



EMPLOYMENT TRIBUNALS

Claimant

A Freke

Respondents

(1) R Vikal
(2) Emma Victoria Limited t/a
Shapins Clinic

v

Heard at: Reading

On: 12 and 13 October 2023

Before: Employment Judge Anderson
C Baggs
F Wright

Appearances

For the Claimant: In Person

For the Respondent: Mrs Singh (solicitor, Peninsula)

JUDGMENT

1. Emma Victoria Limited t/a Shapins Clinic is added as a second respondent.
2. The claimant's claim of sexual harassment is upheld.
3. The claimant's claim of unlawful deduction from wages in the sum of £1522.05 upheld.
4. The matter of remedy will be considered at a separate hearing.

REASONS

Background

1. The claimant was employed by the second respondent, a beauty salon, as a beauty therapist, from 4 February 2022 until 8 December 2022 when she resigned. The first respondent is owner of the second respondent. The claimant brings a claim of sexual harassment and unlawful deduction from wages.

The Hearing

2. The parties filed a joint bundle of documents with 299 pages plus an index. The bundle included a witness statement from the claimant and from the first respondent. Both witnesses attended the hearing and gave evidence on oath.
3. It was noted by the tribunal at the outset of the hearing that the claim was brought against Mr Vikal, but that the claimant was employed by a company and, as a claim of unlawful deduction from wages was brought, the company should be a respondent. Mrs Singh, for the respondent, agreed and the second respondent was added with the agreement of both parties.
4. Judgment was handed down orally at the hearing but there was insufficient time to consider remedy. A remedy hearing has been listed separately. One of the issues the tribunal considered was whether some or all of the allegations of discrimination had been brought in time. A decision was reached on this matter before judgment was handed down but was mistakenly omitted from the oral judgment. That part of the judgment is included in the written reasons below.

The Issues

5. A list of issues, as follows, was agreed with EJ Brown at a preliminary hearing on 24 May 2023.

1. Time Limits

1.1 Given the date the claim form was presented and the dates of Early Conciliation, any complaint about something that happened before 29 August 2022 may not have been brought in time;

1.2 Were the harassment complaints made within the time limit in s.123 of the Equality Act 2010 ("EqA 2010")? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus Early Conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus Early Conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

a. Why were the complaints not made to the Tribunal in time? and

b. In any event, is it just and equitable in all the circumstances to extend time?

2. Harassment – s.26(2) EqA 2010

2.1 Did the Respondent do the following things:

2.1.1 In or around April 2022, ask the Claimant, who was a Beauty Therapist working for the Respondent, for a massage and when the Claimant refused to give Mr Rohit Vikal a massage, did he persist and ask the Claimant repeatedly to give him a massage.

2.1.2 On 3 May 2022, at the CACI training event in London, where training on electrical facials was taking place, send an inappropriate WhatsApp message, in which he advised the Claimant he was waiting for her in Reception, and when the Claimant went down to Reception, and he was not there, then send her a message saying he had meant it to be a surprise but he was only joking.

2.1.3 On 4 May 2022, wait for the Claimant outside her hotel room, and then insist on going into her hotel room with her as she opened the door, and then remain in her room pressurising her to agree to order pizza, and then stay in the Claimant's hotel room until around 10.30 pm.

2.1.4 On the 4 May 2022, as he was about to leave her hotel room at 10.30 pm, ask the Claimant for a kiss, and then a hug, and when she refused both ask her if she needed help with her homework for the course.

2.1.5 From April 2022 to September 2022, suggest to the Claimant on numerous occasions, and around three times a week, that he had feelings for her and he did not know how to deal with them.

2.1.6 In or around late June 2022 or early July 2022, at the end of a late shift and after some training, ask the Claimant to click on a link on his laptop which was a link to Pornhub, and then when the Claimant declined to click on it he then airdropped the same link onto the Reception computer.

2.1.7 In or around the month of July 2022, when the Claimant's shift ended and she requested her car keys from Rohit Vikal, then decline to hand them over and instead repeatedly ask her to chat to him.

2.1.8 In or around July 2022, tell the Claimant she had sexy legs whilst she was cleaning a room on the premises, and then add words to the effect of "don't get offended, but when are you going to get your teeth sorted?" and also, "everything needs to be perfect".

2.1.9 On multiple occasions between June 2022 up to the date of the Claimant's resignation in September 2022, touch the Claimant's knee whenever she was in his office, and frequently touch the badge that she wore on her chest.

2.2 If so, was that unwanted conduct?

2.3 Was the unwanted conduct of a sexual nature or sex?

2.4 Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

2.5 Did the Respondent treat the Claimant less favourably because the Claimant rejected or submitted to the conduct?

3. Unauthorised deductions

3.1 Were the wages paid to the Claimant at the end of January 2022, less than the wages she should have been paid?

3.2 Did the Respondent deduct the sum of £1,522.05 from the Claimant's wages?

3.3 Was any deduction required or authorised by statute?

3.4 Was any deduction required or authorised by a written term of the contract?

3.5 Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

3.6 Did the Claimant agree in writing to the deduction before it was made?

The Law

6. Harassment

s26 Harassment EqA 2010

(1) A person (A) harasses another (B) if—
 (a) A engages in unwanted conduct related to a 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 conduct 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.

7. Time

s123 Time limits EqA 10

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.

...

(3) For the purposes of this section—

- (a) conduct extending over a period is to be treated as done at the end of the period;
- (b) failure to do something is to be treated as occurring when the person in question decided on it.

8. Unlawful Deduction from Wages

s13.— Right not to suffer unauthorised deductions- Employment Rights Act 1996

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "*relevant provision*", in relation to a worker's contract, means a provision of the contract comprised—

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

Findings of Fact

9. The claimant commenced employment with the respondent on 4 February 2022 as Beauty Therapist. The first respondent is the owner of the second respondent. The second respondent is a beauty salon. Throughout the

remainder of the judgment the reference to respondent is to the first respondent, Rohit Vikal, unless otherwise specified.

10. At the claimant's interview it was discussed that the claimant wished to progress to management, and it was agreed by the respondent that this was a possibility.
11. The claimant's contract contains a document entitled 'Deductions from Pay Agreement' giving the second respondent the contractual right to deduct money owing to it, from the claimant's wages.
12. The claimant attended a number of external training courses during her employment. The second respondent paid for these courses. For each course the claimant signed a 'Training Agreement' which included the following clauses:

'If I leave my employment at any time, for any reason, including dismissal, once the training has been agreed and paid for by my employer, I undertake to refund my employer the "Total Cost" as mentioned above (pre-estimate of cost of training, this includes leaving before commencement of the training if it has been paid for and during the training taking place).

In addition, if I leave my employment at any time, for any reason, including dismissal, before the end of two year since my joining date. I undertake to refund to my employer total cost of training or a proportion based on the following scale:

- Less than 12 months after completion of training 100%
- 12 months but less than 24 months after completion of training 50%

In the event of my failure to pay I agree that my employer has the right as an express term of my Contract of Employment to deduct any outstanding amount due under this agreement from my salary or any other payments due to me on the termination of my employment in accordance with the legislation currently in force.'

13. The claimant claims that in or around April 2022 the respondent asked her for a full body massage. He scheduled it into her timetable without asking her. She refused him and he kept asking and pleading with her for a massage which made her feel uncomfortable. The respondent's evidence was that it was commonplace for the staff to practise treatments, including massage, on each other and for him to request a massage from an employee. He accepts that he asked for a massage from the claimant at that time. He says this was a reflexology massage rather than a full body massage, the claimant refused, and he did not pursue it further. The only fact in dispute is whether the respondent repeatedly asked for the massage after the claimant refused it. The tribunal finds on an overall consideration of the credibility of the witness evidence (which is set out in more detail below), where no-one else was present, that the respondent did persist in asking for a massage which made the claimant feel uneasy and under pressure to do something she did not want to do.

14. The claimant claims that from April 2022 to the time she was absent on sick leave (from 23 September 22) the respondent suggested on numerous occasions and around three times a week that he had feelings for her. There is no written evidence on this matter other than a WhatsApp message dated 22 September 2022 in which the claimant writes to the respondent:

'Rohit you asked me to be your girlfriend...that's pretty straightforward and after the multiple conversations we have had previously I cannot believe we are back here again.'

15. The claimant states that the respondent never discussed such matters in messages but always in person or on the telephone. The respondent denies that any such conversation ever took place and suggests that the claimant was getting confused because he had often discussed with her, her becoming his business partner. The tribunal makes no finding on the frequency of any such conversations but finds that the respondent did speak to the claimant on more than one occasion about his wish for her to become his girlfriend. The tribunal finds that such a conversation took place on 22 September 2022 as referred to in the claimant's WhatsApp message. The tribunal has reached this conclusion on the basis of an overall consideration of the credibility of the witness evidence (set out in more detail below), the fact that the claimant refers in the WhatsApp message to multiple conversations, and the level of detail about the discussions set out in her interview with the Peninsula investigator and in her witness statement. It notes also that the claimant did not return to work after this final incident on 22 September 2022 and gave that (the fact that the respondent had repeatedly tried to persuade her into a relationship with him) as the reason for not returning. The tribunal finds that the alternative reasons for the claimant's resignation put forward by the respondent are not credible (again more detail on this matter is set out below). The tribunal notes also that the claimant's witness evidence on this matter was not challenged in cross examination.
16. The claimant undertook an external training course during the week of 3 May 2022. She stayed at a hotel near Watford in order to attend the course. On the evening of 3 May 2023 the respondent sent the claimant a number of text messages stating that he was in the reception area of the hotel and was about to come up to her room. The claimant asked him if he was serious, told him she was washing her hair and eventually said she would meet him in reception. She went down to reception and texted him again. The respondent then replied that it was a joke, and he was not in the hotel at all.
17. On 4 May 2022 when the claimant returned to her hotel after her course the respondent was waiting for her. It is agreed between the parties that they ordered pizza and remained in the claimant's room for the rest of the evening. The respondent left around 10 to 10.30pm. The following issues are in dispute:

A. Whether the claimant invited the respondent to visit her at the hotel.

- B. Whether the respondent was outside the claimant's room or waiting in reception when she returned to the hotel.
 - C. Whether the claimant invited the respondent to her room so that he could see the defects in it, which she later set out in an online review.
 - D. Whether it was the claimant or respondent that insisted they should eat in her room rather than in reception or a restaurant.
 - E. Whether the respondent was reluctant to leave and asked the claimant for a kiss and a hug as he was leaving.
18. In relation to A the tribunal find that the claimant did not invite the respondent to visit her. There is no evidence that she did so in the prolific WhatsApp messages between the parties supplied to the tribunal. The respondent has given two different reasons as to why he was in the Watford area on the night in question. The first is that he had a friend in Aylesbury who had a mobile phone shop and whom he was visiting in order to upgrade his mobile phone (given in the Peninsula interview) and the second that he was visiting a warehouse in Watford, also owned by a friend, in order to purchase monitors and upgrade the beauty salons systems. In view of this inconsistent evidence and the overall findings on credibility set out below the tribunal prefers the claimant's evidence on this matter.
19. In relation to B C and D, where there is no evidence other than the two parties' words, the tribunal concludes, on an overall assessment of the credibility of the witness evidence, that the respondent was waiting on or near the claimant's room when she returned to the hotel, that he followed her into her room rather than being invited to it, and having pizza in the room was his preference and not the claimant's.
20. In relation to E, the tribunal does not find that the respondent asked for a hug or a kiss on exiting the room. Again, overall credibility was considered. The tribunal also noted that the claimant was asked at length about the 4 May incident by the Peninsula investigator, including twice being asked if she had anything to add and did not raise this allegation at that time. It was not raised until the preliminary hearing and the tribunal find that such an act, had it taken place, would have been something that would be raised at the investigation interview.
21. It is the claimant's case that in or around June or July 2022 at the end of a late shift the respondent tried to get the claimant to click on a link to content on Pornhub. The respondent denies that this incident took place. There is no documentary evidence. The tribunal finds that the incident did take place as described by the claimant. It has considered that this is a more overtly sexual incident than others raised but on balance, because of the level of detail provided by the claimant, in particular a description of the link being sent from phones to laptops to the reception computer, it finds that the incident took place.
22. It is the claimant's case that on one occasion in or around July 2022 she requested that the respondent return her car keys, which were in his desk drawer, so she could leave, and he did not do so, repeatedly inviting her to

stay and talk, though she refused to do so. Neither party was cross examined on this matter. The tribunal finds on an overall consideration of the credibility of the witness evidence, where no-one else was present, that this incident did take place. It notes that the claimant refers elsewhere in her witness statement to multiple occasions when the respondent would ask her to sit down and talk and then would start to talk about their relationship, and her description of this event follows that pattern.

23. The claimant claims that in or around July 2022 the respondent said she had sexy legs. Mrs Singh said to the claimant that there was an inconsistency in her story in that at the investigation meeting she referred to this incident as being earlier in her employment. The claimant said that it may be an error and also, she viewed July as still being quite early. The tribunal does not find that this inconsistency, if it is one, detracts from the claimant's credibility on this allegation. It notes again the level of detail the claimant provides in the witness statement. The tribunal finds on an overall consideration of the credibility of the witness evidence (which is set out in more detail below), where no-one else was present, that this incident did take place.
24. In September 2022, the claimant and the respondent had a conversation in which he suggested to the claimant that she should get her teeth sorted. The claimant, in her witness statement, said *'He asked me if I was going to get my teeth done and went on about someone important from the business visiting, saying "everything has to be perfect".'* The respondent was not cross examined on this point, other than denying that he made comments about the claimant's appearance, and did not refer to it in his witness statement. In the Peninsula investigation he denies that the conversation took place in the terms put forward by the claimant. He said that she raised that she may accompany her boyfriend to Poland or Turkey where she may have treatment. The tribunal finds on an overall consideration of the credibility of the witness evidence (which is set out in more detail below), where no-one else was present, that this incident did take place as described by the claimant.
25. It is the claimant's case that between June 2022 and the time that she commenced sick leave that the respondent touched her knee and the name badge she wore on her chest frequently. The respondent denies this. He said that he would tell people if their badge was not straight. He would not touch them. The tribunal finds on an overall consideration of the credibility of the witness evidence (which is set out in more detail below), where no-one else was present, that these incidents did take place and it notes again the level of detail provided by the claimant.
26. The respondent has raised the issue of the client's underperformance. Though not set out as a reason for her departure, this is implied. The tribunal does not find that the performance statistics provided in the bundle are evidence of deteriorating performance. It notes that there are references to incidents where the claimant may have fallen short in terms of customer service and also an incident in which the respondent told her and another employee that they should not be giving each other treatments in working

hours. In addition, there is an email from 30 August 2022 that sets out that the claimant's performance needs to improve if she is to progress towards management or more responsibility, rather than remaining as a beauty therapist. However, there is also evidence that the respondent was referring to the claimant as a possible future business partner right up until 22 September 2022 in the WhatsApp message of that date, and the claimant refers in the Peninsula investigation, which took place on 21 October 2022 to the respondent speaking recently to her about a company car. The tribunal finds that the claimant was not under any threat, at the time of her departure or grievance, of losing out on the chance to progress in the business or of having performance measures instigated.

27. The respondent has suggested that the claimant was confusing his conversations with her about becoming a business partner as being conversations about his wanting her to become his girlfriend. The tribunal finds that this suggestion has no credibility. The claimant is clearly able to distinguish between the two and was aware throughout her employment that a future business partnership was a possibility, and that this was a matter distinct from a romantic relationship with the respondent.
28. The claimant stopped attending work due to sickness after 22 September 2022. She was signed off with stress, submitting fit notes to cover the periods 26 September to 30 November 2022 and 28 November 2022 to 31 December 2022.
29. On 27 September 2022 the claimant emailed the respondent with a complaint raising allegations of harassment and requesting a response. The respondent replied that he had forwarded the claimant's letter to his HR company but would also reply directly to the claimant.
30. The respondent's HR advisers, Peninsula, carried out a grievance investigation. The claimant, the respondent and another employee were interviewed by Peninsula during the week of 21 October 2022. Peninsula produced a report on 8 November 2022 in which, out of ten allegations investigated, it found six of the allegations were unsubstantiated, three were not upheld and one was partially upheld. The partially upheld allegations related to the 3 and 4 May 2022 where it was found that the emails of the 3 May and the respondent turning up at the claimant's hotel were inappropriate, but the actions did not cause any upset to the claimant.
31. The claimant began early conciliation through ACAS on 28 November 2022. This ended on 7 December 2022.
32. The claimant resigned on 8 December 2022. The tribunal finds that the claimant resigned because she believed that she had been subjected to sexual harassment by the respondent. No resignation email was included in the bundle, but the tribunal has taken into account the comments made in the grievance by the claimant about her deteriorating mental health and the findings set out above in reaching this conclusion.

Credibility

33. In this case most of the allegations are of events that took place between two people, in private, and for which there is no documentary evidence. In reaching an assessment on credibility the tribunal has taken into account the interviews given to the Peninsula investigator during October 2022, the parties' witness statements and their oral evidence. Where it has observed notable inconsistencies, it has referred to these and they have played a part in the assessment. It notes that Mrs Singh referred to, in submissions, a number of inconsistencies on the claimant's part, but did not spell those out. The tribunal noted that many of the incidents described by the claimant were set out in great detail, such detail lending credence to the veracity of the accounts. For example, with the Pornhub allegations and the description of how the message was sent to various devices, or the detail of the conversations with the respondent about this 'thing', his name for his feelings for her. Overall, it found her evidence to be consistent and believable. Mrs Singh, for the respondent, said that the claimant's evidence was vague. The tribunal found that the evidence was not vague other than that there was a lack of detail on precise dates. Mrs Singh drew notice to the fact that the claimant had voluntarily accompanied the respondent on business trips and suggested that this weakened her credibility. The tribunal did not understand the claimant to be saying that she was in physical danger and until 22 September it was clear that she was committed to her employment and continuing in her role. Therefore, the tribunal drew no adverse inference from her continuing to carry out a full part in the business.

Submissions

34. Mrs Singh, for the claimant, said that any allegations about harassment that occurred before 29 August 2022 were out of time, and said that the claimant had made no submissions on time or whether the allegations constituted a course of conduct. She noted that there was no application for a just and equitable extension and that the rules on time were strict, with the burden on the claimant to show an extension was warranted. She said that the respondents were entitled to deduct training costs in accordance with the claimant's employment contract. Mrs Singh said that any allegation that the claimant had been treated less favourably as a result of refusing the alleged conduct was denied. She said that the claimant's evidence on dates was vague at the investigation meeting, in the ET1, the preliminary hearing and in cross-examination. She said that the claimant's accounts were inconsistent and this indicated that the facts had been exaggerated and embellished by the claimant in order to strengthen the claim. Mrs Singh said that on two occasions the claimant had gone on business trips with the respondent in her own car and asked why she would voluntarily put herself in such a position. Mrs Singh noted that the evidence of the respondent in cross examination was verbose and some of the WhatsApp messages painted a certain picture, however the respondent was able to provide context and explanations for most of those messages.

35. The claimant said that the respondent had frequently asked her to be his girlfriend, despite her being in a relationship with someone else, which had made her feel lost, sick, frightened and had led her to seek help and

participate in counselling. She said the conduct was unwanted, the respondent had breached boundaries and created an intimidating and hostile environment. In relation to time limits she said that the claimant's conduct was conduct extending over a period. His inappropriate behaviour was not one incident but gradually progressed over a series of months, which affected her mentally and physiologically. She noted that the incident which had most affected her was 4 May 2022 and denied that she had invited him to the hotel. The claimant said she found it embarrassing to talk about the situation and it was only when she did speak to her parents that she realised how bad the situation was. She now realised she had been manipulated and groomed over a number of months and has had to have a great deal of counselling.

36. Mrs Singh objected to the use of the words groomed and manipulated which had not been used before or put to the respondent in cross examination. The tribunal agrees that such claims were not in evidence and has had no regard to them in reaching its decision.

Decision and reasons

37. In reaching its decision the tribunal kept in mind that there was a clear power imbalance between the parties in that the claimant was younger, starting out on her career, and the respondent was an established businessman, her employer, offering her the opportunity to progress in her chosen field.

Harassment

38. For a claim under s26(2) Equality Act 2010, the tribunal needs to decide if the conduct alleged took place and whether it was of a sexual nature. If it decides that it did take place, it needs to decide whether it was unwanted and if so, whether it had the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

39. Although included in the list of issues at 2.5 the claimant has not claimed less favourable treatment because of rejecting or submitting to the alleged conduct either in her ET1 or in any documents or pleadings included in the bundle, and a consideration of that matter, which would be a claim falling under s26(3) of the Equality Act 2010, does not form part of the tribunal's decision.

40. The tribunal has adopted the numbering set out in the case management order at page 40 of the bundle except that it has split allegation number 8 into two parts – 8a and 8b.

1. In or around April 2022, did the respondent ask the claimant, who was a Beauty Therapist working for the respondent, for a massage and when the claimant refused to give Mr Rohit Vikal a massage, did he persist and ask the claimant repeatedly to give him a massage?

41. The tribunal finds that this conduct (namely the persistent requests for a massage in the face of the claimant's refusal) took place, that it was of a sexual nature, being a request for a full body massage which had clearly been

refused. It was demonstrably unwanted, and the tribunal accepts that this violated the claimant's dignity and/or created a hostile environment.

2. On 3 May 2022, at the CACI training event in London, where training on electrical facials was taking place, did the respondent send an inappropriate WhatsApp message, in which he advised the claimant he was waiting for her in Reception, and when the claimant went down to Reception, and he was not there, then send her a message saying he had meant it to be a surprise but he was only joking?

42. The tribunal finds that this conduct took place, that it was of a sexual nature, (being about the respondent visiting the claimant at her hotel room outside of the employment relationship). It accepts the claimant's evidence that it was unwanted and finds that is clear from the WhatsApp messages, and the tribunal accepts that this violated the claimant's dignity and/or created a hostile environment.

3. On 4 May 2022, wait for the claimant outside her hotel room, and then insist on going into her hotel room with her as she opened the door, and then remain in her room pressurising her to agree to order pizza, and then stay in the claimant's hotel room until around 10.30 pm.

43. The tribunal finds that this conduct took place, that it was of a sexual nature, being about the respondent visiting the claimant at her hotel room outside of the employment relationship. It accepts the claimant's evidence that it was unwanted and accepts that this violated the claimant's dignity and/or created a hostile environment.

4. On the 4 May 2022, as he was about to leave her hotel room at 10.30 pm, did the respondent ask the claimant for a kiss, and then a hug, and when she refused both ask her if she needed help with her homework for the course?

44. The tribunal has not found that this allegation was made out on the evidence presented and the claim of sexual harassment in relation to this allegation is not upheld.

5. From April 2022 to September 2022, did the respondent suggest to the claimant on numerous occasions, and around three times a week, that he had feelings for her and he did not know how to deal with them.?

45. The tribunal finds that this conduct took place and that it was of a sexual nature. It has made no finding on frequency other than that it happened on more than one occasion. It accepts the claimant's evidence that it was unwanted and accepts that this violated the claimant's dignity and/or created a hostile environment.

6. In or around late June 2022 or early July 2022, at the end of a late shift and after some training, did the respondent ask the claimant to click on a link on his laptop which was a link to Pornhub, and then when the claimant

declined to click on it did he then airdrop the same link onto the Reception computer?

46. The tribunal finds that this conduct took place and that it was of a sexual nature. It accepts the claimant's evidence that it was unwanted and accepts that this violated the claimant's dignity and/or created a hostile environment.

7. In or around the month of July 2022, when the claimant's shift ended and she requested her car keys from Rohit Vikal, did he then decline to hand them over and instead repeatedly ask her to chat to him?

47. The tribunal finds that this conduct took place and that it was of a sexual nature due to the circumstances in which it took place, i.e. that the respondent was seeking a relationship with the claimant. It accepts the claimant's evidence that it was unwanted and accepts that this violated the claimant's dignity and/or created a hostile environment.

8a. In or around July 2022, did the respondent tell the claimant she had sexy legs whilst she was cleaning a room on the premises?

48. The tribunal finds that this conduct took place and that it was of a sexual nature. It accepts the claimant's evidence that it was unwanted and accepts that this violated the claimant's dignity and/or created a hostile environment.

8b. Did the respondent say "don't get offended, but when are you going to get your teeth sorted?" and also, "everything needs to be perfect".

49. The tribunal finds that this conduct took place but does not accept that it was of a sexual nature. The claim of sexual harassment in relation to this allegation is not upheld.

9. On multiple occasions between June 2022 up to the date of the claimant's resignation in September 2022, did the respondent touch the claimant's knee whenever she was in his office, and frequently touch the badge that she wore on her chest.

50. The tribunal finds that this conduct took place and that it was of a sexual nature. It accepts the claimant's evidence that it was unwanted and accepts that this violated the claimant's dignity and/or created a hostile environment.

Unlawful deduction from wages

51. The second respondent relies on s13 (2) of ERA 1996 to make the case that the deduction made from the claimant's final pay of £1522.05 was lawful, as it was contractually authorised. The tribunal has found that the claimant was sexually harassed by the first respondent. It is the tribunal's view that in so doing the second respondent breached the implied duty of trust and confidence in the employment contract or the implied term that the claimant should not be sexually harassed at work. These are repudiatory breaches of contract, and the claimant was entitled to treat the contract as having ended.

The deduction from wages was therefore not authorised by a contract term and the tribunal upholds the claimant's claim for £1522.05.

52. The tribunal finds that in any event, sexual harassment having been upheld, and the tribunal finding that the claimant resigned as a result of this harassment, such a deduction from wages may be a financial loss arising from discrimination.

Time

53. The claimant's claim was filed on 16 December 2022. Taking into account time added on for the early conciliation period, any allegation made in connection with the sexual harassment claim that took place before 29 August 2022 is potentially out of time. The claimant made no application for an extension on the grounds that it would be just and equitable to grant her one. Her submission was that all of the conduct complained of was connected, i.e. conduct extending over a period. Though not spelled out by the claimant, the tribunal finds that this relates to conduct up to and including 22 September 2022 where there is evidence, disputed by the respondent but accepted by the tribunal, of the respondent having asked the claimant to be in a relationship with him that day.
54. In *Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686, [2003] IRLR 96 the Court of Appeal noted that the applicant needs to prove, in order to establish conduct extending over a period, (a) that the incidents are linked to each other, and (b) that they are evidence of 'an ongoing situation or continuing state of affairs'. In *Aziz v FDA* 2010 EWCA Civ 304, CA the Court of Appeal said that in considering whether separate incidents form part of an act extending over a period, 'one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents'.
55. All of the events complained of concerned only the first respondent, Mr Vikal, and the claimant. All of the allegations upheld are allegations of sexual harassment of the same or a similar nature, i.e. unwanted acts related to the respondent's wish to have a relationship with the claimant. The tribunal finds that the allegations upheld amount to conduct extending over a period which ended on 22 September 2022. All allegations comprising the harassment claim are in time.

Employment Judge Anderson
Date: 20 October 2023

Sent to the parties on:
15 November 2023.

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For the Tribunal Office