



EMPLOYMENT TRIBUNALS

Claimant:
Miss M Hopkins v

Respondent:
Craft Ales and Cocktails Ltd

Heard at: Nottingham

On: 21 February 2022

Before: Employment Judge Fredericks

Appearances

For the claimant: In person

For the respondent: Ms S Wood (litigation consultant)

RESERVED JUDGMENT ON REMEDY

1. The claimant suffered an unlawful deduction from her wages from October 2020 to July 2021 and it is ordered that the respondent must pay her **£1,606.38**.
2. The claimant has also not been paid in respect of accrued but untaken holiday and it is ordered that the respondent must pay her **£551.79**.
3. The claimant suffered an injury to feelings as a result of suffering a single incident of sexual harassment, perpetrated by the respondent's director, on 29 May 2021, and it is ordered that the respondent must pay her compensation in the sum of **£5,500.00**.
4. Consequently, the total amount that the respondent is ordered to pay the claimant is **£7,658.17**.

REASONS

1. This claim was due to be heard at the same time as two other former employees of the respondent. One of those other claimants had presented her claim out of time and so it was dismissed. Consequently, I conducted a remedy hearing for both remaining claimants today.

Respondent's application to extend time to (1) set aside default judgment, (2) extend time to a response, and (3) postpone the hearing

2. By an application dated 18 February 2022, the respondent applied for the hearing to be postponed in order that the default judgment could be set aside and an opportunity given for the respondent to respond to the claim.
3. The application contended that the respondent was unaware that the claims had been issued and so had not had the opportunity to deal with them. It was said that the respondent's business had closed down and so the respondent's director, Mr Neale, could not access the post. It was claimed that the respondent considers it has reasonable prospects of success to defend the claim. The application was not accompanied by a draft ET3 Form for acceptance and the reason offered for this was that the respondent was not aware of what the claims were.
4. When considering the application, I had in mind the guidance provided by Kwik Save Stores Ltd v Swain an Ors [1997] ICR 49 EAT, and so sought to consider (1) the reason provided for the late presentation of a response, (2) the merits of any defence contained within the response, and (3) where the balance of prejudice lay between the parties. I also bore in mind the tribunal's overriding objective to deal with cases fairly and justly in a manner proportionate to the issues without undue delay.
5. The respondent remains a live entity at Companies House and its registered address is the one provided to the tribunal and the one where the documents in this case were sent. Ms Wood informed me that the respondent's Mr Neale had not changed the registered address to one where he could receive post, and Mr Neale seemed to accept that he knew he should have done this. It seems to me that this is indeed a step which should have been completed, and so it is not a good reason for a lack of response to claim that the documents were sent to an inaccessible location.
6. No defence was advanced in the hearing today and so I was unable to determine whether the possible defence had any merit. I accept that, if the respondent was unaware of the nature of the claims, a defence might be difficult to put together, but no further information was offered at all to justify the bald contention that the respondent believed it had reasonable prospects of success if allowed to defend the claim.
7. It is clear to me that the balance of prejudice in relation to the application lay with this and the other claimant. They had completed all of the steps required of them, including providing witness statements and a bundle for the hearing. They are entitled to receive a remedy following their obtaining default judgments and they would be prejudiced significantly by any delay.
8. Finally, and importantly, I did not consider that it would be in accordance with the overriding objective to set aside the default judgments and extend time to file a response in the circumstances. The respondent had not responded to the claim in time because it had not fulfilled its responsibility to update its registered office at Companies House. The respondent had also not provided a draft response form in the hearing and had not substantiated its claims to have a viable defence.
9. In my judgment, the duty to deal with cases fairly and justly, without inappropriate delay, led me to refuse the respondent's application and continue with the remedy hearings.

10. Following this decision, Mr Neale left the hearing. His representative remained but offered no submissions in respect of the evidence provided or the remedy to be awarded.

Unlawful deduction of wages and unpaid holiday

11. The claimant's claims under this heading succeeded courtesy of the production of the default judgment. At the hearing, the claimant provided witness evidence and a spreadsheet showing the hours she said she worked and the amounts she said she was paid, which gave rise to the shortfall.

12. I asked the claimant questions about how the evidence was put together and checked the calculations so that I could be satisfied in the document's accuracy. I was satisfied that the document was accurate and so awarded the full amount particularised.

Compensation for injury to feelings

Facts and injury to feelings

13. The claimant claimed compensation for events which happened during her employment which gave rise to injury to feelings. The claim succeeded as a result of the default judgment, but the amount to be awarded required determination. In total, the claimant claimed £3,000 for this part of her claim.

14. In evidence, the claimant described how she was working on 29 May 2021 when the respondent's Mr Neale touched her intimately without consent. She said that she was having a light hearted conversation with Mr Neale, who was drunk, when she went to wash her hands. She described how Mr Neale came up behind her and grabbed her bottom and made a joke of it, calling her "Madam" as he touched her. When challenged about it, Mr Neale made a joke from it and then apologised.

15. In her witness statement, the claimant describes that she still remembers the discomfort, shock and panic of the incident. She feels that she was treated with disrespect and is the victim of sexual harassment. The claimant said that she did not want to be alone with Mr Neale any longer. She also said that she does not wish to enter into any other employment relationship following the incident. The claimant also says that her mental health has been negatively and that, as a result of her experiences, she has been required to undertake counselling therapy to ease the harm caused to her. She no longer wishes to work under the management of a man.

16. The claimant very bravely recounted the incident in the course of the hearing, and answered my questions about the impact it had on her in earnest and with clarity. I accept all that she said about the incident and the injury to feelings it has caused.

The law

17. The award for injury to feelings is to compensate the claimant for the injury they have suffered and, when deciding an award, I should focus on the injury rather than the gravity of the act committed by the respondent (*Komeng v Creative Support Ltd*)

UKEAT/0275/19/JOJ). The general principles when considering the remedy are drawn from Prison Service v Johnson [1997] IRLR 162:

- a. Awards are compensatory and should be just to both parties to compensate fully without punishing the perpetrator or allowing feelings of indignation affect the decision;
 - b. Awards should not be too low to ensure that the cause of the claim is respected, but not too high so that the claimant enjoys untaxed riches;
 - c. Awards should bear some broad general similarity to the whole range available in personal injury cases;
 - d. Tribunals should take in account the value of everyday life by reference to purchasing power or by reference to earnings; and
 - e. Tribunals should keep in mind the need for public respect for the level of awards made.
18. Vento v Chief Constable of West Yorkshire Police (No2) [2003] IRLR 102 found that compensation can be awarded for subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.
19. Vento then set the possible ranges of awards which should be paid and separated them into three 'bands': lower; middle; and upper. These ranges have been amended in subsequent cases culminating in De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879. Following this, the Presidents of the Employment Tribunals of England and Wales, and Scotland, issued Presidential Guidance which, now in its 15th Edition, and that guidance sets the current Vento bands as follows:
- a. Lower Band, for less serious cases which are an isolated or one-off occurrence causing the injury to feelings: £990 to £9,900;
 - b. Middle Band, for serious cases which do not merit the Highest Band: £9,900 to £29,600; and
 - c. Upper Band, for the most serious cases involving a prolonged course of discrimination or harassment on the grounds of sex or race: £29,600 to £49,300.
20. Whilst it is possible to award more than £49,300, this should be reserved only for the most exceptional cases.
21. For an award to be made, I must be satisfied that the injury to feelings has occurred and that it has occurred because of the action or incident identified. Where the link between those two is clear, it might be sufficient for the claimant to simply say that they were upset by the action (Murray v Powertech (Scotland) Limited [1992] IRLR 257; Ministry of Defence v Cannock [1994] ICR 918).

Award in this case

22. The incident complained of was isolated in nature and for that reason alone it may fall into the 'Lower Band'. I do not seek to diminish the act or its impact but, having regard that the award must not be impacted by any sense of indignation I might have about the behaviour to which the claimant was subjected, I consider that the

appropriate level of compensation does fall within the Lower Band. The claimant herself asked for £3,000 to be awarded for her injury to feelings and so I consider that she likely accepts that the Lower band is the appropriate band in this case.

23. However, I am not bound to award only what the claimant has asked for, and in my judgment there are factors here which tend to me awarding a sum in excess of £3,000. Specifically, these are:

- a. The claimant is in therapy as a result of the incident;
- b. The incident still plays on the claimant's mind some 9 months later;
- c. The claimant says that she does not wish to enter employment anymore in an area in which she worked full time and considered to be an area within which she could carve a career;
- d. The claimant says she does not wish to work under a man; and
- e. The claimant now lives with the knowledge that she has been the victim of intimate touching without consent.

24. Additionally, I take into account that the claimant was working full time in the field which she now says she does not wish to work in, and was earning in the region of £1,500 per month before tax. I also make some allowance for the possibility that the claimant may need to pay for private therapy in the future to aid her recovery from the injury to feelings.

25. In all these circumstances, having considered the matter carefully and hearing evidence directly from the claimant, I award the claimant £5,500 for the injury to her feelings.

Employment Judge Fredericks

11 March 2022

Sent to the parties on:

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For the Tribunal Office:

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Full written reasons will not be provided unless asked for by a written request presented by any party within 14 days of the sending of the written record of the decision.