



EMPLOYMENT TRIBUNALS

Claimant: Mr Leyton Tinker

Respondent: Eyre Arms Limited

Heard at: Nottingham **On:** 24 June 2024

Before: Employment Judge Omambala
Mr R Jones
Mr A Saddique

Representation

Claimant: Mr M Hancock, Designated Appropriate Adult

Respondent: Did not attend and was not represented

JUDGMENT

- (1) The Claimant's complaint of:**
 - (a) unlawful harassment contrary to section 26(2) of the Equality Act 2010 is upheld.**
 - (b) unlawful victimisation contrary to section 27(1) of the Equality Act 2010 is upheld.**
 - (c) automatically unfair dismissal contrary to section 103A Employment Rights Act 1996 is upheld.**
- (2) The Respondent is ordered to pay to the Claimant the following sums**
 - (a) compensation for injury to feelings £2,500; together with interest of £179.66.**
 - (b) compensation for loss of earnings £2,403.82(g); together with interest of £368.83.**
- (3) The total sum the Respondent is ordered to pay to the Claimant is therefore £5452.30.**

REASONS

1. The Respondent is a public house which serves food. At the material time it had approximately eight employees.

2. No representative or employee of the Respondent attended the substantive hearing, and no communication or explanation was received to explain their absence. On behalf of the Claimant Mr Hancock had sent a copy of the Claimant's schedule of loss, witness statement and correspondence to the Respondent and its representative.
3. The Tribunal exercised its discretion to proceed. It received a small bundle of correspondence between the parties in evidence. It heard oral evidence from Mr Tinker and Mr Hancock.

Findings of Fact

4. The Claimant is a minor. He applied for work at the Eyre Arms Limited as a waiter and a pot washer and was appointed following a short interview with Doris Ewens of the Respondent.
5. There was a dispute about the date on which the Claimant's employment started. The Tribunal accepts the Respondent's evidence that he started work on or about 1 May 2022 and the Claimant's evidence that he worked four to five shifts a week.
6. The Claimant worked mostly in the kitchen as a pot washer. The Respondent employed a chef, Mr Matt Wragg, who also worked in the kitchen. The Claimant worked under Mr Wragg's supervision and control. He did not know Mr Wragg before he started working at the Respondent's pub.
7. During the course of his employment, in July and August 2022 Mr Wragg made a number of comments to the Claimant whilst he was at work. They included, "what are you doing my little sex machine?" and describing him as "gorgeous boy" and "my little sugar plum" and telling him, "Love you Leyton." When the Claimant commented on how dirty the pots were, Mr Wragg said, "You like it dirty." Mr Wragg also asked the Claimant how often he had sex with his girlfriend.
8. The Claimant did not answer Mr Wragg and tried to ignore his remarks. He told the Tribunal that they made him feel uncomfortable and "weird" and he tried to avoid talking to him. Mr Wragg made comments of this sort whenever they worked together and were alone. The Claimant told the Tribunal that Mr Wragg would say something to him every day.
9. The Claimant also told the Tribunal that on two occasions Mr Wragg had touched him inappropriately. On the first of those occasions the Claimant said that Mr Wragg had poked his "bum cheek" as he walked past and told him to "keep washing those pots." On the second occasion Mr Wragg had tickled the Claimant on both sides of his ribs as he was washing pots. The Claimant also described Mr Wragg grabbing his own crotch suggestively at him. The Claimant explained that Mr Wragg's behaviour made him feel awkward at work and that Mr Wragg only did these things to him when there was no one else around.
10. The Claimant explained that he did not know what to do. He said he was not going to tell Ms Ewens. However, on 6 August 2022 he told a new colleague, Kyle East, that Mr Wragg had "been inappropriate with him." because he wanted to tell someone about it. Kyle told another colleague Sarah Busby, who then told Ms Ewens.

11. The Claimant was told not to attend work pending an investigation of his allegations. The Claimant was invited to attend a meeting with Ms Ewens of the Respondent on 9 August 2022. He was accompanied by Mr Hancock who is a family friend. At the meeting the Claimant outlined what had been happening to him and handed Ms Ewens a note which summarised Mr Wragg's conduct. The Claimant was unable to recall precise dates and times for the incidents he reported.
12. The Tribunal accepts the evidence of the Claimant and Mr Hancock that during the meeting Ms Ewens criticised the Claimant for speaking to another member of staff about the incidents rather than speaking to her. Ms Ewens told the Claimant and Mr Hancock that she had known Mr Wragg since he was seventeen and he was [then] forty-two and no one had made an allegation against him in the past. Ms Ewens also praised his work.
13. Following the meeting the Respondent sent the Claimant a letter dated 10 August 2022 signed by Doris Ewens and Robert Ewens which terminated his employment. The letter referred to the Claimant having made "a very serious allegation against a member of our staff." It stated that because the Claimant was unable to provide full details regarding the times of the alleged incidents, they were unable to investigate the matter further. The Respondent stated that "until this matter has come to a conclusion, we feel it inappropriate for you to work in the same establishment as the accused member of staff." The letter also said that if the Claimant wished to involve the police it would assist with their enquiries.
14. The Claimant did report this matter to the police. There was an investigation but not a criminal prosecution. The Respondent did not permit the Claimant to return to work.

The Pleadings

15. The Claimant has been granted permission to amend his claim form to bring a complaint of (1) sexual harassment in addition to complaints of (2) victimisation (3) protected disclosure dismissal.
16. The Respondent has denied that the Claimant has done a protected act and/or made a protected disclosure. The Respondent denies that any protected disclosure was the principal reason for the Claimant's dismissal. The Respondent also denies that any protected act was an operative cause of his dismissal. The Respondent's pleaded case is that dismissal was the only option available to it in the light of Mr Wragg's denial of the allegations and the limited information that was available at the time.

The Law

Sexual Harassment

17. Section 26(2) of the Equality Act 2010 provides that a person harasses another 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).

'Unwanted conduct' can include spoken words, physical gestures, facial expressions and aggression. In this context, 'unwanted' means unwelcome

or uninvited conduct. The assessment of whether conduct was unwanted or not should be considered from the recipient's point of view.

18. Section 26(1)(b) provides that 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.
19. In deciding whether the conduct has the necessary purpose or effect the Tribunal must take into account each of the following: -
 - (a) the perception of B.
 - (b) the other circumstances of the case.
 - (c) whether it is reasonable for the conduct to have that effect.

Victimisation

20. Section 27(1) of the Equality Act 2010 provides that a person victimises another if they subject him/her to a detriment because they have done a protected act or believes that they have done or may do a protected act.
21. Section 27(2) (d) states that making an allegation that another person has done something which is contrary to the Equality Act 2010 is a protected act.

Protected Disclosure Dismissal

22. Section 43B (1)(a) Employment Rights Act 1996 ("ERA") defines a qualifying disclosure as any disclosure of information which in the reasonable belief of the worker making it, is made in the public interest and tends to show that a criminal offence has been committed, is being committed or is likely to be committed.
23. Section 103A ERA provides that an employee shall be regarded as unfairly dismissed if the reason or the principal reason for the dismissal is that he has made a protected disclosure.

Burden and Standard of Proof

24. The Claimant bears the burden of proving his case. The standard of proof is proof on the balance of probabilities.
25. If there are facts from which the employment tribunal could decide, in the absence of any other explanation, that the Respondent has breached section 26 or section 27 of the Act by harassing or victimising the Claimant, then it must hold that the harassment has occurred unless the Respondent shows that it did not breach section 26(1) of the Act.
26. In making its assessment the employment tribunal must consider all of the evidence as to the facts.

Conclusions

27. The Tribunal is satisfied that Mr Wragg engaged in the conduct which the Claimant described in his oral evidence and in writing at the material time. The Claimant gave clear and credible evidence. He did not seek to exaggerate his account. The conduct he described was unwanted conduct within the meaning of section 26(2) of the Equality Act. Mr Wragg's actions and remarks to the Claimant were suggestive and of a sexual nature.

28. The Claimant was embarrassed and intimidated by Mr Wragg's behaviour, and he did not know what to do about it. The Tribunal considers that having regard to their respective ages, to the fact that the conduct took place when the Claimant was alone with Mr Wragg and to the imbalance in power between the Claimant and Mr Wragg, it was reasonable for the conduct complained of by the Claimant to have the effect he described. The Tribunal has concluded that Mr Wragg's treatment of the Claimant had both the purpose and effect required by section 26 of the Equality Act 2010. It violated the Claimant's dignity and created a hostile and offensive working environment for him.
29. Further, the Tribunal has concluded that the Claimant did a protected act when he disclosed information about Mr Wragg's conduct to his work colleagues on 6 August 2022 and when he shared that information with Ms Ewens in the meeting on 9 August 2022. The Claimant alleged that Mr Wragg had acted unlawfully towards him by acting inappropriately and in a sexual manner.
30. As his employer, the Respondent was liable for Mr Wragg's conduct pursuant to section 109(1) Equality Act 2010.
31. The Tribunal has also concluded that in telling Ms Ewens about the unwanted conduct on 9 August 2022 the Claimant made a qualifying protected disclosure of information within the ERA 1996. The Tribunal is satisfied that the Claimant believed that in touching him without his consent and by engaging in unwanted conduct Mr Wragg was committing a criminal offence because he was a minor. The Tribunal finds that in disclosing this information to his employer the Claimant was acting in the public interest as well as to protect himself.
32. The Tribunal is in no doubt that the Claimant was dismissed because he had made a protected disclosure and because he had done a protected act. The Respondent was more concerned to protect and retain Mr Wragg, who was a long-serving and valued employee, than it was to protect the Claimant and investigate his allegations of verbal abuse and inappropriate touching. The Tribunal accepts that Mr Hancock raised the possibility of the Claimant being given alternative work at a different venue operated by the Respondent whilst any investigation took place. The Respondent rejected that suggestion and instead penalised the Claimant for having raised his concerns, by dismissing him.

Remedy

33. Having decided that the Respondent has acted in breach of the Claimant's statutory rights the Tribunal went on to consider the question of what compensation, if any, the Claimant should be awarded. The Tribunal reminded itself that only losses which have been caused by the Respondent's unlawful conduct are recoverable and that it is for the Claimant to prove his losses.
34. The Claimant gave evidence of loss of earnings caused by his dismissal. He would have worked for 27 hours per week for the remaining three weeks of his summer holiday at an hourly rate of £4.81. This led to a loss of £519.48. Thereafter, the Claimant would have reduced his hours and worked for 16 hours a week at the same rate until February 2023 giving a sum of £1,847.04. In addition to these sums the Claimant claimed for holiday pay of £37.30. The Claimant did not present any information on the

likely value of tips which he said would have supplemented his wages. In the absence of evidence, the Tribunal were not able to make any award under this head. The Tribunal award the Claimant the sum of **£2,403.82** loss of earnings.

35. The Tribunal was satisfied that it was just and equitable to make an award of compensation for injury to feelings having regard to its conclusion that the Claimant had been subjected to sexual harassment and had been victimised because he complained about Mr Wragg. The Tribunal had regard to the general principles in assessing an injury to feelings award and to the Presidential Guidance on such awards.
36. The Tribunal has decided that the evidence before it makes an award within the lower Vento band appropriate. The Claimant was a young person and vulnerable because of his age. The unwanted and unlawful treatment he experienced happened over the course of three to four weeks and caused him considerable anxiety, worry, embarrassment and distress. It resulted in the loss of part time employment which was important to him. The Tribunal has concluded that an **injury to feelings award of £2,500** is proportionate.
37. Finally, the Claimant is entitled to receive interest on sums due to him in respect of compensation for injury to feelings and past loss of earnings.
38. The Tribunal has calculated the interest due to the Claimant in respect of its award of injury to feelings in accordance with regulation 6(1)(a) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations, 1996, SI 1996/2803.
39. The date of discrimination was 10 August 2022. The date of calculation was 24 June 2024. The applicable rate of interest is 8%. The Tribunal therefore awards the Claimant the sum of **£368.82** (being 683 days x 8% x 1/100 x 1/365 x £2,500).
40. The Tribunal has calculated the interest due to the Claimant in respect of its award of loss of earnings in accordance with regulation 4 of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations, 1996, SI 1996/2803. Interest is calculated on the Claimant's net loss of earnings. The applicable rate of interest is 8%. The Tribunal therefore awards the Claimant the sum of £179.66 in interest (being 341 days x 8% x 1/365 x £2403.82).
41. The Tribunal therefore orders the Respondent to pay to the Claimant the sum of £5,452.30.

Employment Judge Omambala KC

Date 24 June 2024

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be

provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>