



EMPLOYMENT TRIBUNALS

Claimant: Mr L Gallimore

Respondent: (1) Medipatrol Limited
(2) Ms S Hill-Venning

Heard at: Bristol (by video) **On:** 08/04/2022

Before: Employment Judge David Hughes

Representation

Claimant: In person (assisted by Ms Foulkes)
1st Respondent: Not present and not represented
2nd Respondent: In person

JUDGMENT having been sent to the parties on 22 April 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

History

1. This dispute has a not-uncomplicated history. That history was helpfully clarified by Employment Judge Bax in an order of 12.01.2022.
2. Mr Gallimore worked for Medipatrol. He brought a claim against Medipatrol for unfair dismissal, for unauthorised deductions from wages and for discrimination on the grounds of age and sexual orientation.
3. Ms Hill-Venning was a director of Medipatrol.
4. On 16.06.2021, Employment Judge Gray determined the wages and unfair dismissal claims in Mr Gallimore's favour.
5. On 28.06.2021 the Claimant applied to add Ms Hill-Venning as a Respondent to the discrimination claim, and on 31.08.2021, Employment Judge Gray accepted the claim against her.

6. Proceedings were sent to Medipatrol's address, and Ms Hill-Venning had until 28.09.2021 to file a response and give details of any objection to being added to the proceedings.
7. On 02.09.2021, Taylor Aitken wrote to the Tribunal, saying that they acted as the registered office of Medipatrol and said that they thought it unlikely that Ms Hill-Venning would have received the claim form at Medipatrol's trading address, because IT had ceased trading and vacated the premises. The claim form had been forwarded to Ms Hill-Venning at her home address.
8. On 14.09.2021 Mr TJ Newport wrote to the Tribunal saying, they advised the Respondent and suggested that the claim form had not been received by the First Respondent and sought guidance. It appeared from the Tribunal record that Mr Newport was not added as a representative.
9. On 08.10.2021 the Claimant was asked to provide a response to the correspondence from Mr Newport and Taylor Aitken and it was noted that the Second Respondent had until 28.09.2021 to file a response. Mr Newport was copied into the Tribunal's e-mail, which was given on 08.10.2021.
10. On 16.11.2021, Employment Judge Gray considered the correspondence and asked for a check to be carried out as to whether the Second Respondent had filed a response and if not to send a letter under rule 21. A response was not filed by the Second Respondent. The Second Respondent was sent a letter to the First Respondent's trading address, on 18.11.2021 informing her that a judgment could be issued, she would be notified of hearings but could only participate to the extent permitted by the Judge.
11. On 03.12.2021, a notice of video hearing was sent to the parties, which required them to give e-mail addresses to the Tribunal for the purpose of the video hearing. The notice of hearing was sent by post to the Respondents at the trading address.
12. On 11.01.2022, the Claimant was sent a link to join the video hearing.
13. On checking the file before the hearing started, the Judge was concerned that notice of hearing was sent to the Respondents at an address they had vacated. An enquiry was made of the Claimant by the Tribunal Office as to an e-mail address for the Second Respondent. The Tribunal at 09:23hrs e-mailed a Medipatrol address and also Mr Newport.
14. At about 0950 Mrs Newport telephoned the Tribunal and said that her husband represented the Respondent and that they had only just received the notice of hearing, but that he was unable to attend due to work commitments. An e-mail was then sent to the Tribunal.
15. On 21.01.2022, notice was sent to the parties of this hearing, advising them of today's hearing. The notice advised the parties that, as neither Respondent had entered a response, a judgment may be issued, that they were entitled to receive notice of any hearing but that they could only

participate in any hearing to the extent permitted by the Employment Judge hearing the case.

16. On 28.01.2022, Ms Hill-Venning made an application, which was referred to Employment Judge Midgeley. A response was made, on his direction, dated 23.02.2022. The substance of response read as follows:

Application for reconsideration of the Judgment of 28 January 2021

1. By an application dated 28 January 2022, the Mr Newport, who is the representative for the Second Respondent, applied for reconsideration a Judgment against the First Respondent dated 15 June 2021. The application was made on form N244 which applies to the County Court and is pursued on the basis of the CPR, which has very little application to the Employment Tribunal, which is governed by the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (“the Rules”).

2. Rule 71 of the Rules specifies that any application for reconsideration must be made within 14 days of the Judgment being sent to the parties. The application is therefore seven and half months out of time. It is questionable whether the Second Respondent has locus standi to pursue the application on behalf of the First Respondent in any event; although it is possible if she were a Director of the First Respondent at the time of the application. No application has been made for an extension of time in which to request reconsideration.

3. The application is therefore dismissed.

Remedy Hearing

4. The hearing listed on 8 April 2022 is the remedy hearing in respect of the claims against the Second Respondent; the Second Respondent having failed to enter a response within the statutory time limit.

5. The Second Respondent has not applied for an extension of time to submit a response, nor has she applied for reconsideration of EJ Gray’s decision in accordance with Rule 21 by which the case was listed for a remedy hearing. Any such application is now out of time.

6. The consequence of the Rule 21 Judgment is that the Second Respondent is precluded from disputing liability and may only make representations in relation to the compensation awarded for the remedy hearing with leave of the Judge. She may not call witness evidence without leave of a Judge.

7. The hearing on the 8 April 2022 will therefore proceed as a remedy hearing within the parameters set out above, absent any further application.

Issues

17. At the outset of today’s hearing, I canvassed with the parties the issues to be determined. It seemed to me that the sole issue was the amount of compensation, if any, Mr Gallimore should be awarded for injury to feelings arising from discrimination on the basis of age and sexual orientation. Mr Gallimore agreed that this was the sole issue.

18. Ms Hill-Venning did not agree. She sought to argue that she had not received the original documentation in the case. She had spoken to a barrister and, so I understood, had obtained some advice, although it may

have been of an informal nature. She had seen no statement from Ms Hope, a witness on whom the Mr Gallimore proposed to rely.

19. Ms Hill-Venning confirmed that she had seen the case management order of EJ Bex, and the directions issued on the direction of EJ Midgeley. She confirmed that no application had been made after EJ Midgeley's directions.
20. I was satisfied that the issue before me was the one that I had identified for the parties, subject to one caveat. That caveat was that the position insofar as the 1st Respondent was concerned was not entirely clear. Although Employment Judge Midgeley's directions had identified the hearing as one going to a remedy as against Ms Hill-Venning, Employment Judge Gray's Judgment of 15/06/2021 stated that the complaints of discrimination were still to be determined. Therefore, although the argument before me focussed, understandably, on the position between Mr Gallimore and Ms Hill-Venning, it seems to me that the judgment I make should be between Mr Gallimore and both Respondents, jointly and severally.
21. Employment Judge Bax's order had directed Mr Gallimore to provide a statement setting out the factual basis of his discrimination claims, including the dates or approximate dates of the alleged incidents and the effect on him. The order made no reference to any statement by any other person.
22. Mr Gallimore had prepared a statement, which with a little difficulty was identified as a document headed "statement of events". There was another document headed "*Inj to feelings claim*", which I was also asked to consider. The statement did not comply with Employment Judge Bax's order that it have numbered paragraphs, and did not go into detail as to the effect of the discrimination on him.
23. Ms Hill-Venning objected to me hearing evidence from Ms Hope. She had not seen a statement from Ms Hope. She said that Ms Hope knew Mr Gallimore personally, and was a friend of his. As for there being no statement from her, the Case Management Order had referred only to a statement from Mr Gallimore himself.
24. I had some sympathy with Ms Hill-Venning's position, as she had had no notice of what that evidence was to be. As to Ms Hope being a friend of Mr Gallimore, that was a matter that goes to the weight I might give her evidence.
25. Mr Gallimore briefly explained to me what he wanted Ms Hope to say. He wanted her to give evidence about Hill-Venning's persona and character, the claims of discrimination, and her demeanour to other members of staff. I did not consider that any of those matters went to the impact of the discrimination on Mr Gallimore. Mr Gallimore added that Ms Hope could give evidence about having supported him when dealing with the impact of the discrimination on him. That, it seemed to me, would be relevant to the question I had to decide, and I decided that I would hear Ms Hope's evidence.

26. Ms Hope's evidence was fairly brief, and I allowed Ms Hill-Venning a short break before cross-examining Ms Hope. Indeed, I allowed her a short break before cross-examining Mr Gallimore.

What happened

27. Mr Gallimore was recruited to Medipatrol by Ms Hill-Venning. He says that he instantly became subject to homophobic abuse and bullying by Ms Hill-Venning. He said that the instances of homophobic abuse were too frequent to set out in detail in his statement. He refers to clearly homophobic terms such as "*faggot*" or "*fucking faggot*" being used in reference not only to himself, but to other staff in the LGBT community.

28. Although there were references to the Claimant's age, I find that the overwhelming majority of the abuse that the Claimant received was homophobic in nature.

29. Mr Gallimore says that a lack of support from Ms Hill-Venning made it impossible for him to finish a FREC training course. He said that 3 other members of staff joined in the homophobic abuse of him. He made formal complaints about those others, and these were dealt with satisfactorily internally.

30. Some parts of the Claimant's statement set out allegations against Ms Hill-Venning that are outwith the scope of the question before me, and I disregard those parts of the statement.

31. Ms Hope told me that she had spoken daily, or almost daily, with Ms Gallimore, who told her about the abuse he was receiving. Ms Hope works as a paramedic, and said that she thought Mr Gallimore's mental state was comparable with some of the mental health crises that she's seen in that capacity. She said that Mr Gallimore had been at an age and stage in life when he was coming to terms with his own sexuality, and so the homophobic abuse really did impact on him.

32. Ms Hope said that she supported Mr Gallimore through times when he had self-harmed, and one occasion when he had taken an overdose of sertraline. He was still receiving weekly counselling at the time of this hearing, she said.

33. In answer to questions from Ms Hill-Venning, Ms Hope admitted that she could not tell whether Mr Gallimore was merely spinning her a yarn. But she said that she had personally taken him to the Gloucester Royal Hospital in January 2021.

34. Asked if she was aware of a conflict between Mr James Molyneux, a former director of Medipatrol, Mr Bradley Scales, Mr Molyneux's former partner, with whom Mr Gallimore had shared a home, and Ms Hill-Venning, Ms Hope denied any knowledge of this at the time. She wasn't able to say whether Mr Gallimore's overdose was at the time that Mr Scales and Mr Molyneux had broken up, or whether Mr Gallimore had had mental health difficulties before working for Medipatrol.

35. Mr Gallimore had not included anything about self-harming or an overdose in his statement. I allowed him to be re-called, so that Ms Hill-Venning could cross-examine him on those. He told her that he had not felt it was relevant, and didn't feel comfortable disclosing it, having already disclosed his sexual wellbeing and orientation. He denied being selective in what he told Ms Hope, but felt comfortable speaking with her and felt he could trust her. He denied that his overdose had been at the time that Mr Molyneux and Mr Scales had split up, and said that he had been working for Medipatrol at the time of the overdose. He became a little confused over dates, and subsequently clarified this, saying that he'd stopped working for Medipatrol in August 2020. In his ET1, he says that his employment ended in October 2020.
36. I found Mr Gallimore to be, on the whole, a credible and reliable witness. It is unfortunate that he did not refer to the self-harming and overdose in his own statement, but his reasons for that are, I find, credible, and I accept them. I do not agree with Ms Hill-Venning's suggestion that it was strange that he didn't mention these matters, but had disclosed his sexuality.
37. I also accept that the reason for the lack of detail in Mr Gallimore's statement is because the homophobic abuse to which he was subject was too frequent for individual instances to be identified readily. I accept that he was subjected to regular homophobic insults by Ms Hill-Venning. I accept that these happened often in front of other people, and that some other employees joined in.
38. I accept that the impact on Mr Gallimore was significant. He was a young man. He told me that he felt able to be out at the workplace, but had come to regret it because of the abuse he received.
39. I did not have medical records, or any expert evidence regarding self-harm or an overdose. I accept on a balance of probabilities that Mr Gallimore did engage in self-harm, and did take an overdose. I find that the overdose took place after Mr Gallimore had left Medipatrol. With some misgivings, however, I think it probable that it was related, in some way at least, to the abuse he had received there.
40. In her evidence, Ms Hope appeared at times to be arguing a case for Mr Gallimore. That is understandable to an extent, as they are friends, but it was not her role. Despite that, I accept her evidence as broadly credible and reliable.
41. In the document headed "*Inj to feelings claim*", Mr Gallimore sought an award at the top end of the middle Vento¹ bracket. I explained the brackets to the parties. As his claim was received in November 2020², the relevant brackets are £900-£9,000; £9,000-£27,000; and £27,000 to £45,000. He said that this was still his position, and therefore I did not need to hear the parties on the top bracket.

¹ Vento -v- Chief Constable of West Yorkshire [2002] EWCA Civ 1871 [2003] ICR 318.

² See 3rd addition, dated 27.03.2020, to Presidential Guidance originally issued on 05.09.2017.

42. Ms Hill-Venning invited me to make no award of compensation for injury to feelings. She made submissions about her own financial position. She said that her money had gone to pay Mr Gallimore's wages, had provided him with food and accommodation, and that he had had enough from her. She said that I should view this as a lower-band Vento case, because she denied that there had been any homophobic abuse at all.
43. I appreciate the difficulty of making submissions as to the amount of compensation, if any, that should be awarded, when she would have preferred to argue that she was not liable at all, but Ms Hill-Venning's arguments were somewhat unrealistic.
44. In this case, there was sustained homophobic abuse that had a significant impact upon the Claimant. I find that this was clearly not a lower-band Vento case. This was far from an isolated or one-off occurrence, or something that might properly be regarded as similar.
45. Neither party referred me to any caselaw referring to where within the middle or lower Vento bands this case might be placed.
46. The abuse in this case was sustained. References to "*faggots*" and "*fucking faggots*" are likely to have caused Mr Gallimore significant distress, and I have accepted that the abuse had a serious impact on him.
47. I recognise that it is certainly possible to conceive of more serious cases. The abuse could have been worse. More people could have joined in. There might have been physical intimidation, or even violence. But those might well have placed the case in the upper Vento band, rather than the middle.
48. I do not think an award at the very top of the middle Vento band is appropriate in this case. Although some cases one might conceive of involving worse abuse than here would clearly be in the upper bracket, that is not necessarily true of all cases. And I only considered the abuse dealt out by Ms Hill-Venning, not the other employees who joined in. But I do think that the sustained nature of the abuse, and its impact on Mr Gallimore, require an award in the upper half of the middle Vento band.
49. Taking into account all the circumstances of the case, I award Mr Gallimore the sum of £20,000 in compensation for injury to feelings.

Employment Judge David Hughes

Date 24.04.2022

REASONS SENT TO THE PARTIES ON
12 May 2022 By Mr J McCormick

FOR THE TRIBUNAL OFFICE