



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4100021/2020

Hearing held in Glasgow on 24 October 2022

Employment Judge M Whitcombe

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Miss L Shennan

Claimant
In person

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Mr L Meighan

Respondent
Did not attend

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JUDGMENT

The claim for unfair dismissal having been struck out on 19 January 2021, the claim against the original first respondent (Keen to Kleen Ltd) having been dismissed on 14 April 2022 and the response of the remaining respondent (Mr L Meighan) having been dismissed by operation of an unless order with effect from 20 July 2022, the judgment of the Tribunal is as follows.

(1) The claim for sexual harassment succeeds against the remaining respondent, Mr L Meighan.

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(2) The claimant is awarded compensation for sexual harassment as follows:

- a. compensation for financial losses of **£1,427.38**, including interest at 8%;
- b. compensation for injury to feelings of **£11,769.59**, including interest at 8%;
- 5 c. the total compensation which the respondent is ordered to pay to the claimant is therefore **£13,196.97**.

(3) Oral reasons for this judgment were given at the end of the hearing.

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REASONS

Introduction

1. These are the written reasons for a judgment given with oral reasons following a hearing on 24 October 2022. They have been produced at the claimant's
15 subsequent request.
2. Prior to the claimant's request for written reasons, the respondent made an unsuccessful application for reconsideration of the judgment. That application was refused for the reasons set out in the Tribunal's letter dated 1 November
20 2022. They are not reproduced here.

Claims

3. The claimant was employed by the respondent between 8 October 2019 and
25 19 November 2019 as a cleaner.
4. In a claim form received by the Tribunal as long ago as 3 March 2020 the claimant alleged that two respondents ("Keen to Kleen Ltd" and the current respondent, Mr Meighan) had committed acts of sexual harassment contrary
30 to section 26 of the Equality Act 2010 during her short period of employment.
5. Although the claimant also brought a claim for unfair dismissal, she lacked

the minimum continuous service necessary to qualify for the right to claim unfair dismissal and accepted that fact on 9 November 2020. The unfair dismissal claim was struck out by Employment Judge d’Inverno on 19 January 2021.

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6. On 19 January 2022 the claimant confirmed that the remaining claim would proceed against Liam Meighan only. Keen to Kleen Ltd had been dissolved on 6 April 2021. Employment Judge Meiklejohn dismissed all of the claims brought against Keen to Kleen Limited on 14 April 2022.

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7. As the chronology shows, this case has a long procedural history and it did not move as smoothly or as rapidly to a final hearing as would normally have been expected. It is not necessary for present purposes to set out all of the reasons why.

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8. The respondent has been inconsistent in his approach to the litigation. At times, he asserted that he was too unwell to attend a hearing, though he failed to provide medical evidence substantiating that assertion or to comply with Tribunal orders in that regard. At other times, the respondent appeared keen to attend a hearing and declared an intention to do so. The respondent has also written several abusive emails. Mostly they have been directed at the claimant, though on one occasion the respondent explained that he had actually intended his remarks for the Tribunal itself.

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Dismissal of the response

9. As a result of the respondent’s failure to comply with the extended deadline in an Unless Order, his response was dismissed in accordance with rule 38 with effect from 20 July 2022. The respondent did not make any application under rule 38(2) to set aside that order. Consequently, the respondent was precluded from disputing liability since the effect was as if no response had been presented at all (see rule 38(3)). I would have allowed the respondent to participate on questions of remedy (only) if he had attended the hearing,

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but he did not.

Respondent's failure to attend

5 10. The respondent's final email prior to the hearing said "*I will not be attending
this tribunal I have recently gained full time employment and I do not want to
see miss shennan she ruined my life and continues to so I can't be anywhere
near her...*", before going on to say that "*it's absolutely disgusting what I'm
being ask to do travel to Glasgow and face evil, I will not put myself in any
10 stress so I would attend by phone call and have my evidence sent in for the
10th time other than that iv no interest in her lies or anything else.*"

11. The Tribunal had not given permission for the respondent to attend by
telephone, nor did he clearly seek permission to do so. In response to the
15 above email a Legal Officer reminded the respondent of the possibility of
applying to join the hearing by video if he was unable to attend in person. In
any event, the respondent made no attempt to apply for the mode of hearing
to be adjusted or to make arrangements for remote attendance, if permitted.
The default position therefore continued to apply: the respondent was
20 required to attend the hearing in person in order to participate. He was clearly
aware of the date and location of the hearing and had made a free and
conscious decision not to attend. In those circumstances, I decided that it was
fair and appropriate to proceed with the hearing in his absence under rule 47.

25 **Evidence**

12. The sole witness to give evidence was the claimant herself. She gave her
evidence on affirmation. For the reasons outlined above, her evidence was
not directly challenged by the respondent, who did not attend the hearing. I
30 found the claimant to be an honest and persuasive witness. Her account was
internally consistent and was not contradicted by any of the documentation.

13. The claimant also supported her case with a collection of screenshots from

her phone showing messages which had passed between her and the respondent. They include the respondent saying "*im disgusted with myself ill sit down and explain what i done*" in response to allegations of sexual harassment, including unwanted flirting and unwanted touching. I find that the screenshots are consistent with and support the claimant's oral evidence.

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14. The respondent had also submitted documents at various points during the history of the case. They were not verified, supported or explained by any sworn evidence from the respondent himself and he was not available for cross-examination upon those or any other documents. Consequently, I gave the documents submitted by the respondent very little weight. The respondent clearly thought that they contradicted the claimant's account, but I did not accept that.

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15 **Findings of fact**

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15. I found the following facts to be proved on the balance of probabilities. The claimant gave uncontradicted evidence substantiating each of the incidents set out in the claim form. She confirmed that the key incidents were as follows.

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Incidents of harassment

16. On 10 October 2019 the respondent told the claimant that her, "*booty could corrupt*" him.

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17. On 13 October 2019 the respondent messaged the claimant mentioning "*corruption from ur know what*", referring to the claimant's bottom. He went on to say that it was hard to stay professional due to her "*booty*".

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18. On 1 November 2019 the respondent called a female customer a "*whore*", and often made similar remarks.

19. On 6 November 2019 the respondent told the claimant "*not to corrupt*" him.

20. On 15 November 2019 while cleaning a house in Troon the respondent pressed his body tight against the claimant's bottom while helping her to fix a mirror. There was no need to do so and there was plenty of room on either side of the claimant.

21. On 19 November 2019 the respondent tried to kiss the claimant, while maintaining that he had "pretended" to do so. Later that day his mood deteriorated and he shouted at the claimant in front of a customer and a colleague. The claimant was terrified and drove the respondent and the colleague home in tears. That night the claimant resigned and confronted the respondent about his sexual harassment, mood swings and drug use. The respondent said that he was "*disgusted with [himself]*".

22. On 25 December 2019 the respondent and his sister left fake negative reviews on the Facebook page associated with the claimant's own cleaning business. The claimant felt that this had ruined her Christmas dinner.

23. Although those with the main incidents they were also examples of things which happened more or less every day.

Effect on the claimant's feelings

24. The respondent's mood swings scared the claimant. Eventually the claimant decided that she would not wish to work for anyone else again because of her experiences. She therefore started her own business even though that meant that she would not receive any holiday pay or sick pay. She had not thought about starting her own business until her experiences with the respondent. In the claimant's words, "*it made me feel horrendous, on edge all the time*". The claimant now feels wary of men in general. She had pre-existing anxiety about life in general which got a lot worse over the past three years. She attempts to work in order to keep busy.

25. The claimant acknowledged that the public vindication which would result from a successful claim and a judgment maintained on a public register would be important to her. She would expect that to improve things, although she was not sure.

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26. The claimant avoids taking on clients in towns or villages where the respondent lives, has lived or has worked. That is because she is worried about bumping into him. I find that this demonstrates ongoing fear and anxiety attributable to the harassment suffered.

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27. The claimant's experiences of sexual harassment at the hands of the respondent were the cause of her resignation. She was then unemployed for six weeks before starting her own business. It took about two further weeks to build up that business to a level where it completely replaced the average earnings previously received when working for the respondent.

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Reasoning and conclusions

28. The claim for sexual harassment succeeds against Mr Meighan because the response has been dismissed. I therefore make that declaration. The relevant incidents are set out in my findings of fact.

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29. The purpose of an award of compensation is to put the claimant, so far as money can, in the position she would have been in if the unlawful harassment had not occurred. In Scotland, it is calculated in the same way as damages in proceedings for reparation.

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Loss of earnings

30. The claimant was unemployed for six weeks losing an average of £179 in each of those weeks, making £1,074. There were then two weeks of ongoing losses totalling £138 while the claimant built up her own business. The total financial losses were therefore £1,212. I have calculated interest from the

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midpoint of the period of loss, which I take to be 17 December 2019. At the statutory rate of 8% that brings the total sum, including interest, to £1,427.38.

5 31. The burden of proving a failure to mitigate loss would be on the respondent, but it is not necessary to rely on the burden of proof. I am quite satisfied that the claimant acted promptly and reasonably to reduce her losses by setting up her own business.

Injury to feelings

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32. I have considered the Presidential Guidance on compensation for injury to feelings applicable to this claim, which was presented on 3 March 2020.

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33. I accept that the harassment had a significant effect on the claimant's feelings. It made her conclude that she did not wish to work for anyone else ever again and she now works on a self-employed basis. The respondent's actions amounted to distressing and unsettling sexual harassment even though the employment relationship lasted a short period. There were suggestive sexualised remarks and invasion of personal space. That greatly aggravated the claimant's pre-existing anxiety and continues to do so. The respondent has not at any point in these proceedings conceded unlawful behaviour or other wrongdoing, recognised the impact on the claimant's feelings or apologised.

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34. Significantly, the impact on the claimant's feelings has now lasted for three years. The continuing impact on the claimant's feelings is demonstrated by the fact that she avoids working in locations where she might bump into the respondent. The duration of that injury to feelings has also, I accept, been prolonged by repeated communications from the respondent during the course of this litigation which were insulting and abusive, and also by fake, adverse online reviews of the claimant's own business left by the respondent. That is an aggravating feature. I am well aware that aggravated damages are not recognised as a separate head of damages in Scotland, which is why I

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express it as an aggravating feature. The views of Smith LJ in *Martins v Choudhary* [2007] EWCA Civ 1379, CA, and Underhill P in *Metropolitan Police v Shaw* [2012] ICR 464, EAT, suggest that this may be the better way of analysing it in England and Wales too. As long as compensatory principles are adhered to, the terminology does not matter very much.

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35. However, I assess compensation for injury to feelings on the basis that this judgement, involving a public recognition that the claimant has suffered sexual harassment and an award of compensation, will go some way to achieving closure, enabling the claimant to move on. I accept that the injury to her feelings will not end immediately, but I do think that it will lessen and resolve in the foreseeable future.

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36. I have concluded that the just, proper and proportionate sum to compensate the claimant for what she has suffered up until today's date, and also what she will continue to suffer at a reduced level for some time yet, is £9,500, a figure at the lower end of the middle band of those applicable at the date the claim was commenced. I calculate interest from the midpoint of employment, that is 29 October 2019. Interest at the statutory rate of 8% brings the total compensation for injury to feelings, including interest, to £11,769.59.

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37. Therefore, the claim for sexual harassment against the respondent succeeds and the total award of compensation is £13,196.97.

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Employment Judge: M Whitcombe
Date of Judgment: 18 November 2022
Entered in register: 18 November 2022
and copied to parties

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