behavioural Therapy. She has ceased her normal daily activities and finds it hard to leave home.
- d. She considered that any award should not be less than a total of £15,000. These were not one-off incidents and should not therefore be considered to be in the lower band.
- e. The Second Respondent's behaviour was escalatory and he also targeted the Claimant's sister, on the same basis. His behaviour was racist throughout.

#### Conclusions on Remedy

15. The same factors as we identified before continued to apply: the Second Respondent was the Claimant's manager; her relatively diminutive physical size in relation to his and her isolation at work (a cleaner in an office block, out of office hours).
16. However, as we found previously, while she did promptly report the two sexual harassment incidents, she did not, at any point, report the '*white girls*' comment to the First Respondent. Indeed, she did not raise it in her grievance, her appeal against the outcome of that grievance, her claim form, or at the case management hearing, only referring to it (obliquely) in the report she made to the police in April 2018 and directly in her witness statement for the last hearing.
17. We consider, therefore that this act of the Second Respondent cannot, accordingly, have weighed as heavily on her mind as the incidents of sexual harassment, as otherwise she would have raised it sooner and more frequently.
18. We note, applying **Al-Jumard**, that we should take account of any overlap between the incidents of discrimination, if stemming from the same set of facts, which is the case here.

19. Nonetheless, however, we are now confronted with three individual acts, of both sexual and racial harassment, over an approximately two-week period.
20. While we note the Claimant's assertions in respect of the effects of these acts of harassment upon her, even now, four years later, there was no corroborative medical or other evidence to support such.
21. We consider that the accumulation of incidents and the combination of both racial and sexual motivations, even over a relatively short period of time, pushes the injury to feelings award into the lower end of the upper **Vento** band. However, we also consider that the Claimant's failure to previously report this matter, or even to raise it until her witness statement for the previous hearing indicates that it cannot have been, of itself, or even in conjunction with the acts of sexual harassment, a major additional factor in the injury to her feelings and that therefore the award should be fixed at the lower end of that band. We are also conscious, applying **Al-Jumard** that we should avoid double-counting and that it is inherently difficult, in these circumstances, to draw a clear distinction between the Second Respondent's acts of sexual and racial harassment, both being closely-linked. We therefore find that the proportionate level for compensation for injury to feelings (taking into account the £6000 already awarded) is a total of £4,000, plus interest.
22. We calculate interest on the balance now due to the Claimant, of £4000, as follows:
- a. Interest at 8% per annum on £4000 is £320, therefore £0.88 per day.
  - b. There have been 1513 days since the date of the last incident of sexual harassment, which results in interest of £1331.73
23. The total additional award due to the Claimant for injury to feelings is therefore £5331.73
24. Conclusion. The Respondents racially and sexually harassed the Claimant and are jointly and severally ordered to pay her the total sum of £5331.73.

Employment Judge O'Rourke  
Date: 22 March 2022

Reasons sent to parties: 6 April 2022

FOR THE TRIBUNAL OFFICE