EMPLOYMENT TRIBUNALS (SCOTLAND)
Case No: 4102886/2022

Held in Glasgow on 6, 7 and 8 June 2023
With members' meeting 22 June 2023

Employment Judge M Robison
Tribunal Member S Singh
Tribunal Member J McElwee

Ms K Bone	**Claimant** **In person**
Duncreggan Enterprises Ltd	**Respondent** **Represented by** **Mr M Rice – Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The majority judgment of the Employment Tribunal is that:

i) the claimant has been subjected to direct discrimination contrary to section 13 of the Equality Act 2010.

ii) the claimant has been subjected to harassment contrary to section 26 of the Equality Act 2010.

The unanimous judgment of the Employment Tribunal is that:

i) the respondent shall pay to the claimant the sum of £1,280 for compensation for loss of wages, plus interest of £59.64.

ii) the respondent shall pay to the claimant the sum of £5,000 in respect of injury to feelings, plus interest of £468.60.

iii) the respondent has failed to pay the claimant holiday pay on termination of employment contrary to regulation 14 of the Working Time Regulations 1998.

iv) the respondent shall pay to the claimant the sum of £145.51 in respect of unpaid holiday pay.

REASONS

1. The claimant lodged a claim with the Employment Tribunal on 1 June 2022, claiming disability discrimination, public interest disclosure detriment, discrimination because of sex, and harassment related to sex, as well as failure to pay holiday pay.

2. Following several case management hearings, the claimant withdrew her claims for disability discrimination and public interest disclosure detriment.

3. The claimant was employed as a personal carer for Mrs S Rice, who is a director of the respondent company. The claimant alleged that conduct of Mrs Rice's husband, Mr M Rice, also a director of the respondent company, amounted to sexual harassment and sex discrimination, following which she resigned. She also claims that she received no holiday pay on termination.

4. The issues for determination at this hearing were therefore whether the claimant had been subject to direct sex discrimination and sexual harassment in breach of sections 13 and 26 of the Equality Act 2010, and whether she was entitled to holiday pay in terms of regulation 14 of the Working Time Regulations 1998.

5. During the hearing, the Tribunal heard evidence from the claimant as well as from Ms L McKenna, her friend and neighbour. We also heard evidence for the respondent from Mrs F Markey and Ms M Grout, current and former carers of Mrs Rice, and from Mr M Rice.

6. Both Mr Rice and Ms Bone had lodged documents in support of their position, both of which essentially took the form of witness statements, but included screen shots of copies of emails to which we were referred during the course of their oral evidence.

Findings in Fact

6. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved.

7. The claimant was employed with the respondent as a personal carer for Mrs Rice from 3 January 2022 until she resigned on 20 May 2022. Mrs Rice has been diagnosed with multiple system atrophy (MSA) which is a degenerative brain disorder. For the last two years this has meant that she cannot walk or talk and her condition impacts upon her autonomous nervous system so that she has difficulty swallowing and breathing.

8. In or around December 2021, Mr and Mrs Rice decided to engage an additional care worker to provide support in the evenings, as well as to take Mrs Rice swimming.

9. A mutual friend recommended Ms L McKenna who already had a job as a personal carer working during the day. She was interviewed but after interview she advised that she did not wish to take the job because of other commitments. However, she advised that the claimant, who is her friend and neighbour, who had recently moved to the area and who has a background in social care, may be interested in the position.

10. The claimant was subsequently interviewed towards the end of December 2021, and commenced employment on 3 January 2022.

Terms and conditions of engagement

11. Initially, the claimant was engaged for five hours to be paid at the "living wage" of £10.02 per hour. The respondent had a practice of paying employees on the 15th of the month, effectively two weeks in arrears and two weeks in advance.

12. The claimant was initially engaged to attend to the claimant each evening for one hour from approximately 8 pm until 9 pm, when the claimant would assist Mrs Rice in preparations to retire to bed.

13. It had been intended that the claimant, who is a qualified swimming teacher, would take Mrs Rice to the swimming pool each week, on a Monday late

afternoon, if the swimming pool was available. The claimant was able to take Mrs Rice to the swimming pool on some occasions from February onwards.

14. On Thursday evenings, the claimant would on occasion arrive early and join Mr and Mrs Rice for fish and chips which were ordered from the local pub.

15. On Friday evenings, the claimant would often drive Mr Rice to the pub and return to attend to Mrs Rice and they would have a "pamper night".

16. On other occasions, the claimant would join Mr and Mrs Rice for a social visit when Mr Rice cooked a meal. The claimant would on occasion bring her friends to visit.

17. During March, it was agreed that the claimant would increase her hours and that she would be paid at a set rate of £320 per month. Mr Rice understood this to be the maximum the claimant was entitled to, given that she was in receipt of Universal Credit.

18. During April, Mr Rice attended a conference and the claimant provided Mrs Rice with overnight support.

19. Around January 2022, the claimant agreed to accompany Mr and Mrs Rice on a trip to the USA to attend their nephews' weddings. Mr Rice made arrangements for the claimant's travel, including flights to Southampton and a cabin on the Queen Mary to New York. They were due to depart on Friday 27 May 2022.

20. On one occasion, apropos accompanying Mr and Mrs Rice on holiday, Mr Rice said that he wished that the claimant's cat would get run over. He also on one occasion when the claimant drove him to the pub called her car "a jalope". On another occasion when Mrs Rice dropped a smoothie, the claimant had to clean it up with Mr Rice standing over her.

The May 13 Incident

21. On Friday 13 May 2022, the claimant attended to her duties as usual. Mr Rice attended the local pub and consumed alcohol. He returned home, then the claimant left at or around 9 pm.

22. At 23.48, Mr Rice texted the claimant her own mobile number. This was a mistake. The following text message exchange ensued:

KB: Mick, you just sent me my own phone number?

MR: Yes messed up. I was trying to send it to my other phone. So you were on my contact list for my iphone.

KB: Ahh, cool. Have a great weekend!!

MR: Sorry I get lonely and want to chat. Just ignore or delete me.

KB: 🤣🤣🤣

MR: True. I won't say anymore as I have to be professional – that is unless you want me to.

23. The claimant did not reply to that text that evening.

24. The next day, Saturday 14 May at 09.33, the claimant replied as follows:

KB: Hi Mick, no I don't. Can I ask, do I get paid tomorrow? Just because it's a Sunday or will it be Monday I get paid please?

MR: Well it should be paid tomorrow as I have set it up for pay on 15 May. Let me know if you don't get it tomorrow?

KB: Okdoke, thank you.

25. On Sunday 15 May at 06.51, the claimant sent Mr Rice another text:

KB: Good morning I haven't been paid.

MR: I will check my end – maybe banks just do the transfer on week days

KB: Probably not on a Sunday

MR: Yep I just checked and it has listed the payment for 16 May even though I scheduled it for 15 May.

26. On Sunday 15 May 2022, the claimant travelled to Glasgow for her band practice when she spoke to her friends about the incident.

27. On Monday 16 May 2022 at 13.24 the claimant texted Mr Rice as follows:

KB: You crossed a boundary on Friday that I will not and cannot tolerate. I won't be taking Suzanna swimming today. Or perhaps ever, or until my distain has subsided. You can tell Suzanna, and I will be in touch with the sisters. You cannot be inappropriate like that with me.

28. On Monday 16 May 2022 at 17.10 Mr Rice responded by text as follows:

MR: I apologise most profusely. Please forgive me. I was out drinking. It won't happen ever again. I shall tell Susanna that you cannot make it today. Sleep on your decision as we do not want to lose you as a carer.

Agreement to resume work

29. On Monday 16 May 2022, the claimant attempted to contact Mrs Rice's sister, Mrs Jackie Deasey, by telephone.

30. At 21.28 the claimant received a text from her as follows:

JD: Hi Kerris Jackie here. I'm with my sister Cathy. Would you like to talk now if that suits you? Kind regards J

31. The claimant spoke to Mrs Deasey and an arrangement for the claimant to see Mrs Rice on her own to discuss matters was suggested.

32. On 17 May 2022, the claimant sent the following text to Mr Rice:

KB: I want to speak with Susanna on my own. Tomorrow. Pick up my guitar and please have the money you owe me ready to pick up too. My trust…my own time and way"

MR: Okay I understand. Let me know what time is best for you and I will leave the cottage so that you can speak with Susanna alone.

33. On 17 May around 9 pm, Mr Rice texted the claimant:

MR: Suzanna would like to speak with you now. I will go to the Snug so that you are alone with her. I will leave the additional £70 in cash that we owe you…

I am sorry for this mess and upsetting you. I think Susanna wants to try and sort things now. Let me know if you can come and I will leave immediately.

KB: OK, I will be 5 mins. Just leaving now.

MR: Just taking Suzanna to the toilet

KB: I'm here Just going to the garage will come back again.

MR: Okay

34. Following liaison with Mrs Rice and Mrs Deasey, the claimant understood that an agreement had been reached that for the next two to three evenings Mr Rice would not be present and it would only be the claimant and Mrs Rice.

35. This agreement was not communicated to Mr Rice.

36. On Tuesday 17 May 2022 there was a text exchange between the claimant and Mrs Deasey, when the claimant asked for Mrs Rice's phone number, which Ms Deasey gave her, which continued:

JD: do let me know how things are when you can. Take care

JD: Is Mick there.

KB: Will update you tomorrow. Suzanna is glad I was honest. A little upset but we are ok. Mick's in the snug…

37. On Tuesday 17 May 2022, the claimant got in touch by text with Ms McKenna who was on holiday. They had the following text exchange, commencing 22.22:

KB: "All is ok. Bit of trouble with Mick. Not managed to get into the garden as weather still pish lol. Plants are great! Will check on tad babies tomorrow, when a break in the rain? How's holibobs Xx

LM: The weather is stunning here. Who's MICK? Holiday is fab love x

KB: Luck devil, it's shit here lol. Mick, Suzanna's husband. That's great Xxx

LM: Why what's happened

KB: Acht wait till you are home. Its nonsense. Don't wanna spoil your holiday, me and Suzanna are fine tho! Xx

LM: Great stuff are you still off to the US

KB: It's a bit more complicated than that and a bit of a long conversation for message. Will check Tad's tom tho xx

38. On Wednesday 18 May at 11.19 am Mrs Rice texted the claimant as follows:

SR: Kerris I was so excited about this trip, I am now wondering how I can manage to go without your help. I was looking forward to wearing all my new outfits. Mick was just a drunken idiot. I hope you can change your mind about the holiday then I know I will be able to go. Can you come at 8 pm tonight instead of 7. Thanks Suzanna

KB: Morning yes I was looking forward to it too. I do believe in second chances also. Although nothing like that can happen again. See you at 8 pm I need to know I'm safe

Claimant's resignation

39. The claimant attended on the evening of Wednesday 18 May 2022 as arranged. Mr Rice was in the living room but did not speak with or engage with the claimant. While the claimant was attending to Mrs Rice, Mr Rice answered a Zoom call from Mrs Rice's sisters.

40. On Thursday 19 May 2022, the claimant texted Mrs Rice at 11.47 am, as follows:

KB: Hi Suzanna unfortunately yesterday Mick was in the house when we …forward by not agreeing to the discussion we had the other day. I can't keep having curve balls thrown at me. Too many things are going wrong now with…boundary has been broken. It left no respect for healing this situation and I can't move forward if we are not respecting each other's feelings and wishes. I'm really at a loss now. I don't agree that Mick was drunk and being silly. Mick was inappropriate and broke my trust. He is not making it easy to more forward by….

41. On Thursday 19 May 2022 at 4.58 pm, Mr Rice sent an e-mail to the claimant in the following terms:

"Susanna has been out with Frances today – so she has only just shown me your text to her.

I'm sorry that I have made you feel vulnerable. I have already apologized for my inappropriate text and have promised that it won't happen again.

I thought when you texted Susanna to say that everyone deserves a "second change" that you would be coming on Wednesday evening, that we were back to some sort of normalcy – and that this included being able to be in the same room as you. I am sorry if I got this wrong.

I know that it was awkward yesterday evening and I tried to "keep quiet" and not be my usual chatty self as I thought that this would be easier for you. I am, should you want, prepared to leave the house and stay in the Snug when you come to attend Susanna. But I think that this should be time limited as I cannot leave every time you arrive for evermore.

I know that you were looking forward to going to the USA and we were due to leave next Friday. I do hope that you will be able to come on the trip as we are both sure that you would enjoy it.

If you decide to come – we have arranged a further £600 in cash to get next Wednesday to pay for the additional hours (on a 4 hour per day basis) during the trip. This is on top of your usual £320 plus £70 cash in hand.

Can you please confirm that you will be coming on the trip by Monday 23 May? If you cannot come, we shall try to make alternative arrangements.

I know that it will take a big leap of faith to trust me ever again – but I hope you can give me a "second chance".

Regards Mick".

42. The claimant responded by e-mail dated 19 May 2022 at 18.59 as follows:

"It was agreed that you would be out of the house for a couple of days so me and Suzanna could recalibrate. Move back into the routine and slowly. For me to feel safe and to ease back into a routine.

When you were there it was another break in our verbal agreement. Which essentially was a second chance.

I am a woman all alone in this world, who only wanted to help Suzanna. I think Suzanna is a wonderful woman, and I did enjoy chatting to you and I understood the situation very clearly.

Iv gave you time for the pub, took Susanna swimming and went above and beyond my duties as a personal assistant. I have believed that we all actually cared a little for each other, which in retrospect wasn't a healthy place to be, and very Naïve.

I just think its so wrong, you are a married man, whose wife I am caring for. It's really, really bad Mick! It's a side to you I never wanted to see. We all have thoughts. I know that, but acting on things and thinking is very different. I believed that you would have been able to control yourself, or at least figure out a way with Suzanna to fulfill 'needs' in a way that didn't jeopardise, Suzanna's care. I looked to you like a bit of a father figure (wrongly so, but it was just thoughts) and iv had a terrible home life. You were kinda rekindling my faith again until you did what you did. I loved spending time with you both, but now it all just seems so cheap and nasty. Iv Been so upset.

If I had a partner you may not have gone there, and that's not my fault! Makes it even worse really. I can't help where I am in that department, even though it's not where I thought I'd be at 40. I'm having to navigate through my life as best as I can on my own, and I am vulnerable. As much as I hate to admit it. Doing what you did only brings that closer to home for me and I have to deal with all that stuff too, on my own!! I don't have a carer, I'm my own carer, too. It's been inappropriate on so many levels.

I don't know right now. It was never even about the money for me. I have money I can live on. It was about me getting out and having a routine and purpose, in a

new environment, home town. I couldn't care about the Money!! I just keep getting let down. Over and over and I'm not strong enough anymore for it. I used to be.

Also, I had to mention the money you guys owed me, on several occasions until I received it the other day. Which is another broken boundary. I am still owed 70 for another Month, plus 5 or so hours overtime when you went away. You guys only gave me 70 and that was for one month. Iv been doing all these extra hours for months now. But as I said it wasn't even about the Money but now that's all it's about. Perhaps you should get someone else, who can do the hours and you can pay them properly. Who have a stable home life etc. Because I don't at the moment. I just moved here and finding my feet. It's probably a bit my fault too, but I was doing my best, my very best, but it wasn't good enough it seems. I took a leap of faith on many levels and it's just turning to shit, again!! I trusted you both and you guys have taken advantage.

Iv had to deal with a lot, on my own. Moving etc. It's been huge. You and Suzanna were a huge part of my settling in here. I just don't know how to move forward with all of this, when you guys keep breaking healthy boundaries with me?

I'm not super Human, contrary to belief!"

43. Mr Rice responded by e-mail the same day at 21.22, as follows:

"I am certainly not Mr. PERFECT! We can at least agree on that. We all have our own issues and demons. I do not think I am a Monster!

Watching my wife becoming more of an invalid day by day has affected me and I know I have behaved very badly.

The issue over money, I think, was partly to do with keeping your pay under £320 so that your benefits were not compromised. This has led to some confusion. Sometimes, things have gone too far and talking about it just makes it worse.

If you can take a deep breath and give us another chance we would both appreciate it.

I promise to be good.

Please let me know your decision.

Regards

Mick".

44. The claimant responded by e-mail at 9.25 am on Friday May 20, as follows:

"No sorry for your loss, but you should have appreciated what I brought to the table. Instead you didn't see my value. Then ultimately abused my trust. Twice now. I wish you both well. Being sorry then not changing is manipulation".

Claimant's response to incident

45. On Sunday 22 May at 9.16 am, the claimant sent an e-mail to Mrs Rice's social worker, Donna Dunn, in the following terms:

"Unfortunately, I am not providing Suzanna with care anymore. Mick Rice, her husband. Made inappropriate advances on me through text messages while drunk. I tried to sort it out, but again boundaries were broken and thus I can no longer put myself at risk. I thought you should know. I feel that young-ish, single women are not good idea for this placement.

Mick seems to have 'needs' that are not being met currently and he is apparently lonely.

I was PA and his advances were extremely unwanted and unwarranted. I worked hard and well with Susanna to give her top class care. I am very disappointed and now without a job.

I wondered if you know of any PA's required around my area?

Im really very disappointed at this stage as I really enjoyed working with Suzanna, Mick too however he took my kindness for weakness and that has spoiled everything!! I nipped it in the bud as soon as he said, but really, you can't take it back."

46. That e-mail was forwarded by Ms Dunn to the self directed support officer, Aileen Dominick. She advised that having sought advice from their legal department,

they could not get involved with the employer/employee relationship. She advised that a personal assistant in such circumstances can go to the police or lodge a claim in the employment tribunal, contact the PA network and/or make a formal complaint to Argyll and Bute Health and Social Care Partnership.

47. The claimant replied, *"I only wanted to let you know really, because in case another single female was to go into this placement. It may happen to them".*

48. On 25 May 2022, the claimant attended her GP. She provided a medical report, dated 17 August 2022, in the following terms:

"She presented to me on 25th May 2022 acutely agitated and distressed. She said that for the previous 10 days a male colleague at work had been making inappropriate and unsought advances. She is currently under the mental health team and was referred prior to this due to past trauma. She is on the waiting list for psychology to address this. The contacts with her work colleague had been extremely distressing and had triggered off her past traumas resulting in PTSD symptoms such as insomnia, rumination and agitation, such that her anti-depressants and anti-anxiety medicines are no longer working. I therefore had to prescribe her anti-psychotic medication at low dose (quetiapine 50 mg twice daily). She has continued on this on a reducing dose ever since. She told me that she had to give up work as a direct result, during our consultation on 25th May 2022. If she hadn't done this then I certainly would have been signing her off sick. She remains under review by myself and the mental health team".

49. The claimant has been in receipt of counselling for the condition of complex PTSD, which included a weekly call with a "listening ear support worker". Following the incident on 13 May, she increased the calls to twice weekly and then received a block of counselling which has recently concluded.

50. The claimant continues to receive benefits (Universal Credit).

51. The claimant commenced employment as a swimming instructor with Argyll and Bute Council in October teaching four classes each week.

Holiday pay

52. The claimant was initially paid at a rate of £10.02 per hour. For the month of January, she was paid £217.10. This represents 5 hours per week, paid at £10.02 multiplied by 52 weeks and divided by 12 months to give a monthly average. This was paid on 15 January 2022.

53. For the month of February, on 15 February 2022 she was paid a basic pay of £217.10 with 6 hours of overtime paid at £10.02 totalling £60.12.

54. For the month of March, the claimant was paid basic pay of £217.10, paid 15 March 2022.

55. For the month of April, the claimant was paid £320, paid 15 April 2022.

56. For the month of May, the claimant was paid £320, paid 31 May 2022.

57. The claimant took no holidays and received no holiday pay during her employment.

Tribunal's discussion and decision

Observations on the witnesses and the evidence

57. We appreciated, in our assessment of the witnesses and their evidence, that neither party was legally represented, and the claimant in particular clearly found that difficult, not least because of the subject matter of the claim and the fact that Mr Rice was representing the respondent himself.

58. There were, however, very few if any disputes about material facts in this case, not least because the key exchanges between parties were recorded in texts or e-mails which we have reproduced in full in this decision. As is often the case, it is the interpretation of those facts which are disputed, and in respect of which this Tribunal did not agree, which has resulted in a majority decision.

59. While we accepted the central facts of her case, we found the claimant's evidence to be unreliable in regard to some details, for example the date that she commenced employment, and the dates of events after the incident on 13 May.

60. Mr Rice argued, as we understood it, that the claimant had reacted the way that she did because of her mental health condition, which she has disclosed as Complex PTSD. He suggested this meant that she exaggerated her claims, and indeed that explains why she pursued this claim.

61. We did not accept that the claimant's reaction to the incident on 13 May could be attributed to her PTSD, although we accept that the impact of the incident could have been exacerbated by her condition.

62. The witnesses called by the respondent, Ms Markey and Ms Smout were essentially "character" witnesses and we had no reason to doubt their evidence. Likewise Ms McKenna who was called by the claimant gave evidence about the type of person the claimant is and how she would react to and deal with certain events. Given the legal issues which we had to determine, we placed relatively little weight on their evidence.

63. We found Mr Rice to be a credible witness who was prepared to concede as appropriate matters which might not show him in a good light. We accepted his evidence, including his evidence in regard to details such as dates. The majority, however, did not accept that he was entirely candid in the way that he gave evidence specifically about the incident on 13 May.

Equality Act claims

64. Although this Tribunal did not reach a unanimous conclusion about the outcome, we were in agreement about a number of conclusions, including the sums awarded, as identified below.

65. The claimant argues that the respondent has breached the Equality Act 2010, and she relies on both section 13 and section 26 to support her argument. She argues that the same facts support her claims both that she was directly discriminated against because of her sex (contrary to section 13), and that she was sexually harassed (contrary to section 26).

66. Section 13(1) of the Equality Act 2010 sets out the provisions relating to direct discrimination, which is where an employer treats or would treat an employee less

favourably than a comparator in the same material circumstances, because of a protected characteristic, in this case sex.

67. Section 26 of the Equality Act 2010 states that a person harasses another if that person engages in unwanted conduct related to a relevant protected characteristic, here the protected characteristic of sex, or in conduct of a sexual nature, and the conduct has the purpose or effect of violating the complainer's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainer.

68. In deciding whether the conduct has this effect, the Tribunal must take account of the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have had that effect.

69. The claimant argues that she was subjected to direct discrimination, that is that she was less favourably treated because of her sex. Direct discrimination requires a comparison to be made, and here the claimant relies on a hypothetical male comparator. The claimant's position is that had she been a man in the same or similar circumstances, Mr Rice would not have treated her the way that he did.

70. The claimant also argues that she has been subject to harassment related to a protected characteristic, namely sex, and also to conduct of a sexual nature, which had the purpose or effect of violating her dignity and which created an intimidating, hostile and degrading environment for her. No comparator is required for the purposes of proving harassment.

71. The claimant relied on what she believed was inappropriate behaviour on the part of Mr Rice which, prior to the offending text, amounted to a comment about wishing her cat dead; a reference to her car as a "jalope'; looming over her on one occasion when she was cleaning the floor; and, if we understood her evidence correctly, an occasion when she was removing her jumper.

72. We did not accept that this behaviour amounted to less favourable treatment because of sex. We did not accept that the references to the cat and the car, which Mr Rice admitted and put down to his sense of humour which he accepted that everyone did not share, could be categorised as less favourable treatment

because of sex. We thought that an employee of the opposite sex may well have been subject to the same or similar treatment. We did not accept that, at the time, the claimant believed that the incident when she had to clean up the smoothie or remove her jumper could be categorised as less favourable treatment because of sex.

73. Nor did we come to the view that such behaviour, prior to the incident on 13 May, could be categorised as harassment related to sex because at the time such actions had neither the purpose, nor indeed the effect, of violating the claimant's dignity or otherwise creating an intimidating environment. The claimant appears to have reflected on her treatment after the incident of 13 May and come to the view that these matters may have been linked, but there was no evidence to support that conclusion.

74. Indeed, we were also aware that the claimant had built up a good relationship with both Mrs Rice and Mr Rice. She said that she trusted them, that Mr Rice was something of a father figure to her, that she felt at home in their house. A friendship developed very quickly and we heard that they would socialise together on occasion. The claimant said that she brought her friends to visit, and that she had joined them for a meal when Mr Rice's daughter was visiting.

75. We do not accept that there was any inappropriate behaviour prior to the offending text. It may well be that the claimant has, on reflection and in retrospect, questioned some interactions with Mr Rice, but we do not accept that at the time these were considered by her, nor did they amount to, less favourable treatment because of her sex, or sexual harassment. This was a unanimous conclusion.

The majority decision

76. The Tribunal gave careful consideration to whether the text exchange could be said to amount to a breach of the Equality Act, either direct discrimination or sexual harassment or both.

77. The majority has concluded that although it requires inferences to be drawn from the language used in the text exchange, the final text in particular must be construed as a proposition to the claimant, and that was how she herself

understood it. The majority has come to this conclusion taking account of the context and surrounding circumstances: the fact that this was an unsolicited text exchange around midnight on a Friday night when Mr Rice admitted that he had been drinking, and Mr Rice's response to the claimant's reaction in apologising, admitting he was drunk, admitting it was inappropriate, promising that it would never happen again. Had it been entirely innocent the majority was of the view that he would have reacted very differently, for example by stressing that she was mistaken or had misunderstood his intentions.

78. It is true that the comment in the text was not overtly "of a sexual nature" and nor did it use sexually explicit language, but here the comment clearly indicates an intention to take the relationship to a different level. The majority understood this to be a proposition to the claimant to engage in a relationship beyond the friendship which had developed since she had commenced employment, with the inference that might be either romantic or sexual.

79. During evidence Mr Rice had explained the text to the claimant initially as a mistake but that he went on to say that he was lonely and wanted to chat. We noted that he said in evidence that he was lonely and that he was a chatty person, and this was confirmed by his witnesses, and we understood him to suggest that he was simply looking for someone to talk to. As the claimant said, it may well be that Mr Rice was lonely and that he did want to chat being a talkative person. However, she was of the view that he could have contacted family or friends but he would not have contacted his employee unless his intentions were not entirely innocent.

80. While in evidence Mr Rice conceded that the texts he sent were inappropriate, in submissions, the majority understood that Mr Rice had effectively conceded that the offending text did represent a proposition to the claimant, even if he did not do so in terms. This is because his submissions amounted to an argument that a proposition to a work colleague to commence a romantic or sexual relationship, unless it was egregious or offensive, could not be a breach of the Equality Act until that proposition had been rebuffed.

81. The majority was of the view in any event that if his intentions were entirely innocent, he would not have continued with the text exchange. Even if the first text was a mistake, he could have left it there. The claimant intends to "sign off", stating, "ahh, cool. Have a great weekend!!".

82. However, Mr Rice continued the conversation with the reference to getting lonely and wanting to chat, adding "just ignore or delete me", which implies an awareness that such an approach may be unwelcome.

83. The claimant's response was to reply with "laughing" emojicons. While this might well be ambiguous, the majority accepted the claimant's evidence that this was, in an exchange late at night where an employer was referencing being lonely and wishing to chat, an attempt to "laugh off", treat the suggestion as a joke, or diffuse the situation. The claimant said they represented "nervous laughter".

84. The claimant's reaction and in particular the delay in making it clear that it was unwanted, could, in the view of the majority, be explained by the fact that this was an employer/employee relationship, where an employer has power in relation to how an employee is treated when an employer's request is refused, with the potential to lose their income by being dismissed.

85. Had the exchange ended there the majority was of the view that it may well have been possible to interpret the references in an entirely innocent way. However, the following text is clearly a suggestion of a different order, namely that "I won't say anymore as I have to be professional – that is unless you want me to".

86. It is that text in particular, coming as it did after a reference to being "lonely" and wanting to "chat", and taking account of the context and surrounding circumstances, which convinced the majority that this is a proposition to take the relationship to another level. This is a crucial finding, because all subsequent analysis turns on that conclusion.

87. Given that interpretation of the text, the majority accepted the claimant's argument that this was less favourable treatment than a male colleague would receive because a male colleague would not have been propositioned in that way by Mr

Rice. The majority therefore concluded that this was less favourable treatment because of the protected characteristic of sex.

88. Prior to amendments to the antecedent legislation (The Sex Discrimination Act 1975), incidences such as this could only be presented as direct discrimination. However, because of the focus on the requirement for a comparator, the SDA was amended to include harassment related to sex, and subsequently harassment of a sexual nature.

89. The majority has come to the view that, even if it could be argued that the conduct did not amount direct discrimination, this conduct amounts to harassment related to the protected characteristic of sex.

90. Sexual harassment is defined as "unwanted conduct related to sex which has the purpose or effect of violating the dignity" of the complainer or of "creating an intimidating hostile degrading or offensive environment".

91. As there is no requirement for a comparator, the conduct simply needs to be "related to" the protected characteristic of sex, that is the conduct has to be related to the fact that the claimant is a woman. Conduct which is "related to" a protected characteristic is more extensive that conduct "because of" a protected characteristic (*English v Sanderson Blinds* [2009] IRLR 206).

92. The majority concludes, because we interpret the text exchange as a proposition to take the relationship to a romantic or sexual level, that the conduct is "related to sex".

93. The claimant relies also on the provisions of section 26 which include conduct "of a sexual nature". It is true to say that the text makes no specific reference to conduct of a sexual nature.

94. When it comes to conduct related to sex, harassment which is related to sex need not in any event be of a sexual nature; the form the conduct takes is irrelevant, and can include what might be termed "sexist" behaviour (such as asking women to serve tea because it is considered women's work).

95. The majority takes the view therefore that the fact that conduct does not explicitly state that Mr Rice was seeking a romantic or sexual relationship, or make any reference to sex at all in the text, that is nothing to the point when it comes to assessing whether the conduct was related to sex. We conclude that the approach by Mr Rice which was a proposition to take their relationship to a different footing was "related to sex". However, the majority also concluded that, given that interpretation of the text, it should also be categorised as conduct as conduct "of a sexual nature".

96. The definition refers to "unwanted conduct". Case law makes it clear however that there is no requirement for an alleged victim to have communicated that the conduct is "unwanted". Mr Rice in his text said, "ignore or delete me" and from this the majority takes the view that he is aware that his conduct may be unwanted. But in any event, in a number of cases, Tribunals have properly found that some conduct which is self-evidently offensive can amount to harassment even if the claimant has not expressly objected or made that clear in advance (see for example *Insitu Cleaning v Heads* [1995] IRLR 4 EAT).

97. In this case, given the majority conclusions about the interpretation of the text, it is self-evident that a proposition from an employer to an employee, particularly an employee engaged as a personal carer and caring for the perpetrator's wife, would be "unwanted".

98. It might be argued too, as Mr Rice did, that harassment implies repeated behaviour. Case law has confirmed however that one incident of harassment, if it is sufficiently serious, might be sufficient. Conduct need not be repeated behaviour, and a one off incident or comment can amount to harassment (*Richmond Pharmaclogy v Dhaliwal* [2009] IRLR 336 EAT).

99. Whether unwanted conduct is sufficiently serious to found a complaint of harassment is a question of fact and degree (*Insitu* above). In this case, the majority takes account in particular of the circumstances and context of this conduct. In determining whether any conduct, objectively, violates dignity or creates an intimidating, hostile, degrading humiliating or offensive environment, the context and broader circumstances need to be taken into account. Acts

themselves may appear trivial, but the context may produce a different picture, particularly where a power dynamic is in play (*Driskel v Peninsula* [2000] IRLR 151 and *Reed and Bull Information System Ltd v Stedman* [1999] IRLR 299).

100. Mr Rice in submissions urged us to take the view that a proposition at work could not be said to amount to harassment, because such events often happen in the workplace. He submitted that it can only be when the approach is "egregious or offensive", and where the person approached rebuffs or refuses the advance, that it could be said to be unlawful.

101. The majority did not accept this submission. Whether or not the particular approach in this case amounts to a violation of dignity depends on context. The context here is of the employer, that is the director of the respondent, making a proposition to an employee. But in the view of the majority there are particular aggravating factors here – not least because the claimant was working in the home of employer, that the perpetrator was married, and further that the claimant was caring for the perpetrator's wife, that she had built up trust with him, that she had developed a friendship, had come to see him as a father figure, and she had socialised with his daughter who is a similar age.

102. The majority came to the conclusion that the text exchange, which we have concluded is a romantic or sexual proposition, although it was one instance, in all the circumstances was sufficiently egregious to amount to unwanted conduct related to sex and conduct of a sexual nature.

Purpose or effect

103. If such conduct has the purpose of violating dignity or creating a hostile environment, then unlawful harassment will be established. This will require consideration of the perpetrator's intention or motive. As the harasser is unlikely to admit it, inferences may need to be drawn from the surrounding circumstances, there is no reasonableness requirement so that the claimant will be successful if it can be shown that the conduct had the prescribed purpose, even if the conduct would not normally be regarded by others as offensive.

104. In this case making such a proposition in the context described, in particular made by an employer to an employee where a power dynamic is at play, could be said to have the purpose or intention of violating the claimant's dignity (not least given Mr Rice's awareness that the approach may be unwanted).

105. However even if it is accepted that there was no intention on the part of Mr Rice to violate the claimant's dignity or to create an intimidating environment, unwanted conduct will amount to harassment if the conduct has that effect, regardless of the perpetrator's motive or intention, if it was reasonable for the claimant to have been offended by the conduct. So, we must consider whether or not it was reasonable for the claimant to have taken offence at receiving a text of that nature.

106. Mr Rice referenced in submissions the EHRC code of practice, at paragraph 7.18, and it is helpful to consider its terms when assessing this reasonableness question.

107. This states at paragraph 7.18 as follows: "In deciding whether conduct had that effect, each of the following must be taken into account: a) The perception of the worker; that is, did they regard it as violating their dignity or creating an intimidating (etc) environment for them. This part of the test is a subjective question and depends on how the worker regards the treatment. b) The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct; for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place. c) Whether it is reasonable for the conduct to have that effect; this is an objective test. A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended".

108. When considering (a) the perception of the worker, there is no doubt that the evidence is that the claimant took offence at the implications of the proposition in

the text. Although she did not immediately express any concerns, the majority did do not accept the fact that she did not immediately take issue with the text means that she was not offended by it. Mr Rice relies on the fact that it was not until Monday 16 May and after she had spoken with friends that she raised any concern, as well as the fact that the claimant calls the incident "nonsense" in the e-mail to Ms McKenna, to support his argument that she was not upset offended or traumatised by the text. The majority's view is that in an employer/employee relationship an employee may make take time to reflect on such an approach because of the implications the response may have for their position, treatment or even livelihood. Nor do the majority accept that the fact that the claimant downplays the incident to Ms McKenna means that she did not react adversely to it.

109. With regard to (b), the other circumstances of the case, we know that the claimant has experienced poor mental health, but we have taken the view that cannot be said to be the reason the claimant interpreted the text as she did. However, the majority took account as discussed above of the environment in which the conduct took place, and the power dynamic at play which might be said to be a cultural norm. This may also explain the delay in making her position clear to Mr Rice.

110. With regard to (c), as we understood it, Mr Rice sought to suggest that the claimant was "hypersensitive" and that another person subjected to the same conduct would not have been offended. That may well be true, but we did hear for example from Ms McKenna that she would have reacted similarly to such a text exchange. Although Mr Rice apologised emphatically and promised that it would never happen again, the fact is that the text was sent, and what was done could not be undone. This clearly would have impacted on any ongoing relationship between employer and employee. Given that we have concluded that this is a proposition from an employer to an employee, for the reasons discussed above, we take the view, objectively speaking, that it was reasonable for the claimant to react the way that she did, notwithstanding this was one incident and the language was not overtly salacious.

111. If we conclude as the majority has done that the conduct amounts to a proposition to alter the nature of the relationship from employer/employee, then the majority conclude that the claimant has established conduct related to sex which has the effect, if not the purpose, of violating her dignity and creating an offensive environment for her.

The minority decision

112. The minority in this case has concluded that it is not appropriate to interpret the text exchange as a proposition. As discussed above, this is a crucial finding which the claimant's case turns on. The minority takes the view that the text has to be read based on the clear wording on the face of the texts, and that no inferences should or could be drawn that this is anything other than a request to chat.

113. While such an approach was inappropriate, as admitted by Mr Rice, there was no underlying sexual harassment or discrimination, because Mr Rice would equally have said what he said to a male employee.

114. The minority reaches that view based on the surrounding circumstances, and the following facts in particular.

115. The claimant's initial response to the text exchange was to discuss regular issues related to the claimant's wage. There is a long gap between the text and the claimant suggesting that she had concerns about the exchange, during which time she had taken advice from friends. The text exchange did not impact negatively on her when she received it, because she had gone to Glasgow for band practice on the following Sunday and in the text exchange with Ms McKenna has passed it off as trivial. Had the claimant been affected the way that she claims she would have mentioned this more specifically to Mrs Rice or her sisters.

116. Further, this is the correct interpretation given the overall picture of a developing friendship, which had blurred the line between a conventional employer/employee relationship and a personal one. The claimant was becoming increasingly friendly with Mr and Mrs Rice. This included socializing with them, partaking of home cooked meals prepared by Mr Rice, and attending barbeques at their home accompanied by her friends. She was thus involved in a relationship with them

which was over and above the normal relationship of employer and employee, including for example the claimant driving Mr Rice to the pub on Friday evenings.

117. If Mr Rice had been contemplating developing a romantic relationship with the claimant, there had been prior opportunities which he had not taken to proposition the claimant. He did not, for example, make any excuse to accompany the claimant and Mrs Rice to the swimming pool.

118. The minority understood Mr Rice's response to the claimant's complaint to relate to the fact that he did not want to jeopardise the forthcoming trip to the USA.

119. In regard to Mr Rice's submissions, the minority understood these as making a general point about workplace relations and not as an admission or concession that he himself had made a romantic or sexual proposition. The minority took the view that Mr Rice did not concede that it was his intention to discriminate against or unlawfully harass the claimant on account of the text messages sent on 13 May.

120. The minority therefore decided that the evidence did not support the conclusion which the majority had reached that the text exchange amounted to an inappropriate proposition, but should be interpreted as a suggestion from a friend to have a chat because he was lonely. The claimant should not have read the text to mean that she was being propositioned, which was objectively an unreasonable interpretation of the text exchange.

121. Given that finding, the minority took the view that the conduct could not be said to be direct discrimination, because Mr Rice would have treated a male employee in the same way. Nor, for the same reason, could it said to be related to sex and there was no underlying harassment in the text exchange, so could not amount to sexual harassment.

The aftermath of the text

122. The claimant also relies on her treatment by Mr Rice after the text was sent. Her evidence was that an arrangement had been reached with Mrs Rice, brokered by two of her sisters, that Mr Rice would not be in attendance for two or three nights to allow her to "recalibrate". She argues that his attendance in the house and

indeed in the living room on Wednesday 18 May 2022 was in breach of that agreement and designed to intimidate her, or at least that it had that effect.

123. Mr Rice argued that this could not be an act of harassment for him to be in his living room in his own home, when his wife was present, and he did not have an interchange with the claimant. While we did not necessarily accept that had his actions been a deliberate breach of the agreement, we did accept Mr Rice's evidence that he was not aware of the agreement which had been reached. It may be that it had been understood that Mrs Rice would have communicated any agreement to Mr Rice, but Mr Rice stressed that he had difficulty communicating with his wife because of her condition, and we accept that he was not made aware of the terms of the agreement, or at least had misunderstood them.

124. We did not accept therefore that in isolation that conduct (of Mr Rice being present on the evening of 18 May) was less favourable treatment because of sex. Nor did we agree that this conduct, in isolation, could be said to amount to unwanted conduct related to sex. Even if it was, we did not accept that it was reasonable for the claimant to have treated this conduct as intending to intimate, partly because that there was no interchange between the claimant and Mr Rice, but particularly because he was not aware of any agreement. This was a unanimous conclusion.

125. The majority however concluded, notwithstanding that we did not consider that behaviour to amount to sex discrimination or sexual harassment given the particular circumstances, this did have an impact on the claimant. This was because she believed that an agreement had been reached and that agreement had been breached by Mr Rice. It was this in particular from her perspective which destroyed her trust given that she was attempting to give Mr Rice a second chance.

126. In summary, the majority has concluded, that the one incident, namely the offending text exchange, is sufficiently serious to amount direct discrimination and unlawful harassment contrary to section 13 and 26 of the Equality Act 2010.

Remedy

127. The majority has thus found that that there has been a breach of sections 13 and 26 of the Equality Act 2010, that is that the claimant was subjected to sex discrimination and sexual harassment. As a consequence of the harassment the claimant resigned her position. She is claiming loss of wages and injury to feelings.

128. The Tribunal was able to reach a unanimous judgment on the question of remedy.

Wage loss

129. We know that the claimant attended her GP following the incident and the GP said that she would have signed her off work had she not resigned. However, the claimant's position is that but for the discrimination, she would have continued to work for the respondent.

130. The claimant is seeking loss of wages for the months of June, July, August and September. She advised that she commenced a new part time job as a swimming teacher in October 2022. Although she lodged pay slips relating to that employment, these were incomplete and we had no exact figures relating to that employment. However, we understood from the pay slips that were lodged that she was earning broadly in the region of what she had been earning with the respondent, and we therefore take the view that there is no on-going loss. Indeed, the claimant in submissions stated that she was only seeking wage loss from May until October, and did not indicate that she was seeking ongoing losses.

131. On the basis that at termination the claimant was paid £320 per month, the sum due for the period from June to September, that is four months, is £1,280. This is a gross figure.

132. The Tribunal is under a duty to consider interest on awards for discrimination, even if a claimant does not apply for it (regulation 2(1) Employment Tribunals (Interests on Awards in Discrimination Cases) Regulations 1996). The interest rate to be applied is 8%. For monetary awards such as loss of wages, the calculation is based on the midpoint between the date of the act of discrimination

and the date of calculation, that is 12 December 2022. That we calculate is 213 days at 28 pence per day, which means interest totalling £59.64 must be added.

Injury to feelings

133. The claimant is seeking injury to feelings. She initially sought £7,000 (see schedule of loss submitted 8 November 2022) which was revised to £15,000 after she took legal advice (see schedule of loss submitted 15 December 2022).

134. We did not accept, as discussed above, if this is what Mr Rice sought to argue, that the claimant's reaction to the text could be said to be due to her medical condition, and the majority has found that his conduct did amount to unlawful discrimination.

135. We find however that it is one incident of discrimination. We take the view that is relevant to our assessment. The majority have taken the view that it is sufficiently serious to constitute sexual harassment, having concluded that it amounted to a proposition for the claimant to have a romantic/sexual relationship with Mr Rice.

136. We require to calculate compensation due, under section 124(6) Equality Act on the same basis as such an award would be made in the sheriff court, that is it may include an award for injury to feelings. It should be noted that one of the principles of assessing damages is that "you take your victim as you find them", sometimes known as the "thin skull" or "eggshell" rule. In this case that means that if the claimant's reaction to the incident was more profound because of her underlying condition of complex PTSD, than for others who might react differently, then we must make an award that reflects her reaction, regardless of any personal condition that may have made the claimant more susceptible to injury.

137. When considering the appropriate level of injury to feelings, we require to take account of the "Vento" bands. These bands are revised every year in Presidential Guidance. In respect of claims presented on or after 6 April 2022, the Vento bands are: a lower band of £990 to £9,900 (less serious cases); a middle band of £9,900 to £29,600 (cases that do not merit an award in the upper band); and an upper band of £29,600 to £49,300 (the most serious cases), with the most exceptional cases capable of exceeding £49,300.

138. We take the view that this case falls around the mid point of the lower band. We take that view for the following reasons.

139. We take account of the following factors: the text exchange was inappropriate and took place around midnight on a Friday evening; the claimant had built up a relationship of trust with Mr and Mrs Rice; that she had already come to see them as parental figures and particularly Mr Rice as a father figure; that she had socialised with Mr Rice's daughter who is a similar age to her; the claimant was an employee of the respondent and Mr Rice as director was in a position of trust; there was a power dynamic at play; the claimant worked in her employer's home and was caring for Mr Rice's wife; Mr Rice immediately apologised; he apparently realised that he had made a serious mistake; he sought to reassure the claimant that it would not happen again; there was only one incident which took the form of a text exchange and the language of the text was not overtly salacious; and the claimant had only worked for five months.

140. While this is one incident of harassment, we take the view that it is a serious breach of trust in the context of the employer/employee relationship. For an employer to proposition an employee has we have found here, must be viewed, albeit one incident in isolation, as serious, attracting a commensurate award for injury to feelings. The severity of that one incident, given the context, and its inevitable impact on the claimant, must be recognised in the award.

141. However, we consider that the claimant has exaggerated the culpability of the conduct of Mr Rice, particularly in the paperwork lodged relating to this claim. We accept that Mr Rice made one mistake, which was apparently out of character, and for which he apologised. Beyond that one exchange, we did not find fault with his conduct in regard to the claimant.

142. Further, we take the view that any impact on the claimant was short term. Although we were aware that the claimant reacted adversely to the incident, and that her mental health had suffered, we came to the view that the impact was not protracted. We came to this conclusion because she had removed herself quickly from the situation and within three months she had got back on track and got another job. There was no medical evidence lodged which suggested that the

impact was longer term or more serious. This was despite our understanding that she had been diagnosed with complex-PTSD and while it may be that the incident has had deeper or a longer lasting impact, there was no medical evidence before us to that effect.

143. Taking account of these factors, we were of the view that injury to feelings must sit within the lower Vento band. Reflecting however the severity of the one incident, we took the view that the award should sit around the mid point of the lower band. We therefore make an award of injury to feelings in the sum of £5,000.

144. Injury to feelings awards attract interest from the date of the act of discrimination (regulation 6(1)(a) Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996). At 8% of £5,000, that is £1.10 per day, over 426 days until date of calculation. The sum due therefore in respect of interest to the date of this judgment is £468.60, which must be added to the injury to feelings award.

Holiday pay claim

145. Regulation 13 and 13A of the Working Time Regulations 1998 sets out the amount of holiday pay due, namely 5.6 weeks. Regulation 14(2) confirms that an employer “shall” make a payment in lieu on termination for any untaken holidays. While regulation 14(4) permits a derogation from that, that relates only to circumstances where a worker has taken more leave than he is due on termination.

146. In this case we know that the claimant had taken no holiday and was paid no holiday pay. The claimant would therefore be due holiday pay pro-rated in respect of the hours she worked.

147. Mr Rice had calculated holiday pay based on 12% of sums earned. While we are aware that many employers use a 12.07 per cent accrual rate to calculate annual leave for workers who have irregular working patterns, this is a pragmatic solution based on the premise that the statutory annual leave entitlement of 5.6 weeks due under the Working Time Regulations represents 12.07 per cent of a working year of 46.4 weeks (i.e. 52 weeks minus 5.6 weeks). However, such an approach is not guaranteed to comply with the Regulations (as highlighted in the recent

decision of the Supreme Court in *Harpur Trust v Brazel* [2022] UKSC 21). The crucial difference is that the 12.07 per cent method calculates holiday entitlement as a percentage of hours worked, to be paid at the worker's normal hourly rate, whereas the Regulations base holiday entitlement on a proportion of the number of weeks in the holiday year that the individual has been engaged, regardless of the amount of work done (and whether or not any work has been done).

148. In the *Harper Trust* case, the Supreme Court held that the Working Time Regulations did not permit the employer to cap leave entitlement at 12.07 per cent of annualised hours. The Regulations simply require the straightforward exercise of identifying a week's pay in accordance with Ss.221–224 of the Employment Rights Act 1996 (ERA) and multiplying that figure by 5.6.

149. The relevant section in a case where an employee has no normal working hours is section 224, which sets out the correct calculation of a week's pay which is the amount of the employee's average weekly remuneration over up to 52 weeks (as recently amended).

150. In this case the claimant was paid a total of £1,351.42. She worked for a total of 22 weeks. The claimant's average weekly wage for the period which she worked was therefore £61.42. If that figure is multiplied by 5.6, this would give the holiday pay for a year, namely £343.95. For the weekly rate that would amount to £6.60 per week, which multiplied by 22 would give a total holiday pay due of £145.51. Clearly this is close to the figure of £141.81 which Mr Rice calculated using the 12.07% approach, but does indicate that it is not an entirely accurate approach.

151. Mr Rice admits that he did not pay the claimant holiday pay and he did not calculate or reference holiday pay on termination of employment. However he argues that he overpaid the claimant for the month of May and that he paid holiday insurance on her behalf (for the holiday to the USA). He argues that this should be off set against the holiday pay due. Mr Rice did not pursue a counter claim in this Tribunal, because of course he would not have been entitled to, there being no breach of contract claim made in this case.

152. The right to minimum holiday is a statutory right. The Regulations require that payment is made for holiday pay on termination. There is no provision to off set

in these circumstances. The claimant is therefore entitled to holiday pay, using the formula in the Regulations, that is she is entitled to a total of £145.51.

Conclusion

153. We have found that there has been a breach of the Equality Act in this case and that the claimant is entitled to holiday pay on termination.

154. The total sums due by the respondent to the claimant is set out in the table below.

Award	Calculation	Total
Loss of earnings	4 x £320	£1,280
Interest on loss of earnings	(£1,280 x 8% x 213 days) x £0.28	£59.64
Injury to feelings	Mid point of lower Vento band	£5,000
Interest on injury to feelings	(£5,000 x 8% x 426 days) x £1.10	£468.60
Holiday pay	22 weeks x £6.60	£145.51
TOTAL		**£6,953.75**

Employment Judge: **M Robison**
Date of Judgment: **13th July 2023**
Entered in register: **14th July 2023**
and copied to parties