



EMPLOYMENT TRIBUNALS

Claimant

Respondent

W

v

Lincolns Care Ltd

Heard at: Cambridge

On: 28 August 2018

Before: Employment Judge Foxwell

Appearances

For the Claimant: In person

For the Respondent: No attendance

RULE 21 JUDGMENT

The Respondent having failed to enter a Response:

1. The Claimant's claim of sex discrimination succeeds.
2. The Claimant's claim of unfair dismissal is dismissed as she lacked sufficient qualifying service to bring such a claim.

REMEDY JUDGMENT

1. Contrary to section 26 of the Equality Act 2010 the Claimant was subjected to sexual harassment at work by Mr Juan Jose Guera Landazuri, an employee of the Respondent, in the period 9 February 2015 to 30 June 2015.
2. The Respondent is vicariously liable for the acts of Mr Landaruzzi.
3. The Respondent shall pay compensation to the Claimant for this unlawful treatment of **£24,103.09** including statutory interest. This sum is calculated as follows:
 - 3.1. Loss of earnings £874.05
 - 3.2. Interest on loss of earnings:
Period of calculation = 1294 days
Mid-point = 18 November 2016 (647 days)

$£874.05 \times 8\% \times 647/365 =$	£123.95
3.3. Compensation for injury to feelings:	£18,000
3.4. Interest on compensation for injury to feelings:	
Period of calculation = 1294 days	
$£18,000 \times 8\% \times 1294/365 =$	£5,105.09

REASONS

1. The Claimant began working for the Respondent, Lincolns Care Ltd, on 26 January 2015. Her employment ended on 30 June 2015. Having gone through early conciliation between 4 August 2015 and 4 September 2015 she presented a complaint of sex discrimination to the Tribunal on 4 September 2015 (there was also a complaint of unfair dismissal but as she did not have sufficient qualifying service to claim this I have dismissed that aspect of the claim). The claim did not proceed at the time because it was struck out for non-payment of fees under the Fees Order which then applied to Tribunal claims. Following a decision of the Supreme Court in July 2017 that the Fees Order was unlawful, this case was reinstated and given a new case number.
2. The Respondent failed to enter a response when the claim was initially presented or more recently when it was reinstated. Accordingly, I have entered judgment against it under rule 21 of the Employment Tribunal's Rules of Procedure 2013.
3. I have determined the remedy to which the Claimant is entitled at today's hearing. To do so I heard evidence from her and her husband and considered the documents in a slim bundle prepared by the Claimant for the hearing.
4. I make the following findings on the balance of probabilities and based on the evidence I have received.
5. As stated above, the Claimant's employment began on 26 January 2015. She was employed to provide support for adults with mental health or learning disabilities in their own homes.
6. On 9 February 2015 the Claimant was rostered to work with a colleague, Mr Juan Jose Guera Landazuri, for the first time. Mr Landazuri is a Spanish national. On this occasion Mr Landazuri attempted to kiss the Claimant. The Claimant thought that this was simply a cultural issue and thought nothing more of it at that stage. However, when they worked together again on 11 February 2015 Mr Landazuri stood directly behind her as she was working, described her as a "pretty lady" and then attempted to kiss her by grabbing her face between his fingers and thumb. He attempted to put his tongue in her mouth. A similar thing happened on 12 February 2015, this time in the presence of a service user.

7. The Claimant attempted to raise Mr Ladazuri's conduct informally with colleagues and her employers but was told firstly that this might simply be a cultural matter and later to be more forceful with him, for example by kicking him between the legs.

8. There were further incidents when Mr Ladazuri rubbed his hands on the Claimant's back, described her as a "pretty lady" and made his sexual interest in her well known.

9. In April 2015 there was an occasion when he touched her between her shoulder blades ran his hands down her back and felt her bottom. On another occasion in April 2015 he touched her breasts. He also asked intrusive questions about the Claimant's home and sex life.

10. All of this treatment had a profound effect on the Claimant. She complained to her employer, but, as I have mentioned, initially this was brushed off as a cultural manifestation or with advice simply to push Mr Landazuri away. When matters did not improve a manager, Mr Hussain, said that he would separate the Claimant and Mr Landazuri so they would not have to work together. No further action was taken against Mr Landazuri.

11. The Claimant reported Mr Landazuri's behaviour to the police and he was investigated. It transpired that he was a convicted sex offender who had already been deported from the United Kingdom on a previous occasion. I understand that he has been deported from the Country for a second time.

12. The Claimant was affected profoundly by her treatment; she was unable to work for two weeks in early June 2015 and was signed off sick by her GP. She was advised to take a course of antidepressants but decided not to. Her distress was heightened when Mr Landazuri was asked to come back to work after he was remanded on bail. She felt that she could not carry on with her employment any longer and left the Respondent on 30 June 2015. She was fortunate to obtain alternative employment within a couple of weeks she told me. I have taken that as two weeks.

13. I asked the Claimant to explain to me how this treatment had made her feel. She described becoming withdrawn and no longer having the courage to speak out. She told me that she feels worthless because she did not react to Mr Ladazuri's treatment as she thought she would have done before it occurred. She also told me that she is now fearful of being alone with men or of going out to pursue ordinary activities such as shopping. She said that she felt that she had not been listened to by her employer who simply did not care and that this has led to a loss of faith in those in authority.

14. The Claimant's evidence was corroborated by her husband who said that she used to be very outgoing and confident before this treatment.

15. I accept the Claimant's evidence and that of her husband that she is a changed woman because of the sexual harassment she was subjected to. It was clear to me that she had been significantly affected by this treatment.

16. Accordingly, I make a declaration that the Claimant was sexually harassed by Mr Landazuri and find that the Respondent is vicariously liable for this treatment which occurred while both were at work.

17. I am satisfied that the Claimant has suffered injury to feelings. There is no evidence of separate personal injury; the Claimant saw her GP at the time she was off sick and was advised to take anti-depressants but chose not to. The Claimant told me today that she has not taken any such medication since.

18. With the assistance of an advisor the Claimant had prepared a draft schedule of loss. I accept the base figures that she has provided for gross and nett pay. Her gross weekly pay when working for the Respondent was £276.64 and her nett weekly pay was £249.47. I accept that she suffered a loss of earnings of £375.11 when she was off sick between 9 and 21 June 2015 (two weeks' nett pay less £123.83 received). I also find that she suffered a further loss of two weeks' pay after her resignation on 30 June 2015. I find that her resignation was a consequence of the unlawful sex discrimination she was subjected to. I therefore award £498.94 by way of lost earnings for this second period. My total award for loss of earnings is £874.05.

19. The largest element of the claim relates to injury to feelings and the Claimant put this at £18,000 in her schedule of loss having regard to the Vento bands. She placed her treatment in the upper point of the middle Vento band. When considering this I looked at other similar cases as follows:

19.1 AA Solicitors Limited v Majid (2016) where £14,000 was awarded to a woman who was subjected to a campaign of sexual harassment over a period of 6 weeks in which the harasser attempted to touch her, hug her and squeeze her;

19.2 X v Y and Z (2006) where a four-month campaign of sexual harassment led to an award of £15,000; and

19.3 Bing v Chard Town Council (2006) where £15,000 was awarded in similar circumstances over an eight month period.

20. Having regard to these comparators, the nature of the treatment described and taking into account the impact of inflation and the general increase in awards consequent on the Simmons v Castle and D'Abel cases I accept that the correct level of injury to feelings in this case is £18,000 as claimed. Accordingly, I award £18,000 under that head.

21. I accept the Claimant's calculation of interest on injury to feelings of £5,105.09.

22. I also award interest of £123.95 on the out of pocket losses giving a total award of £24,103.09.

Employment Judge Foxwell

Date:31 August 2018.....

Sent to the parties on: 6 September 2018

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For the Tribunal Office