



EMPLOYMENT TRIBUNALS

Claimant v **Respondent**
A Scottscape Group Limited (in Liquidation)

Heard at: London (South) (via CVP) **On:** 6 & 7 May 2025

Before: Employment Judge Fredericks-Bowyer
Tribunal Member D Rogers
Tribunal Member Dengate

Appearances

For the claimants: In Person
For the respondent: Did not Attend

RESERVED JUDGMENT

The claimant's complaints of sexual harassment against the respondent are not well-founded and are dismissed.

REASONS

Introduction

1. This is our reserved judgment following two days of hearing before us. The claim arises from what the claimant alleges was sexual harassment perpetrated by her line manager, whom we refer to in this judgment as 'N'. The initials chosen in anonymising the individuals in this dispute bear no reflection on their real names.

The hearing

2. The claimant represented herself at the hearing and gave evidence in support of her claims. The documents supplied to us were all supplied by the claimant in the run up

to the hearing because the respondent is in Creditors' Voluntary Liquidation. A representative of the respondent in liquidation attended the first morning of the hearing but did not intend to take part. They were allowed to leave the hearing immediately and so the respondent took no part.

Anonymity Order

3. The hearing involves graphic instances of sexual communication, which it is necessary to reproduce in judgment. Given the private and potentially impactful nature of the material and relationship which forms the basis of the claim, the Panel asked the claimant if she wished to have an anonymity order made to shield her identity. The claimant submitted that all identities should be public.
4. N is alleged to have committed sexual misconduct. That misconduct has not been found, but there is nevertheless potentially severe impact upon him and his future prospects (and right to private life) from his identity being published. It is relevant, in our view, that he was not able to attend the hearing to explain himself or defend his conduct. It is, in our view, appropriate to make an anonymity order in respect of him and to shield his identity. In doing so, we have had regard to the principles of open justice and the right of others to express and report on this case. We do not consider that there is any need for N's name to be made public and we note there was nobody attending the hearing who wished to report on it. We made an anonymity order in respect of N.
5. A did not apply for an anonymity order, but we note the potentially severe impact upon her of having deeply personal matters published publicly. We are also concerned that A's name being published would allow there to be a link made to N in circumstances where we have taken steps to protect N's identity from entering the public domain. Following the same balancing exercise as outlined above, we made an anonymity order in respect of A.
6. We considered making an order in respect of the respondent in liquidation, given that it was a small employer. However, because neither A nor N (nor presumably anyone) are still employed by the respondent, we did not resolve to make an anonymity order about the respondent.

The issues

7. The issues were set at a case management hearing before Employment Judge Perry on 11 February 2025. The relevant issues relating to the sexual harassment claim were:-

7.1. Does the Tribunal have jurisdiction to deal with complaints about matters which took place before 29 August 2023 because of the operation of the applicable time limits?

7.2. Did the respondent do the following things:-

7.2.1. For a few days in early June 2023, N repeatedly ask A what her thigh tattoo related to?

7.2.2. *From early to mid June 2023, N showing A pictures of naked women on his phone?*

7.2.3. *In early to mid June 2023, N showing A a naked picture of himself?*

7.2.4. *In early to mid June 2023, N telling A that once she was in a dom/sub relationship, it's in her blood?*

7.2.5. *On 21 August 2023, N telling A:-*

7.2.5.1. *She had to call him Sir;*

7.2.5.2. *To ask him each morning if he wanted tea or coffee;*

7.2.5.3. *To text him each morning "what was his pleasure" and then to make it; and*

7.2.5.4. *The day's scenario she had to write to him about.*

7.2.6. *From 21 August 2023 until September 2023, N repeatedly:*

7.2.6.1. *Invading the claimant's personal space;*

7.2.6.2. *Brushing up against the claimant;*

7.2.6.3. *Telling the claimant to write him sexual letters; and*

7.2.6.4. *Suggesting the claimant had to do what he wanted or he would dismiss her.*

7.3. *Was that unwanted conduct of a sexual nature?*

7.4. *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?*

7.5. *If not, did it reasonably have that effect?*

Relevant facts

8. The facts as we find them on the balance of probabilities are as set out in this section. Where we have resolved any conflict in the evidence, or have preferred our interpretation of the documentary evidence before us, we explain why we have done so at the relevant point. In this case, our factual findings are based on only hearing evidence from the claimant. Plainly, our findings on the balance of probabilities may have been different had we heard from N. We did not.

9. A began working at the respondent in February 2023. N was her manager. We find that A and N's working relationship had sexual themes to it. This is apparent from the messages in the bundle as well as A's evidence. A also made the following factual assertions which we accept and find as fact:-

9.1. *in early June 2023, N saw A's tattoo on her thigh and asked her about it;*

9.2. *A told N she used to be in a dominant-submissive relationship but had left that behind her; and*

- 9.3. N revealed he had also had some interaction with that scene, and showed A some photographs of himself with few clothes on and of women dressed revealingly in latex. N said he had taken the photographs;
10. The whatsapp messages in the bundle start on 22 June 2023. The messages are friendly in tone. A wished N well for his wedding day in July 2023. There is no mention of any interaction or behaviour as we set out above and it is clear that the claimant did not complain about the nature of the conversations in June 2023 and nor did she pull away from friendly contact with N.
11. Around 1 August 2023, the messages become more flirtatious in tone. The pair exchange a joke about N engaging in dogging on a long drive, which A describes as “*great fun*”.
12. On 31 August 2023, A and N exchange the following messages:-
- A: “*Ur drawers need a tidy.. just saying...*”
- N: “*I might like rummaging in my drawers*”
- A: “*Lol, well I enjoyed my rummage...*”
- N: “*Haha*”
- A: “*I’m easily please..*”
13. Around this period, A says that N told her that he liked ‘bigger’ women like A, made explicit comments about her body, and asked her if she “*takes it up the arse*”. We accept that evidence, which was not opposed, and which we consider is broadly supported by the sexual undertones of the whatsapp conversations from the period which are before us.
14. A also says that she was “*shocked*” by the comments made to her by N. On the balance of probabilities, this seems to us unlikely and we do not accept that evidence. A is actively engaged in suggestive text conversation with A, which continues throughout the period in question. There is no indication of A discouraging the nature of the contact over this time period, and so we consider that she was not shocked by the comments made. We consider it more likely than not that the comments were made in conversation.
15. On 6 September 2023, A and N engaged in a conversation which they talked about in messages later in the day. A was, so long after the events, unclear about the precise timelines. She alleges that N would make unwanted physical contact with her around this time, and that somewhere in early September N instructed her what sort of sexually explicit messages she should write to him. She alleges that N would speak to her alone and tell her to message him with certain themes. She says he said he would sack her if she did not, and that nobody would believe her if she complained. She also said that N instructed her to call him “*sir*” and to ask him each day “*what is Sir’s pleasure today?*”.

16. From 4:30pm on 6 September 2023, the pair engaged in the following Whatsapp exchange:-

N: *"Great chatting today I'm glad you can talk to me. Nothing will ever shock me and it's nice having someone like-minded in the office."*

A: *"It's our secret though... I knew there was a reason I was drawn to you... Like u said, I am a woman who knows what I like and want"*

N: *"I would never breathe a word. I've been in and work in the fetish scene for many years... And I've always been greedy and an exhibitionist LOL"*

A: *"True x ohh me to, big girl and full of confidence"*

17. On 8 September 2023, the pair exchanged messages about how pain could be a good thing, after A had been stung by a wasp. A told N about some clubs she had attended in the fetish scene, and N told her that he preferred private parties because he *"like[s] it when a load of people can see what [he's] doing"*. A says that she also the same with a *"need to be watched"*.

18. On 11 September 2023, the pair had the following exchange:-

N: *"I got a tan"*

A: *"Any white bits?"*

N: *"I don't"*

A: *"Damn it, no inspection required... LOL... Oh my god my head pounding, not the sort of pounding I enjoy x I need cheering up"*

N: *"I'm in a conference, shame I wasn't in the photo you all had taken"*

A: *"Have fun thinking about all that x"*

N: *"I could have gone along the line"*

A: *"As long as I had a double tap... I always like a happy ending"*

N: *"Don't we all"*

A: *"Cat that got the cream... or should I say pussy"*

N: *"Love them"*

A: *"Say, big ones I hope"*

N: *"Wet ones"*

A: *"Even better, love a good squirt"*

N: *"Lol.. Heel on shoulders and squirt"*

A: *"Omg ffs no other way... Unless being held down, legs wide, a good fisting"*

N: *"lol"*

A: *"Ohh not forgetting magic wand on clit at the same time"*

N: *"Yes"*

A: *"No no no, clit wandering along with DP, not that I'm greedy... lol clit wandong, thank you, my headache has gone now, just another problem sitting in wet panties... lol, I'm easily pleased"*

N: *"Haha hope I helped"*

A: *"Well wriggling about in my seat xx... Lol... Typical bloke not finishing off what u started, so I'm just going to have to go home now and sort myself out xx"*

19. Later that day, N asked A if she "came":-

A: *"I did, it was like"*

N: *"Haha and at work... Lucky you... Gusher"*

A: *"Very much"*

N: *"Better open than shut I'm sure"*

A: *"True, so how was your conference?"*

N: *"Work wise very interesting"*

A: *"Lol didn't get distracted then"*

N: *"it would take a lot to distract me"*

A: *"Lol.. xx... well you made my headache go... and I pleased myself when I got home. So thank you for that xx gonna be sore tomorrow xx"*

N: *"You should have done it at work"*

A: *"Lol didn't have keys to your office, but I did have a little fiddle in the bathroom.."*

20. The claimant then sent messages in explicit detail about the smell of her fingers after the activities she said she undertook in the bathroom.

21. The following day, on 12 September 2023, N told A that he liked *"many hands"* on him and A asked to be invited along to his next *"play date"*. N also told A: *"I delete all messages as we can get in trouble re work"*. A agreed, saying *"great minds think alike"*. The following exchange then occurred:-

A: *"U could at least send me a sexy picture for my wank bank"*

N: *"Haha I don't have sexy ones I'm a man lol"*

A: *"FFS... What u like... a tease"*

N: *"Haha"*

A: *"Definitely going to start calling you SIR..."*

N: *"I like that"*

A: *"Ohh please Sir"*

N: *"I usually demand it"*

A: *"Of course it is expected Sir"... And suitably punished if not caused Sir no doubt"*

22. On or around 19 September 2023, A left N a letter in his office. A says that N instructed her to write the letter, which was a letter expressing affection for N. The letter was the subject of another whatsapp exchange on 19 September 2023:-

N: *"Morning [A]... Sir would love a cup of tea if you have time"*

A: *"Always have time for Sir... Sir is so so handsome"*

N: *"Haha well thank you"*

A: *"Sir, please do not laugh at me, when I speak the truth... Sir is killing me, FT all morning"*

N: *"Sir is only doing his job"*

A: *"But there is no happy ending for me Sir.. PMSL... I do hope Sir isn't cross that I gave u a letter, it just felt right at the time x x I spluttered the truth xx"*

23. A little later, A continued:-

A (at 12:14): *"Has Sir read my letter..."*

A (at 15:34): *"Sir, I hope u understand what I was trying to you how I felt x thank you Sir x ... Enjoy your evening Sir, I am home already!"*

N: *"I am very touched by your letter, and I hope your awakening leads to many years of loving yourself and the experiences you can have"*

A: *"Hi Sir... I am an understanding sub x as long as I keep Sir hydrated I am happy x I hope you don't mind the letter x I feel much better in myself again and am looking forward to getting f@@@ed again... xx... Sir has set me free"*

N: *"You have set yourself on, and if I am a part of that, I'm very glad"*

A: *"I will forever be grateful to you, not sure I'm enjoying the fanny twitching at work... every bloody time I set eyes on you Sir x"*

24. The following day, A told N he was *"handsome"* and *"aged like a fine wine"*. Subsequently, N told the respondent's HR department about the nature of the messages received from A and she faced disciplinary action.

25. Against the context of this documentary evidence in the form of messages, we find the following facts:-

25.1. N did not do any of the things set out at paragraph 8.2.5 in the list of issues; and

25.2. N did not do any of the things set out at paragraph 8.2.6.

26. We are secure in these findings on the balance of probabilities for the following reasons:-

26.1. The messages show the conversation between A and N was mutually flirtatious;

26.2. A openly engaged in discussion by whatsapp about her sexual interests;

26.3. A introduces the themes of a dominant-submissive dynamic, including introduction of the idea of calling N "Sir";

26.4. A engages in the exchanges with graphic detail and enthusiasm far beyond probable interaction from someone coerced into starting such conversations';

26.5. There are no complaints from A about what she now alleges was happening at the time;

26.6. A is genuinely concerned that her letter was not well-received, which does not sit well against the proposition that she was forced to write it; and

26.7. The first complaint A made about N's alleged conduct was after it was clear that N had terminated the conversations and raised the matter of her messages with the respondent.

27. In summary, A's evidence about the dynamic in the relationship between A and N is simply not credible when the messages are read alongside the allegations. A asks

us to believe that the messages are false, and are instead a record of things she was coerced into saying or writing. In our judgment, that is simply not credible given the easy and natural nature of the exchanges. We perceive that, as A gets more graphic and detailed throughout the messages, N actually pulls away from her. That is not consistent with N being the dominant person in a position of abuse.

28. Reflecting in the round on all of the evidence, we consider that A and N were in a consensual relationship of a sexual nature taking place, at the least, over the medium of whatsapp. Other than the claimant's bald assertions to the contrary, which do not make sense against the wording, tone and nature of the messages, there is no evidence of any coercion.

29. Indeed, our finding on this front is made more secure by the claimant's response on 13 October 2023 when told that N alleged the messages she sent him were unwanted (our underline for emphasis):-

"with regards to the allegations of gross personal misconduct which has been brought by [N], again this has come as a surprise as all messages sent between us were totally consensual."

30. Only on 18 October 2023 does A complain about N's alleged conduct, when she raised a grievance.

31. In all the circumstances, we find as a fact that A wanted and encouraged the attentions she received from N until N raised the matter within the respondent, when she saw making the allegations carried through to this claim as the best way to defend her continued employment at the respondent.

Relevant law

32. Section 26 Equality Act 2010 provides:-

"(1) A person (A) harasses another (B) if –

(a) A engages with unwanted conduct related to a 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 subsection (1)(b), each of the following must be taken into account –

(a) The perception of B;

(b) The other circumstances of the case; and

(c) *Whether it is reasonable for the conduct to have that effect.*”

33. Whether or not the harassment is sexual in nature is a matter of common sense by reference to the facts of a particular case (*Driskel v Peninsula Business Service Ltd and ors [2000] IRLR 151, EAT*). The *Equality and Human Rights Commission Code and Guidance* gives examples of sexual harassment:

- 33.1. Unwelcome sexual advances;
- 33.2. Touching;
- 33.3. Sexual assault;
- 33.4. Sexual jokes;
- 33.5. Displaying pornographic photographs or drawings;
- 33.6. Sending emails containing material of a sexual nature;
- 33.7. Suggestive looks;
- 33.8. Leering;
- 33.9. Making promises in return for sexual favours;
- 33.10. Sexual gestures;
- 33.11. Intrusive questions about a person’s private or sex life;
- 33.12. Making statements about one’s own private or sex life;
- 33.13. Sexual posts or contact on social media;
- 33.14. Spreading sexual rumours about a person.

Discussion and conclusions

34. There is no doubt that the conduct alleged by the claimant is conduct of a sexual nature. We have found that many of the allegations did not occur as a matter of fact. The June 2023 conduct which we did find is also conduct of a sexual nature.

35. We have concluded that the attention from N was wanted by the claimant. The messages which we have found to be consensual followed the act of alleged harassment. In our view, those earlier exchanges in relation to dominant/submissive relationships, and the showing of pictures, is why A and N were comfortable in striking up the whatsapp relationship that they did.

36. Consequently, where the conduct complained of is wanted, and not unwanted conduct, it cannot fulfil the definition of harassment under *s26 Equality Act 2010*.

37. It follows that the claim cannot succeed and it will be dismissed. The claim is dismissed.

Approved by: Employment Judge Fredericks-Bowyer

4 July 2025

Sent to the parties on: 7 August 2025

For the tribunal office: Emmanuel Chukwuma

