Case No: 2212116/2023

EMPLOYMENT TRIBUNALS

Claimant: Miss E Kaloudi Tsikni

Respondents: Mr M Kontis (1)
Alphakon Limited (2)

Heard at: London Central

On: 29-31 October, 2-3 December 2024,
22-23 January, 12-13 February 2025

Chambers: 24 February 2025

Before: Employment Judge Khan
Mrs D Olulode
Mr S Hearn

Representation
Claimant: Representing herself
Respondents: Ms S Richards, litigation consultant

Interpreters
Ms A Clift (30-31 October, 3 December 2024, 23 January, 12-13 February 2025)
Ms J Gjoni (23 January 2025)

JUDGMENT

The unanimous judgment of the tribunal is as follows:

(1) The first respondent sexually harassed the claimant (allegations SH1, SH3, SH4, SH5, SH6 and SH7).
(2) The second respondent made unauthorised deductions from the claimant's wages in the sum of £1988.45.
(3) The second respondent breached the claimant's contract by failing to pay her expenses of £499.53.
(4) The second respondent breached the claimant's contact by failing to make pension contributions into the NEST pension at the rate of 3% of the claimant's gross qualifying earnings.
(5) All other claims are not well-founded and are dismissed.
(6) The respondents are ordered to pay the claimant the sum of £2,487.98.

The compensation which the respondents shall be ordered to pay in respect of the complaints of sexual harassment and breach of contract (pension) shall be decided at a remedy hearing.

REASONS

1. By a claim presented on 12 July 2023, the claimant brought complaints of sexual harassment / sex-related harassment, unauthorised deductions from wages and breach of contract. The respondents resist these complaints.

The issues

2. We were required to determine the following issues based on the list of issues enumerated in the Case Management Order of EJ Flanagan dated 18 October 2023 and refined / amended during this hearing:

(1) Harassment related to sex / sexual harassment (Equality Act 2010 (EqA), section 26)

1.1 Did the first respondent do the following things:

1.1.1 (**SH1**) On 4 February 2023, Mr Kontis shared a story of two of his employees that became a couple and were having sex at a hotel near the coast in Athens during working hours [added by amendment on 30 October 2024].

1.1.2 (**SH2**) In March 2023, he told the claimant that on a previous occasion he overheard two gay men in the toilets having sex and he stood outside the toilets shouting things at them.

1.1.3 (**SH3**) In March 2023, in relation to a product called Erectin, he said that when visiting a male pharmacist, he would tell them “Come on man, I’m sure you bang 5 or 6 girlfriends, you need this. Shall I put you down for six plus one for free?”

1.1.4 (**SH4**) In March 2023, he told the claimant about a client of a therapist who was fantasising about her walking over him with her heels.

1.1.5 (**SH5**) In March 2023, he asked the claimant: “Come on Eirini, if a guy takes you to a 5 star suite at the top floor of a hotel, what would be happening next?”

1.1.6 (**SH6**) In March 2023, he said he had a very loyal customer named James who was buying many Erectin in one go and remarked “James is having a blast being very active and he must be a very happy customer” [added by amendment on 30 October 2024].

1.1.7 (**SH7**) In March 2023, he mentioned a female customer who contracted him through webchat asking if Erectin really works. She asked him if he had used it and Mr Kontis said that he had tried it a few times with his girlfriend and it was really good. Then the customer called him “impotent” for needing a product to perform [added by amendment on 30 October 2024].

1.2 If so, was that unwanted conduct?
1.3 Did it relate to sex?
1.4 Alternatively was it of a sexual nature?
1.5 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
1.6 If not, did it have that effect? The tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

(2) Time limits (EqA, section 123)

2.1 In respect of any of the complaints brought under the EqA which were added by amendment and are prima facie out of time:

2.1.1 Would it be just and equitable to extend time?

(3) Unauthorised deductions from wages (Employment Rights Act 1996, section 13)

3.1 It is agreed that the claimant was not paid wages for 1 day on 28 February 2023 and 10 days between 1-12 May 2023. The second respondent conceded that it made unauthorised deductions in the total amount of £1988.45.

(4) Breach of contract (expenses and pension)

4.1 The claimant claims that she is owed £799.89 in 'business expenses'. The second respondent conceded that the claimant was owed £385.39 in expenses.
4.2 The claimant has a 'miscellaneous' claim totalling £1,703.49, which is the total sum of bonus, healthcare expenses and car allowance claimed.
4.3 The claimant alleges that she has a shortfall in her employer pension contributions. She claims a total of £1,500 for funds that should have been attributed to her.

(5) Breach of contract (notice pay)

5.1 It is agreed that the claimant was dismissed without notice.
5.2 What was the claimant's notice period? The claimant states that it was 1 month.
5.3 Did the claimant do something so serious that the second respondent was entitled to dismiss her without notice?

The evidence and the procedure

3. We were unable to make any substantive progress on the first day of the hearing including to hear evidence (29 October 2024) nor were we able to hear any evidence on the fourth day (2 December 2024) or the sixth day (22 January 2025) or the first half of the seventh day (23 January 2025) because a Greek interpreter was required and one was not available.

4. The claimant otherwise participated and at all times gave evidence with the assistance of an interpreter.

5. On the first day of the hearing, it was explained to the claimant that her application to admit new evidence could not be considered unless she disclosed the material in question to the respondents together with an English translation of this material.

6. On the second day of the hearing, the claimant made an application to amend the claim. Part of this application which amounted to a further and minor particularisation of the claim was granted by consent and the remainder of this application was granted against the respondents' objection for the reasons we gave. This was a substantial amendment to add new facts and allegations of harassment, which was made almost 18 months out of time, and was being made at this relisted final hearing. However, the balance of hardship weighed in favour of granting this application because we were satisfied that the new allegations which were closely related to the four extant allegations of harassment, were important to the claim as, if well-founded, would give weight to the other allegations and our assessment of the first respondent's credibility, and the respondents confirmed that neither the new facts being advanced by the claimant nor the timing of this application would result in any practical difficulty in responding to these allegations.

7. For the respondents, we heard evidence from Miltiadis Kontis, the first respondent, and owner of the second respondent.

8. There was an initial hearing bundle of 337 pages. There was an additional 16 pages of English translations of documents in the bundle which were in Greek. Additional documents were either added by consent or by our order against the respondents' objections for the reasons we gave. We read the pages to which we were referred. An updated bundle of 450 pages was provided, as ordered, when the hearing resumed in January 2025.

9. We considered the written and oral submissions made by both parties.

10. References below in square brackets [ ] are to pages in the bundle.

Relevant legal principles

Harassment

11. Section 26 EqA provides that:

> *(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.*
>
> *…*

(4) In deciding whether conduct has the effect referred to in section (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.

12. In *Pemberton v Inwood* [2018] IRLR 542, CA Underhill LJ re-formulated his earlier guidance in *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336, EAT, as follows:

> "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

Time limits: just and equitable extension

13. It is for the claimant to satisfy that it is just and equitable to extend the time limit. There is no presumption that a tribunal will exercise its discretion to extend time. It is the exception rather than the rule (see *Robertson v Bexley Community Centre* [2003] IRLR 434).

14. In *British Coal Corporation v Keeble* [1997] IRLR 336 the EAT said that in considering this discretion a court should consider the prejudice which each party would suffer as the result of refusing or granting an extension and have regard to all the circumstances of the case, including:

(1) the length of and reasons for the delay
(2) the extent to which the cogency of the evidence is likely to be affected by the delay
(3) the extent to which the party sued has cooperated with any requests for information
(4) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action
(5) the steps taken by the plaintiff to obtain appropriate professional advice once he or he knew of the possibility of taking action.

15. In applying the just and equitable formula, the Court of Appeal held in *Southwark London Borough v Afolabi* [2003] IRLR 220 that while these factors will frequently serve as a useful checklist, there is no legal requirement for a tribunal to go through such a list in every case, "provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion". This was approved by the Court of Appeal in *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640 when it noted that:

> "factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

Breach of contract (notice pay)

16. The tribunal must consider, on the balance of probabilities, whether the employee's conduct was so serious as to amount to a repudiation of their contract of employment entitling the employer to terminate it without notice.

17. We must evaluate and weigh all the evidence before us, including any evidence which was not considered by the respondents at the time when the claimant was dismissed.

Pension (auto-enrolment)

18. Under section 3 of the Pensions Act 2008 (PA), an employer must make prescribed arrangements by which an eligible jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date. Section 4 PA provides that these arrangements may be deferred by up to three months from the automatic enrolment date on condition the employer gives the worker a notice of intention to defer automatic enrolment pension scheme (and complies with prescribed notice requirements). These provisions are enforceable by the Pensions Regulator although where terms have been incorporated into the contract this may also give rise to a breach of contract claim.

19. Further provisions relating to the practical arrangements which employers must make to automatically enrol eligible jobholders into a pension scheme are set out in the Occupational and Personal Pension Scheme Schemes (Automatic Enrolment) Regulations 2010 (the 2010 Regulations). Regulation 5B of the 2010 Regulations provides that where notice of termination is given within the first six weeks of the automatic enrolment date (and is not subsequently withdrawn) auto-enrolment becomes discretionary.

The facts

20. Having considered all the evidence, we make the following findings of fact on the balance of probabilities. These findings are limited to points that are relevant to the legal issues.

21. Miltiadis Kontis, the first respondent, is the owner of the second respondent, a business selling health supplements.

22. The claimant was employed by the second respondent as a Territorial Sales Manager for England from 28 February to 12 May 2023. Before that date, she had undertaken work for Mr Kontis on a freelance basis.

23. The claimant also had her own company, For You Health Ltd (FYH). We accept the claimant's evidence that they met in Muswell Hill on 26 September 2022 [209] when she told Mr Kontis that she had her own business selling health supplements and showed him marketing materials for her product range and they discussed prices [302-303]. This is consistent with a message sent by Mr Kontis to the claimant on 21 October 2022 [215] about the prices of her products and the margin she had offered his business in return for selling her products. Notably, in another message sent on the same date, Mr Kontis referred to one of the claimant's products 'Winter Boost' which the parties agreed was the only product in her line that competed directly with the second respondent's range. In oral evidence Mr Kontis agreed the claimant had told him that her previous employer had not objected to her business and had agreed to sell her products through their database. Mr Kontis' evidence was that he understood that the claimant was a sole trader not a company director.

24. At a meeting in Enfield on 13 January 2023 they agreed that the claimant would work for the second respondent business under a contract of employment to be agreed.

25. The claimant's evidence was that Mr Kontis agreed at this meeting that she could sell her products through his company, she could sell her products in her own time, she would have a company car to do both, a salary of around £50,000, a tablet and a phone. We find that Mr Kontis did not consent to the claimant selling her products during her working hours or in her own time as we accept his evidence that had the claimant marketed her own products to the same customers this would have undermined his brand which he was trying to establish. They had begun to explore the possibility that the claimant's range would be marketed by the second respondent subject to an agreement on profit margins for her products but until and unless such agreement was reached the two brands remained wholly distinct.

26. Following this meeting, the claimant sent Mr Kontis a draft contract on 23 January 2023. Although there is a dispute about whether this contract was agreed in principle, the parties agreed to the revised version of this contract proposed by Mr Kontis [62-86], which included the following provisions.

- The claimant's annual salary was amended (from £47,694) to £47,000 (clause 6.1) to be paid in equal monthly instalments:

  > "calculated according to the taxe [sic] code 1257L £3,917 gross per month, £573 tax, £344 NIC, £3K net."

- The claimant would be reimbursed for all authorised and evidenced business expenses (clause 6.4).

- The notice period in the first four years of service was doubled to two months (clause 4.2), with the claimant having the option to

  > "terminate the contract sooner solely on the basis that you provide a substitute for your role who shares the same qualifications and is unequivocally approved by Mr. Miltiadis Kontis."

- There was a probationary period of six months (clause 4.1).

- The second respondent had the right to terminate the claimant's employment without notice in "appropriate circumstances" (clause 13.3) which included:

> "the Company has legitimate grounds in believing that you are guilty of misconduct or incompetence…or refuse to comply with a reasonable order from your superiors…"

The contract also provided for automatic enrolment in the NEST (clause 11.1) with the precise details to be provided on commencement. These details were not subsequently provided. It is agreed that the second respondent did not enrol the claimant into a pension scheme during the period in which she was employed.

27. Mr Kontis purported to cancel this contract with the claimant's agreement on 16 March 2023 [107, 111-112]. It is apparent from the contemporaneous correspondence that this stemmed from a recent discussion they had had about the claimant's pension. The claimant had emailed Mr Kontis on 3 and 14 March 2023 [108, 110] to query the pension contribution that the second respondent would be making; and in the latter email, she also referred to Mr Kontis buying a 10% stake in FYH. Then, on 16 March 2023, Mr Kontis emailed the claimant to make the following proposal [107]

> "After our discussion regarding your pension we need to revise the contract…In order to agree to new terms we need to write a new contract…Do you agree to cancel the attached signed contract?"

The claimant replied on the same date [111] to agree when she asked Mr Kontis to

> "create a new one that states the gross salary will be £49.900 annually if of course you have discussed this with your accountant and you are happy with this term."

She also asked Mr Kontis to confirm what percentage of equity in FYH he wanted to buy "in order to include the full range in Alphakon's catalog". Mr Kontis replied to confirm that new terms would be provided in due course and "We will make an offer for the For You Health brand as well but not on the same contract" [112].

28. The claimant was not provided with a new written contract. We find that the parties did not intend literally to cancel the contract in the sense of bringing it to an end so that they would cease to be bound by its terms but their intention was to engage in discussions to agree on a revised contract in which a limited number of provisions had been amended (including the pension terms). It is clear that in the meantime they continued to treat the contract as continuing. The claimant was paid in March and April 2023 in accordance with the salary at clause 6.1. It is agreed that the claimant was not paid her salary for her first day of work on 28 February 2023 which we find was inadvertent. The claimant was also reimbursed for all the expenses she claimed in those two months. This included reimbursement for car rental

up to 9 May 2023 [325]. As will be seen, the claimant also purported to rely on clause 4.2 to vary the notice period when she resigned and Mr Kontis also relied on the same clause to insist that the claimant was required to provide two months' notice. We therefore find that the same contract subsisted until the claimant's employment ended in May 2023.

The allegations of harassment

SH1

29. During a meeting on 4 February 2023 the claimant and Mr Kontis discussed the use of a GPS tracker on the claimant's company car. It was agreed that the claimant would instead be provided with a tablet with a SIM card which would ensure that her activities outside of work would not be tracked. In an email sent by the claimant to Mr Kontis two days later [103] she wrote:

> "Regarding the tracker, since you asked, I believe it's better if you use it on the tablet that you will provide, since the car will be used for both work and personal use. The tablet will be used exclusively on the calls to present our portfolio. It is very important to add this term in the contract in order to protect your business. UK law is taking very seriously people's privacy…"

30. The claimant claims that during this discussion, Mr Kontis told her that he had used GPS to monitor employees in Greece through which he had discovered that two of his staff were having sex at a hotel hear Athens during their working hours. He told her that they had been dismissed. Mr Kontis accepted that there was a discussion about a tracker and he agreed to provide the claimant with a tablet with a SIM card. His evidence was that there was no need to explain the reason for this, as the claimant was an experienced sales representative. He wanted to track the claimant to monitor her work which would involve her visiting 5-8 pharmacies a day. He said that the claimant's allegation was a nonsense and a fabrication.

31. There is no reference to this allegation in the claimant's email of 6 February 2023 nor in her claim form, although in the latter document the claimant complains that the discussion about the GPS tracker "made me feel very uncomfortable" [14]. We accept that on the face of the email, the claimant appears to be concerned about a potential breach of privacy rights. However, we find that this discussion took place. The claimant's allegation is detailed and plausible, in the circumstances in which it is agreed that there was a discussion about the use of a tracker to monitor the claimant's movements; and, as will be seen, Mr Kontis agreed that he discussed other matters with the claimant which were of a patently sexual nature. We also find that the claimant did not refer to this allegation because she remained intent on starting work for the second respondent, having resigned from her previous job, and did not want to jeopardise her nascent employment relationship with Mr Kontis.

32. We also accept the claimant's evidence that she did not complain about this or any of the other comments which we have found that Mr Kontis made because she was embarrassed and, for the same reason, she did not initially disclose this conduct to her family or close friends.

33. We find that the impugned comments were of a sexual nature, they were unwanted and although we do not find that they were made with the purpose of harassing the claimant, because Mr Kontis was in effect explaining the utility of tracking his employees, we accept her evidence that the impugned comments embarrassed her, caused her to redden, made her feel disrespected and uncomfortable, and created an offensive environment for her. We find that the claimant's response was reasonable in all the circumstances and Mr Kontis' conduct amounted to sexual harassment.

34. The claimant undertook around six weeks' training with Mr Kontis between 28 February and 12 April 2023. The training took place in a therapy room in Regent Street, central London, which was leased by Chryssa Chalkia, an ex-partner of Mr Kontis and then director of the second respondent. We accept Mr Kontis' evidence that he used this room for training because his larger premises were being used to store stock, the therapy room had a whiteboard which he used for training and it was situated in a convenient and central location. We do not therefore find that Mr Kontis had an ulterior motive, as the claimant suggested. Nor do we find that the room was locked because we accept Mr Kontis' evidence that he has claustrophobia and the fact that the door remained unlocked is consistent with his conduct in relation to SH4.

35. The claimant alleges that during these training sessions, Mr Kontis sexually harassed or subjected her to sex-related harassment on six occasions.

SH4

36. It is agreed that Mr Kontis told the claimant that a client of Ms Chalkia had fantasised about her walking on him with her heels. We also accept his evidence that Ms Chalkia had told him that she was being stalked by this client who had knocked repeatedly on the door of her treatment room the previous week and had warned him to be careful because he would be using her room. We accept Mr Kontis' evidence that he relayed the impugned information to the claimant to explain why he had rushed out of his seat to respond to a knock on the door (which had been another therapist from a neighbouring office who complained about the noise they were making).

37. This information was not only of a sexual nature, it was also gratuitous because Mr Kontis did not need to refer to the fact or detail of Ms Chalkia's client's fantasy. We find that this had the effect of violating the claimant's dignity and / or creating the proscribed harassing environment for her, for the reasons set out below; however, we do not find that Mr Kontis had this purpose because we accept his evidence that he was trying to explain his reaction to the knock on the door.

38. The claimant also claims that Mr Kontis told her that he had recorded Ms Chalkia's therapy sessions. In her supplemental statement, the claimant added the further detail that this recording was needed for material to enable Ms Chalkia to complete her thesis. Mr Kontis' oral evidence was that there was no recording. On balance we find that Mr Kontis told the claimant about the recordings, because her evidence was detailed and plausible, although

we do not find that Mr Kontis told her that he had listened to these recordings.

SH2

39. It is agreed that Mr Kontis recounted an incident in 2013 when he had newly arrived in London, he tried to use a toilet in a restaurant and found it was occupied, and he overheard two men having sex. Mr Kontis' evidence was that he would have chosen his words carefully, would not have used the word 'sex' but a gentler word such as 'intercourse' or that the men were having 'an interaction'. When the claimant suggested that he told her that the toilet was 'occupied' he agreed and denied saying that the men were 'having sex'. He also denied saying two 'gay' men only 'two men'. He denied shouting at the men from outside the toilet.

40. Mr Kontis' evidence was that he and the claimant shared similar cultural backgrounds and would often share stories about the differences between London and Greece. He says he is genuinely confused that the claimant has construed this as being harassment. In oral evidence he said he was telling the claimant that that he was in shock, having grown up in a conservative culture. We accept that Mr Kontis chose his words carefully and, as the claimant suggested, and Mr Kontis agreed, he used the word 'occupied'. He was inferring that two men were having sex in the bathroom. He also conveyed he was shocked at their lack of discretion. It is likely that he had made the incorrect assumption that the claimant shared the same view. It is in keeping with that language that Mr Kontis did not use the word 'gay' as the sexuality of the men in this anecdote was obvious. In the context in which we find that Mr Kontis told the claimant that he was shocked, we accept his evidence that he did not shout nor tell the claimant that he had shouted from outside the toilet which would have drawn attention to himself.

41. We therefore prefer Mr Kontis' evidence over the claimant's. We find that this allegation fails on the facts because we have not found that Mr Kontis used the words 'having sex' or 'intercourse' or 'gay' or told the claimant that he shouted at the men, which were material components of the alleged harassing conduct.

SH3

42. It is agreed that during the claimant's training, they discussed Erectin, a product for erectile dysfunction, which the second respondent was licensed to sell in the UK. The claimant claims that Mr Kontis told her that when selling this product to male pharmacists he would say "Come on man, I'm sure you bang 5-6 girlfriends, you need this. Shall I put you down for 6 plus 1 for free?" There was a slight variation between the claim form and the claimant's supplemental statement (i.e. the latter document omitted the words "you need this"). In her oral evidence, the claimant repeated the alleged comment in full.

43. We were conscious that, for the most part, the impugned comments made by Mr Kontis were in Greek which the claimant had translated into English, using AI, in some cases. The claimant was therefore directed to repeat the

words she alleged Mr Kontis had used in the original Greek which Ms Clift then translated into English. The claimant's evidence was that Mr Kontis had used words in Greek which Ms Clift translated as "I am sure you have sex [with] 5 or 6 girlfriends". However, when putting this allegation to Mr Kontis, the claimant said: "Eirini, if I sell this product to a pharmacist I would tell them 'You must fuck 5 to 6 girlfriends. Can I put you down for 6 plus 1 for free?'" Mr Kontis observed that the claimant's case had shifted in that she used the Greek word 'gamao' which is equivalent to 'fuck' and 'pidao' which is equivalent to 'jump' or 'jump in'. In any event, he denied the allegation.

44. In her oral evidence the claimant said that she did not understand that Mr Kontis was proposing that she made suggestive comments to male pharmacists in order to sell this product. She didn't know why Mr Kontis was saying this. She said that she told him that she had a different sales tactic.

45. We prefer the claimant's evidence over Mr Kontis' evidence. We find that in the context in which Mr Kontis was providing training on selling his company's products, including Erectin, and in the circumstances in which he agreed that he made other comments which were not only of a sexual nature but which we have found were gratuitous, we find that this allegation is plausible. We also find that Mr Kontis' evidence was contradictory in that he agreed that this was a product to address erectile dysfunction but he was adamant it was not for sex performance notwithstanding the name of the product. His evidence lacked credibility. Although the claimant used two different Greek words for sex, they were in essence about the same issue. We find that it is more likely that Mr Kontis used 'pidao' (jump in) as this was consistent with his use of 'occupied' in relation to SH2.

46. We find that conduct which was of a sexual nature amounted to sexual harassment for the reasons set out below.

SH6

47. The claimant also claims that Mr Kontis told her about a customer named James who had bought a lot of Erectin in one go. The claimant alleged that Mr Kontis had used the words in Greek which Ms Clift translated as: "James buys a lot of Erectin, he must be very happy with the product, he had a good time and must fuck ['pidao'] a lot".

48. The claimant's oral evidence was also that Mr Kontis showed her the order on his phone and laughed about it.

49. Mr Kontis' evidence was that he didn't discuss clients, share client records and that he could not access client orders. This was not credible. Nor was it consistent with his evidence that he had been selling exclusively online prior to the claimant's employment. We find that the claimant's evidence is plausible. She referred to a specific name and product and to seeing specific orders on Mr Kontis' phone. We find that it is likely that Mr Kontis would have shown the claimant client records as part of her training as she did not have access to these records. We also take into consideration our finding that Mr Kontis' evidence on Erectin was wholly lacking in credibility.

50. We find that this amounted to sexual harassment for the reasons set out below.

SH7

51. The claimant claims that on another occasion, Mr Kontis told her that in responding to an enquiry via webchat about Erectin from a female customer he had informed the customer that he had used Erectin several times with his girlfriend and it was good [EJ/11] whereupon the customer told him that he was 'impotent'. In setting out this allegation in her supplemental statement the claimant used the word 'incompetent' which she corrected to 'impotent' when giving evidence. She explained that Mr Kontis had repeated the word in English which the customer had used.

52. Mr Kontis denied this allegation. His evidence was that queries were dealt with using a chatbot and he never corresponded directly with customers and he referred any queries about the products to his pharmacist.

53. We prefer the claimant's evidence. On Mr Kontis' evidence, if it was possible for his pharmacist to deal with customer enquiries via the webchat it was also possible for him. The claimant's allegation was detailed and plausible. The initial use of the word 'incompetent' was consistent with her evidence that Mr Kontis had recited the English word which the customer had used to him, and which she had initially misunderstood.

54. We also accept the claimant's oral evidence that she felt harassed by this conduct because it was too much information and oversexualized. We find that this was sexual harassment for the reasons we set out below.

SH5

55. The claimant also claims that during a training session that month, Mr Kontis said "Come on Eirini, if a guy takes you to a 5 star suite at the top floor of a hotel, what would be happening next?" In her supplemental statement, the claimant set out broadly the same allegation with minor variations, as follows: "Eirini, if a man takes you on the top floor suite of a fancy hotel after your dinner, what will happen next? What do you expect?" This was essentially the same allegation when translated by Ms Clift from Greek to English: "Eirini, if someone takes you to penthouse of 5* hotel after restaurant what do you expect him to take after?" Mr Kontis' evidence was that this was a total fabrication.

56. We find that this allegation is plausible. We accept the claimant's oral evidence that this was part of a discussion initiated by Mr Kontis about sales and what to expect from male pharmacists. It is relevant that Mr Kontis accepted that he referred to sex twice and we have found that he referred to sex on other occasions which he denied.

57. We also accept the claimant's oral evidence that this conduct more serious because it was directed at her. This was sexual harassment for the same reasons given below.

The harassing effect of SH1, SH3, SH4, SH5, SH6 and SH7

58. Although there had been many informal discussions between them, it is agreed that the claimant did not discuss any anecdotes of a sexual nature with Mr Kontis.

59. In each case, we have found that Mr Kontis' impugned comments were not only of a sexual nature, but they were also gratuitous. We find that they were uninvited and unwanted.

60. In her claim form, the claimant itemised allegations SH2 (which we have not upheld), SH3, SH4 and SH5 which she contended were examples of stories that Mr Kontis shared which made her "feel very uncomfortable" and which had "shaken me, made me feel very uncomfortable, stressed, insecure and cautious" [15]; in her original statement the claimant referred to Mr Kontis disclosing "unsettling anecdotes" which created "an uncomfortable environment"; in her supplemental statement the claimant complained that Mr Kontis made several statements which were "extremely inappropriate, rude and disrespectful" and made her feel "unsafe, uncomfortable, threatened and demeaned".

61. We find that each of these comments violated the claimant's dignity and / or created a degrading and offensive environment for the claimant. We also accept that it was reasonable for this conduct to have that effect. We also find that each successive act of harassment added to the impact of the previous harassment so that there was an additional cumulative effect.

62. Mr Kontis was in a position of authority and power, all of these comments except SH1, took place in a confined space and the claimant was not only new in post but reliant on Mr Kontis to complete her training and facilitate her successful integration into his company.

63. The respondents relied on several Viber messages in which the claimant repeatedly used sex-related slang in Greek i.e. "take the dick" [357], "On his balls" [373], "on his dick" [374], "the wanker" [376], "For three months he was wanking" [376] in private correspondence. We do not find that these comments in which the claimant was venting her frustration or anger about Mr Kontis with two close friends establishes or suggests that the claimant was not genuinely affected by Mr Kontis' unwanted conduct.

The claimant's resignation and dismissal

64. The claimant also complains that Mr Kontis contacted her regularly out of hours. It is agreed that all contact made by Mr Kontis related to work. In respect of the single video call made by Mr Kontis to the claimant late one night, we accept Mr Kontis' evidence that this was inadvertent and he ended the call as soon as he realised his error. Although this was not part of the claim for sexual harassment or sex-related harassment, we would not have found that conduct amounted to such harassment, had this been claimed.

65. The claimant's oral evidence was that she had been able to continue working for Mr Kontis despite his conduct towards her because her training

had been completed and she was now working in the field with little day to day contact with him. However, we find that this conduct which included the sexual harassment which we have upheld (as well as the allegations we have dismissed), being contacted by Mr Kontis outside regular working hours, the outstanding agreement on the payment of additional salary and confirmation of pension contributions, and the prohibition on her selling FYH products prompted the claimant to look for alternative employment.

66. The claimant received an offer of employment with another company on 2 May 2023. Her oral evidence was that she accepted this role by 9 June 2023. This offer was confirmed on 11 May 2023 with an anticipated start date of 12 June 2023. It is therefore likely that the claimant had already agreed to this start date before she received that letter.

67. The claimant telephoned Mr Kontis on 12 May 2023 to inform him that she had accepted a job offer with a start date of 12 June 2023, so that she gave him one month's notice to take effect on 11 June 2023. Mr Kontis requested that the claimant confirmed this in writing which she provided on the same date [38-39]. Finding that it is likely that the claimant would not have waited a day to send this email, we prefer her evidence that she called Mr Kontis on 12 May 2023, and not the day before as Mr Kontis maintained.

68. The claimant claims that in that in giving one month's notice she was relying on the clause 4.2 of the contract which gave her the option of providing less than two months' notice if she found a replacement. Her evidence was that when she gave her notice she told Mr Kontis that she had a few names for a potential replacement, he agreed to accept her truncated notice period and confirmed that he would find a replacement himself, and had a particular man in mind; and that during this call he was polite, very pleasant and took her news well.

69. Mr Kontis responded to the claimant's email later that evening [39] when he wrote: "I have a personal problem with the short notice as we agreed 2 months of notice and not one". In the circumstances, in which the claimant had informed Mr Kontis that she would be leaving in one month in any event (so that the notice she gave was not contingent on a replacement being found), we prefer Mr Kontis' evidence that he did not agree to a one-month notice period, as his contemporaneous response underlined. In the same email Mr Kontis told the claimant that

> "you are not our employee yet…your employment status is pending…We will arrange anything is covered from our previous contract as we did not have time to agree on the terms of the new one…"

He instructed the claimant to "stop working from today" and to send him an invoice for her working days in May

> "as we are not gonna pay you any salary out of contract because we simply don't trust you. Hence we won't pay any of this month's expenses…You can consider this collaboration over."

70. Mr Kontis' evidence was that the claimant had breached clause 4.2 by failing to provide two months' notice.

71. His evidence was also that the claimant had breached her contract by using the second respondent's resources to promote her own brand i.e. FYH and by failing to disclose that she was a director of FYH (as we have noted, Mr Kontis understood that the claimant was a sole trader not a director of a limited company). Mr Kontis asserted that this amounted to acting dishonestly, a wilful refusal to obey a reasonable management instruction to stop selling her products, a failure to act in the best interests of the company (in breach of clause 26.2 of the contract) and gross misconduct. His evidence was that he saw one of the claimant's products in a pharmacy in May 2023 which confirmed his suspicion that she had been selling FYC products to the same customers whilst employed by his company.

72. The claimant's evidence was that she only sold her own products in her own time, which Mr Kontis had authorised. We have found that this was not something which Mr Kontis had consented to.

Wages and other expenses

73. The claimant emailed Mr Kontis on 22 May [192] to itemise the specific dates when she had worked between 28 February and 12 May 2023. She received no further payments.

74. It is agreed that the claimant incurred expenses of £385.39 between 2-12 May 2023 [323]. The expenses which are disputed are a £15 Congestion Charge (CC) dated 2 May 2023 and a car rental charge of £399.50 dated 10 May 2023. The claimant's evidence about her whereabouts on 2 May 2023 was unclear: she said she visited the Zen pharmacy which was situated outside the CC zone and she was unable to recall where she had parked on that date.

75. The car rental charge related to the period 9 May to 23 May 2023 which had been incurred by the claimant on or around 10 May 2023 which was after the date on which she had accepted the new job offer.

76. The claimant also claims for her car rental costs up to 7 July 2023. Her evidence was that absent any agreement to the same, she assumed that they would be reimbursed because she had given one month's notice. However, she accepted that ceased to carry out any work for the second respondent after 12 May 2023; and she began her new employment on 12 June 2023.

Conclusions

Sexual harassment

77. We have found that SH1, SH3, SH4, SH5, SH6 and SH7 amounted to sexual harassment for the reasons set out above.

Sexual harassment: time limits

78. In respect of allegations SH1, SH6 and SH7, which were added by amendment on 30 October 2024, we find it is just and equitable to extend

the time limits so that they are deemed to have been brought within the relevant time limits.

79. The claimant explained that she had not initially understood that she was required to set out the full details of her allegations in the claim form. She had then understood that she had provided these details in the witness statement she had prepared for the hearing in July 2024. However, at that hearing (which was converted from a final hearing to a preliminary hearing because the parties had failed to complete their preparations, as ordered) EJ Woodhead had told her that her witness statement was deficient and she needed to provide further information. The latter is broadly consistent with the Case Management Order dated 4 July 2024 in which EJ Woodhead recorded that "The Claimant's witness statement did not explain assertions/claims she made" (paragraph 3) and the claimant was given permission to rely on a supplemental statement "setting out any matter in the LOI which is not currently address or properly explained in her Original Witness Statement" (paragraph 28).

80. The respondents conceded that the claimant's delay did not cause them any difficulties in defending these allegations.

81. We have found that these allegations were well-founded.

82. Overall, the balance of prejudice weighs in favour of extending time.

Sexual harassment: remedy

83. The amount of compensation, if any, to be awarded to the claimant in respect of the sexual harassment she was subjected to by Mr Kontis shall be decided at a remedy hearing.

Breach of contract: notice pay

84. Although it appears from the contemporaneous correspondence that Mr Kontis purported to unilaterally and retrospectively change the claimant's employment status from employee to self-employed contractor, it is agreed that the claimant remained an employee of the second respondent between 28 February and 12 May 2023.

85. We have found that Mr Kontis responded to the claimant's resignation on 12 May 2023 by dismissing the claimant with immediate effect on the same date.

86. The burden is on the second respondent to show that the claimant's conduct amounted to a fundamental breach of contract warranting summary dismissal.

87. We find that the claimant breached her contract when she gave Mr Kontis one month's notice on 12 May 2023.

88. We also find that the claimant breached her contract when she promoted her own brand whilst employed by the second respondent, whether in her

own time or not, because she had failed to comply with a reasonable management instruction. We accept that Mr Kontis' evidence that he had seen one of the claimant's products at a client's pharmacy in May 2023 which is consistent with the claimant's evidence that she promoted her FYC products during the period she was employed by the second respondent (albeit in her own time).

89. We do not therefore find that the second respondent breached the claimant's contract when it dismissed her without notice.

90. For completeness, we are not persuaded that the claimant breached her contract in failing to disclose that she was a director of FYC. We have found that the claimant told Mr Kontis in September 2022, that she had her own business and she showed him marketing materials for her product range. To the extent that Mr Kontis genuinely understood that the claimant was a sole trader, that was his assumption which would have been corrected by a search on the Companies House website and was not the result of any deliberate misrepresentation by the claimant.

Unauthorised deductions from wages

91. The second respondent conceded that in failing to pay the claimant her salary on 28 February and between 1 and 12 May 2023 it made unauthorised deductions from her wages in the gross amount of £1988.45.

Breach of contract: expenses

92. The second respondent conceded that the claimant was entitled under her contract to reimbursement of expenses incurred in May 2023 in the amount of £385.39.

93. In respect of the car rental charges claimed by the claimant, we have found that by the date she incurred the charges for the period 9 to 23 May 2023, on 10 May 2023 (which is the date on the claimant's expenses sheet [323]), the claimant had accepted the new job and agreed a start date of 12 June 2023. This was in breach of clause 4.2, which we have found Mr Kontis relied on when he summarily dismissed the claimant on 12 May 2023. We therefore find that the claimant was not entitled to reimbursement of any car rental charges after she ceased to be employed by the second respondent. Accordingly, she was entitled only to reimbursement for the period 9-12 May 2023, which we have calculated as amounting to £114.14.

94. We do not therefore find that the claimant was entitled to reimbursement of any car rental charges from 13 May to 7 July 2023.

95. Nor do we uphold the claimant's claims for a £15 CC payment on 2 May 2023 because she was unable to substantiate this claim.

Breach of contract: pension

96. It is agreed that the second respondent did not enrol the claimant into a pension scheme.

97. The respondents submitted that the claimant was not entitled to receive any pension because she had been employed for less than three months. They relied on section 4 PA 2008. However, section 4 PA 2008 provides for a deferral of up to three months from a relevant jobholder's start date. No such notice was given to the claimant. Nor, for completeness, was regulation 5B of the 2010 Regulations engaged because neither party gave notice of termination in the claimant's first six weeks of employment.

98. We find that in failing to auto-enrol the claimant into the NEST scheme, the second respondent breached her contract. Although the second respondent failed to revert to the claimant to confirm the rate of pension contributions it would make to the claimant's NEST pension, we find that it is necessary to import into the contract the statutory minimum right to an employer contribution rate of 3% of gross qualifying earnings. The claimant is entitled to receive compensation for lost employer pension contributions at this rate for the period of her employment, the amount to be decided at a remedy hearing.

Remedy hearing

99. A preliminary hearing will be listed for make case management orders for a hearing to decide on remedy in respect of the claims for sexual harassment and breach of contract (pension).

Employment Judge Khan

21.05.2025

Sent to the parties on:

22 May 2025

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For the Tribunal:

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