



# EMPLOYMENT TRIBUNALS

**Claimant:** J Celerier

**Respondent** Chargepoint Network (UK) Limited

## JUDGMENT ON A RECONSIDERATION

**HELD AT:** Nottingham (in chambers)      **ON:** 19 May 2022

**BEFORE:** Employment Judge Batten  
M Alibhai  
J Bonser

## JUDGMENT

The respondent's application dated 1 April 2022 for reconsideration of the Judgment sent to the parties on 16 November 2019 is allowed and the Judgment of the Tribunal is varied as follows:

The following allegations constitute direct sex discrimination and not harassment:

4, 6, 7, 13, 14, 16, 17 and 44.

## REASONS

1. The Tribunal's Judgment on liability was sent to the parties on 16 November 2020. On 18 December 2020, the respondent appealed a number of aspects of the Judgment.
2. On 3 February 2022, the Employment Appeal Tribunal conducted a hearing under rule 3(10) of the Employment Appeal Tribunal Rules 1993 (as amended). The appeal was allowed to proceed to full hearing on 2 points of appeal and, within the Employment Appeal Tribunal's reasons in

respect of ground 4 of the appeal, His Honour Judge Auerbach invited the parties to make an out of time application for reconsideration, having regard to the effect of section 212 of the Equality Act 2010 (“EqA”) on those allegations which the Tribunal found to be both direct sex discrimination and harassment.

3. On 1 April 2022, the respondent wrote to the Tribunal to request that the Tribunal reconsider whether, as a matter of law, such allegations can simultaneously amount to both harassment and direct sex discrimination. That application was allowed out of time and a date was listed for the Tribunal to meet to reconsider those allegations contained in ground 4 of the original notice of appeal.
4. On 18 April 2022, the claimant made submissions in response to the reconsideration application, to the effect that all the allegations which were found to be both direct sex discrimination and harassment should in fact be considered as alternative findings. In the alternative, the claimant submitted that all the allegations concerned should be found to be direct sex discrimination.
5. The Tribunal has taken the contents of the application and the claimant’s submissions into account together with the direction of His Honour Judge Auerbach.

### **Rules of Procedure**

6. Rule 70 of the 2013 Rules of Procedure empowers the Tribunal to reconsider an judgment where it is necessary in the interests of justice to do so. Ordinarily an application shall be made pursuant to Rule 71, which provides that such an application shall be made within 14 days of the date on which the Judgment is sent to the parties. However, Rule 5 provides that the Tribunal may extend any time limit under the rules, where such has expired.

### **The applicable law**

7. Section 212(1) EqA provides that “detriment” does not include conduct that amounts to harassment.
8. Harassment is contained in section 26 EqA which provides:
  - (1) *A person (A) harasses another (B) if-*
    - (a) *A engages in unwanted conduct related to the 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 behaviour of a sexual nature, and*

(b) *the conduct has the purpose or effect referred to in subsection (1) (b).*

(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.*

9. The concept of harassment under the previous equality legislation was the subject of judicial interpretation and guidance by Mr. Justice Underhill in *Richmond Pharmacology and Dhaliwal [2009] IRLR 336*, namely:

*"There are three elements of liability (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was on the grounds of the claimant's [protected characteristic]."*

10. When considering whether the threshold is met under section 26 EqA in respect of a complaint of harassment, regard must be had to both the subjective and objective elements of the harassment test, per *Pemberton v Inwood [2018] IRLR 552*. The Tribunal must consider whether the putative victim perceives themselves to have suffered the effect in question and whether it was reasonable for the conduct to be regarded as having that effect.

**Conclusions** (including any additional findings of fact)

11. The Tribunal considered each of the allegations which are the subject of its reconsideration in turn, having regard to the findings and conclusions in the Judgment and also the fact that the claimant must clear the high bar of section 26 (2) EqA in order to establish harassment.

12. Having reviewed the allegations, and the Tribunal's findings on each of them, the Tribunal considered that, whilst the respondent's treatment of the claimant was detrimental, amounting to less favourable treatment because of sex, the test of harassment in EqA section 26 was not met in the case of each of the allegations 4, 6, 7, 13, 14, 16, 17 and 44.

13. The Tribunal took account of the fact that the claimant's male line manager had placed unreasonable demands upon the claimant which were detrimental and he had not done the same with male employees. In all the circumstances of the case, the Tribunal considered that the claimant was not unreasonably prone to taking offence and that she had been offended by the treatment meted out to her. She rightly concluded that it was related to her sex. Nevertheless, the Tribunal did not consider that the allegations met the high bar in section 26(2) EqA.
14. Having considered all the points made by the parties, the Tribunal was satisfied that it was in the interests of justice for the original decision on allegations 4, 6, 7, 13, 14, 16, 17 and 44 to be varied to show them as acts of direct sex discrimination.

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Employment Judge Batten  
Date: 28 June 2022