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EMPLOYMENT TRIBUNALS

Claimant ***Respondent***

D **v** **(1) Defence Unlimited International Limited (London)**
(2) Defence Unlimited International Limited (Canada)
(3) Edward Banayoti

HELD AT: **London Central** **ON:** **14 & 16 October 2019**

BEFORE: Employment Judge Glennie (Sitting alone)

Representation:

For Claimant: **Mr C Milsom, of Counsel**
For Respondent: **Neither present nor represented**

JUDGMENT

The judgment of the Tribunal is as follows:

1. **The complaints of:**

   (a) harassment related to sex contrary to s.26 of the Equality Act 2010;
   (b) victimisation contrary to s.27 of the Equality Act 2010;

   are well founded as against all three Respondents

2. **The complaint of breach of contract is well founded as against the First and Second Respondents.**

3. **Remedies will be determined at a hearing on 18 December 2019, with a time estimate of 1 day, before Employment Judge Glennie.**

REASONS

1. By her claim to the Tribunal the Claimant, who is identified as D under the terms of an Anonymisation Order, makes the following complaints.

1. Harassment related to sex, or sexual harassment, contrary to s.26 of the Equality Act 2010.

2. Direct discrimination because of sex contrary to s.13 of the Equality Act.

3. Victimisation contrary to s.27 of the Equality Act.

4. Breach of contract.

2. The Respondents disputed those complaints but by a separate judgment that I gave on 14 October 2019, I have struck out the response.

3. By virtue of Rule 37(3) of the Rules of Procedure, the case has proceeded as if no response had been presented. The Respondents have not attended and, beyond seeking a postponement which was dealt with in my decision on the strike out application, have not taken part in the hearing. There has been some email correspondence during the hearing from the Respondents, but that has not taken the matter any further. In an email sent on the evening of 14 October Mr Banayoti wrote opposing an application for costs, repeating a point about jurisdiction which I will deal with in due course, and then in the early hours of this morning Mr Banayoti sent an email stating that he was planning to appeal.

<u>The Issues</u>

4. There was a list of issues attached to the Case Management Orders made on 21 March 2019 and a copy of that is attached to these reasons as an annex. Two additional issues were identified, namely:

(1) Whether the Tribunal has jurisdiction to hear the claims against the Second and Third Respondents.

(2) Whether any of the Respondents employed the Claimant or whether the Claimant did any work for the Respondents.

<u>The Identity of the Corporate Respondents</u>

5. The Tribunal's Orders have recorded the First and Second Respondents as separate entities on the basis that one is a UK registered company and the other a Canadian registered company, and that is reflected in the claim form in terms of the addresses given for those companies. The Third Respondent Mr Banayoti has asserted, for example in his email to the Tribunal of 3 October 2019, that Defence International Unlimited (Ottawa, Canada) is a Canadian corporation. I note that there is a single name with different

company registration numbers for the UK and Canada shown on the job offer letter to the Claimant, to which I will be referring in due course. I cannot be sure of the position, it may be that there is a single entity with two registration numbers one in the UK and one in Canada, and it may be that there are two separate entities. It appears to me to be probable that the latter is the case and that there are two companies, one registered in the UK, the other registered in Canada, and so I will proceed on that basis. For ease of reference, however, I will speak of "the company" in these reasons, meaning the First and Second Respondents jointly.

The Evidence and Findings of Fact

6. The Claimant gave evidence by reference to a witness statement. There was a bundle of documents prepared by the Claimant's representatives and page numbers that follow refer to that bundle.

7. The evidence in the case necessarily comes from the Claimant alone. The Respondents through Mr Banayoti have challenged the Claimant's case in the most general terms in the ET3 and in correspondence on the basis that it is untrue. The response has been struck out, but I still have to assess whether or not I accept the Claimant's evidence. I find no reason not to do so. There is nothing to suggest that I should not accept the Claimant's evidence, on the balance of probabilities, and I do so.

8. The background to the claim is that the company's business is advising on, and the provision of equipment for, security purposes. Its business is international. The Claimant describes Mr Banayoti as the owner of the company and elsewhere he is described as being the CEO. His precise status is not clear from the documents that I have seen, but he has corresponded extensively with the Tribunal and with the Claimant's representatives on behalf of all of the Respondents, and I am satisfied that in practical terms the company is his. The Claimant is a graduate in sociology with a Masters and a PHD in addition, and has research experience in social media and socio-economic matters.

9. It is a matter of background to the claim that in August and September of 2016 the Claimant and Mr Banayoti had a personal relationship, having made contact via a dating website. That relationship ended, although the Claimant said that there was sporadic contact between her and Mr Banayoti between December 2016 and November 2017.

10. Moving to 2018 (and all dates that I give now will be in that year) there was an email at page 276 on 14 May from Mr Banayoti to the Claimant, which asked her what kind of money she was looking to make. The Claimant replied on the same day that the kind of money she was looking to make was that which could sustain the life style she liked to lead, and she suggested perhaps 250,000 in two months. Mr Banayoti had mentioned dollars, and I assume that the Claimant was thinking of $250,000 over the course of two months.

11. Then on 22 July 2018 Mr Banayoti sent an email to the Claimant with a link to a recruitment website where the role of Senior Executive Assistant with the company was advertised. The Claimant's evidence was that it was said that the role would be mainly based in Washington DC, but would involve travel to offices elsewhere including in the United Kingdom, Canada, Malta and the United Arab Emirates. The Claimant applied for the job by an email to Mr Banayoti who replied on 22 July at page 136. He said in his reply "please no need for anyone to know that we knew each other in the past, thank you" to which the Claimant replied on the same day "of course".

12. The Claimant was then interviewed by two other individuals on 23 July and again by one of those two on 29 July. On 3 August the Claimant received the document at page 124. This is the one that I have already referred to as containing a job offer, and it gives the company's address in Canada. It is signed by Mr Banayoti on behalf of Defence Unlimited International. It is an important document and I will read it in full:

> "Defence Unlimited International is pleased to offer you the position of Senior Executive Assistant. As we discussed your starting date will be 1 September 2018, the starting salary is (Canadian) $90,000 per year and is paid on a monthly basis. Direct deposit is available and preferred. Full medical coverage will be provided through our company's employee benefit plan and will be effective on 1 December 2018. Dental and optical insurance are also available. You have a trial period of three months of the starting date 1 September 2018 to 1 December 2018. If you choose to accept this job offer please sign the second copy of this letter and return it to me at your earliest convenience. When your acknowledgement is received we will send you employee benefit enrolment forms and an employee handbook that details our benefit plans and retirement plan. As discussed Defence Unlimited will provide verified moving and relocation expenses up to $15,000 provided original receipt provided and approved by me. We look forward to welcoming you to the DUI team, please let me know if you have any questions or I can provide any additional information."

There was then a space for the Claimant to sign under the words "accepted" and the document bears a stamp which says Defence Unlimited International, giving a Canadian company number and a United Kingdom company number.

13. I find that this was an offer of employment to start on 1 September, and that the Claimant then accepted that offer by signing and returning a copy of the document as asked.

14. On 10 August one of the two interviewers sent an email to the Claimant at page 161 in which he said that he would need the Claimant to help him finish some work, and he also offered his congratulations.

15. On 15 August Mr Banayoti telephoned the Claimant and during the conversation he said words to the effect that she was so pretty that his fiancée would be jealous and that they would have to be careful. He asked the

Claimant whether she had met anyone since the end of their relationship, she answered that she had not and Mr Banayoti replied "we need to find you someone to date then". The Claimant said she wanted to maintain a professional relationship and did not want to mix business and pleasure. Later the same day Mr Banayoti called the Claimant again and asked whether she had a boyfriend or was dating anyone, he said he was still sexually attracted to her and had feelings for her. He said that he wanted to stay at Niagara Falls with her and that he liked her so much that if they were in a hotel room together she would end up pregnant.

16. On 16 August Mr Banayoti asked for a short biography of the Claimant to add to the company's website, and that and a picture of the Claimant were uploaded. At this stage the Claimant was expecting to go to the USA to work and she made arrangements to move out of her two addresses in the UK. She had her belongings shipped to the family home in Cyprus. At the end of August Mr Banayoti set up a confidential chat on a system named Telegram, which I am told deletes messages automatically after a short period. Mr Banayoti said that the Claimant's visa for the USA would take about 4-6 weeks to acquire. The Claimant pointed out that she had nowhere to stay after mid September. Mr Banayoti said that he would pay if the Claimant extended her tenancy, and she did so up to the end of September. A removal company collected the Claimant's belongings and Mr Banayoti told her that she should send the invoice for that to the company.

17. The Claimant's evidence was that she worked for the company on an ad hoc basis from 1 September. She remained in London and worked from home. She gave as examples of work that she did researching and setting up VIP travel accounts, opening bank accounts and setting up her own company email. There was further discussion about where the Claimant was to be located. Mr Banayoti said that because of the time it would take to obtain a US visa the Claimant would instead be based in Canada.

18. It was then proposed on about 11 September that the Claimant should go to Malta in connection with a business project. At this point Mr Banayoti told the Claimant that he had broken up with his fiancée. On about 13 or 14 September Mr Banayoti made some reference to expenditure that he had incurred during the 2016 relationship, that in relation to items he bought for the Claimant. There was discussion on 17 September about the proposed trip to Malta, Mr Banayoti had a residence there and he suggested that the Claimant could have one floor of this to herself. He then added "can I sneak in to your room at night" and he asked whether she was using contraception.

19. On the same day the Claimant told Mr Banayoti that she was jumping up and down with excitement at the prospect of the trip. Mr Banayoti replied with words to the effect that the only way he wanted her to jump up and down was on top of him. The Claimant said that she wanted to work on a professional footing and that she was not interested in his sexual advances. Then on 25 September at pages 320-324 there were messages between the Claimant and Mr Banayoti in which the Claimant was pressing him to confirm the arrangements for her to travel to Malta as she was concerned about the

prospect of being left with nowhere to live. Mr Banayoti replied that he and a colleague were discussing the Claimant going to the USA after all, as the paperwork for Canada was taking a long time to complete. The Claimant asked whether it was possible for her to stay in Malta, Mr Banayoti said it was not. Shortly after this Mr Banayoti ceased communicating with the Claimant.

20. The Claimant instructed solicitors and on 11 October they wrote to Mr Banayoti at pages 225-228. The letter set out the Claimant's account of events as I have related above. It claimed the Claimant's salary from 1 September and relocation expenses. It complained of sexual harassment and discrimination on grounds of sex, and said that it should be treated as a formal grievance in accordance with the ACAS code. Then on 23 October Mr Banayoti wrote to the Claimant as follows, at page 221:

> "Re: Termination of Employment
> With reference to your employment with Defence Unlimited which employment was to commence on 1 September 2018 as per your letter of appointment and terminated via a telephone conversation dated 21 September 2018 ("Effective Termination"). Please note that you never actually worked or performed any actual work for Defence Unlimited.
>
> You will be remunerated adequately for the work carried out up to the Effective Date of termination which whereby it was discussed that your employment with the organisation was going to be an impossible with the current state of work visas in Canada and the US, your employment would not have been able to commence appropriately before 6-9 months (which is the current time to obtain a work visa) if at all given the current situation.
>
> Kindly note that your probation period was active and hence your immediate termination was not against any practice or law, given the situation and that we have internally addressed your situation. With the visa difficulty it is not viable for us to retain you and you cannot perform your duties adequately remotely.
>
> Remuneration due for your work with the organisation will be settled up to the date of your Effective Termination and you are therefore obviously will not be owed any further compensation by the organisation, either via payment to you directly if a mutual release is signed, failing that, the funds will be deposited in court or an escrow account pending such a release signed.
>
> We regret that you have resorted to threatening the organisation to such an extent given that your official employment in North America had not even commenced and your contribution to the organisation, although appreciated, was very limited.
>
> We wish you all the best for your future. We will not be providing you with any references".

21. I find the letter somewhat ambiguous. It is headed "termination of employment", it then seems to say that the employment never commenced and that the Claimant never did any work, but then says her employment was terminated and she will be remunerated for the work done.

22. The Claimant denies that any telephone conversation place on 21 September terminating her employment. I accept her evidence about that. Such a conversation would be inconsistent with the messages that were exchanged on 25 September about going to the USA rather than to Canada.

23. On 13 November solicitors instructed by the company wrote to the Claimant's solicitors at pages 232-234. In summary, this letter took a jurisdictional point saying that the Claimant appeared to be unclear as to who was the employer, and said that both parties' intention was that the Claimant was to be based in Canada, and so they said that any claim would have to be brought in Canada. The letter said that the Claimant had not commenced employment with the company nor, to the extent alleged, with Mr Banayoti; that the intended start date of employment was pushed back and the only tasks undertaken were preparatory to the employment commencing.

24. Under the heading "allegations against Mr Banayoti" the letter said the allegations of inappropriate conduct were vehemently denied, and it took a point that it seemed convenient that the allegations related to telephone conversations or messages that were automatically deleted.

25. The Claimant then presented her claim to the Tribunal on 21 November 2018. I should record that the Claimant has never been paid any salary or any relocation expenses by any party.

The Applicable Law and Conclusions

26. The first issue for me to address is whether the Tribunal has territorial jurisdiction to hear the Claimant's complaints against Mr Banayoti and against the Canadian company, assuming that the latter is a separate entity from the UK company. Mr Banayoti has asserted that he is a Canadian national, and for the purposes of this decision I assume that this assertion is correct.

27. The facts that Mr Banayoti is a Canadian citizen and the Canadian company is registered or domiciled in Canada do not as such deprive the Tribunal of jurisdiction. Its jurisdiction is not confined to UK citizens or UK companies. There were potential issues as to service of the proceedings on the Respondents if they were domiciled outside the UK. I find that any such issues were resolved by the orders made by Judge Potter on 13 May 2019. These included a finding that the Respondents had in that respect submitted to the jurisdiction of the Employment Tribunal by presenting a response and in attending (by telephone) the previous preliminary hearing.

28. This leaves the question of the territorial reach of the Equality Act and/or (for the breach of contract claim) the Employment Tribunals (Extension of Jurisdiction England and Wales) Order 1994. The Equality Act does not

contain any express provision about territorial jurisdiction. Article 3 of the Extension of Jurisdiction Order, in summary, says that the Tribunal has jurisdiction over a contract claim brought by an employee (subject to financial limits) where the civil courts of England and Wales would have such jurisdiction.

29. The authorities on the territorial reach of employment rights have generally risen in connection with complaints of unfair dismissal and therefore the Employment Rights Act 1996. I find that the position as regards to territorial reach under the Equality Act must be at least the same, or at any rate no more restricted than under the Employment Rights Act, and therefore those authorities are of assistance to me. In **Ravat v Halliburton Manufacturing Services Limited [2012] UKSC 1** in the Supreme Court, Lord Hope made the following observations:

> "26 …..The question in each case is whether s.94(1) applies to the particular case notwithstanding its foreign elements. Parliament cannot be taken to have intended to confer rights of employees having no connection with Great Britain at all. The paradigm case for the application of the sub section is, of course, the employee who was working in Great Britain…….
>
> 27 .…the starting point…..is that the employment relationship must have a stronger connection with Great Britain than the foreign country where the employee works. The general rule is that the place of employment is decisive. But it is not an absolute rule. The open-ended language of s.94(1) leaves room for some exceptions where the connection with Great Britain is sufficiently strong to show that this can be justified. The case of peripatetic employee who was based in Great Britain is one example.
>
> 29…….The question of fact is whether the connection between the circumstances of the employment with Great Britain and with British Employment Law was sufficiently strong to enable it to be said that it would be appropriate for the employee to have a claim for unfair dismissal in Great Britain.

30 Then subsequently in the Court of Appeal in **Bates van Winkelhof v Clyde & Co LLP [2013] ICR 883** Elias LJ made observations about a comparative exercise, saying that this would be appropriate where the Claimant was employed wholly abroad. There would then be a strong connection with that other jurisdiction and Parliament could be assumed to have intended that in the usual case that jurisdiction, rather than Great Britain, should provide the appropriate system of law. Elias LJ then referred to paragraph 9 of Lord Hope's judgment that I have mentioned above and in relation to the comparative exercise, observed as follows:

> "…..it is not necessary where the applicant lives and/or works for at least part of the time in Great Britain, as is the case here. The territorial attraction is then far from being all one way and the circumstances need

not be truly exceptional before the connection with the system of law in Great Britain can be identified. All that is required is that the Tribunal should satisfy itself that the connection is, to use Lord Hope DPSC's words, sufficiently strong to enable it to be said that Parliament would have regarded it as appropriate for the Tribunal to deal with the claim".

31 With all of that guidance in mind, I accept Mr Milsom's submission to the effect that the Canadian connection in this case is a distraction without substance. It is true that the salary for the position was expressed in Canadian dollars, and that is a factor that indicates a connection with Canada. There was, however, in fact nothing more than a transient proposal that the Claimant would be based in Canada. That proposal came and went, as did a proposal that she would be based in the USA, or indeed that she would do some work in Malta. The expression of the salary in Canadian dollars seems to do no more than reflect Mr Banayoti's base, and that of the Respondents' activities, being in Canada. By contrast, I find that the connection with the UK is however clear and strong. The following factors lead me to say this:

31.1 The Claimant is a British citizen.

31.2 The Claimant was recruited in the UK

31.3 The Claimant did some work before the ending of her employment, and at all times when she did work for the Respondents, she was in the UK.

31.4 The employment was terminated in the UK, in the sense that this was where the Claimant was when she received the letter stating that her employment was terminated on 23 October. It was addressed to her at her home in London and, although it contained an assertion that there had been a termination during a telephone conversation which I have found was not the case, even if that had been true the Claimant was in the UK when any telephone conversations took place.

31.5 All of the events on which the Claimant relies occurred when she was in the UK.

32 I therefore find that the Tribunal has territorial jurisdiction over the Equality Act complaints. As regards breach of contract, for the same reasons I find that the Civil Courts would have jurisdiction over a breach of contract claim in the circumstances, and so therefore does the Tribunal.

33 The second issue to address is whether the Claimant was employed, and if so, by whom. The definition of employment for Equality Act purposes is in s.83(2a), which provides that employment means employment under a contract of employment, a contract of apprenticeship, or a contract personally to do work. Article 3 of the Extension of Jurisdiction Order refers simply to a contract of employment.

34 It is not essential for an employee to actually do work for there to be a contract of employment, although there may be situations where that can be relevant evidence going to whether or not there was a contract. Here, I find that the document at page 124 shows that there was an offer and an acceptance. The word "employee" is used in it three times. It describes itself as a job offer, gives a start date of 1 September, and provides for a salary. The Claimant returned her acceptance in the manner that she was invited to do.

35 I find therefore that there was a contract of employment. To the extent that the UK and Canadian companies are separate, the stamp on the document refers to both, and I find that the contract was between the Claimant and both companies.

36 I also find, to the extent that it may be relevant, that the Claimant did some work pursuant to the contract, as I have already described above.

37 I turn then to the complaints under the Equality Act. I have in mind the burden of proof as provided for in s.136 of the Act as follows:

> (2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) has contravened the provision concerned, the Court must hold that the contravention occurred.
> (3) But subsection 2 does not apply if A shows that A did not contravene the provision.

38. The predecessor of that provision was considered by the Court of Appeal in the well-known authorities of **Igen v Wong** and **Madarassy v Nomura**. Those authorities envisaged a two-stage test whereby the Tribunal in the first instance would consider whether the facts that had been established were such that it could properly find in the absence of an explanation that discrimination had occurred. In **Madarassy** the Court of Appeal emphasised that this would have to be a finding that could properly be made, and that there should be something beyond a difference in protected characteristic and a difference in treatment to justify the making of such a finding. That something more need not of itself be very significant, but it must be present. If the facts are of that nature, then the burden is on the Respondent to prove that it did not in any sense whatever discriminate against the Claimant.

39 The definition of detriment in s.212(1) the definition of detriment in means that complaints of harassment and direct discrimination are mutually exclusive. There cannot be a finding that one act amounts to both, but a Claimant may rely on them in the alternative. That being so, I find it appropriate to consider the complaint of harassment first. Section 26 of the Equality Act provides as follows:

> (1) A person (A) harasses another (B) if –
> (a) A engages in unwanted conduct related to a relevant protected characteristic; and

(b) The conduct has the purpose or effect of
(i) violating B's dignity; or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if –
(a) A engages in unwanted conduct of a sexual nature; and
(b) The conduct has the purpose or effect referred to in sub section (1)(b).

(3) A also harasses b if –
(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex;
(b) The conduct has the purpose or effect referred to in subsection (1)(b); and
(c) Because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

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

40. I have also borne in mind the BHRC Code of Practice, paragraph 7.13 which says the following:

> "Conduct of a sexual nature can cover verbal, non-verbal or physical conduct, including unwelcoming sexual advances".

41 There are nine allegations of harassment. My findings of fact are such that I have found that each of these occurred. There are two important points of context to be borne in mind, one is that the Claimant and Mr Banayoti had had a relationship in 2016, the other is the exchange which I have already mentioned at page 136, where Mr Banayoti gave the indication and the Claimant agreed that no one need know about that relationship, also he said that he was getting married.

42 These matters and the exchange of page 136 in particular assist me in concluding that the comments in allegations 1-7 were unwanted by the Claimant. This is further evidenced by the Claimant's statements on about 15 August that she did not wish to mix business with pleasure and that she wanted a professional working relationship, and further on 17 September that she was not interested in Mr Banayoti's sexual advances. It is the case that the Claimant did not protest on other occasions, but I accept her evidence that Mr Banayoti was in a position of power and that she did not know what to say to him on those occasions.

43 Remaining with s.26(1), was this conduct related to the protective characteristic of sex? I find that it was, because the comments were largely gender specific and would have not been made to a man. Alternatively under s.26(2) I would find that allegations 2, 3, 4, 5 and 7 amount to conduct of a sexual nature because they involve an expression of sexual attraction and the suggestion of sexual activities. Allegations 1 and 6 are not so specific and would not in my judgment amount to conduct of a sexual nature, but this is not material given my finding on the first point.

44 The third element of the test of harassment is whether the conduct had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, and I will refer to this in shorthand as having the purpose or effect of harassing her.

40 I first considered the effect, as this is perhaps somewhat easier to address on the evidence that I have available. I have reminded myself of subsection (4) of s.26. I find that the conduct did have the effect of harassing the Claimant. I accept that she felt threatened by the comments, and I find that repeatedly making such remarks and in allegation 6 referring to matters that occurred during their 2016 relationship, Mr Banayoti caused the Claimant to perceive that her dignity was being violated and that a humiliating or offensive environment was being created for her.

41 I find that it was reasonable for this conduct to have that effect in the circumstances. The Claimant had asked for and was entitled to expect a professional working relationship.

42 The complaint of harassment is therefore made out in respect of the seven comments. Allegation 8 is the dismissal and allegation 9 is its manner, in particular the non-payment of salary and relocation expenses. Mr Milsom argued that in the absence of any evidence of a non-discriminatory reason for the termination of the Claimant's employment the irresistible conclusion was that the decision must in part, at least, have been related to sex. He submitted that the Claimant would have been treated differently had she been a man. In essence I accept that submission. I find as a matter of probability that it is not a coincidence that Mr Banayoti's statements about the arrangements for the Claimant's employment became vague quite quickly after the Claimant expressed a lack of interest in his advances and that his communications with her ceased altogether within about two weeks.

43 Curiously, perhaps, the link is strengthened in my judgment by the incorrect assertion in the letter of 23 October that the Claimant's employment had been terminated on 21 September. That was only four days after the Claimant had rejected Mr Banayoti's advances, and it seems to me that this may be an inadvertent revelation of when it was, and by extension why it was, that Mr Banayoti decided that he no longer wanted the Claimant in the organisation. It seems to me that as regards these two allegations, subsection (3) of section 26 is the most obviously applicable.

44 I consider that the facts are such that I could properly find that Mr Banayoti dismissed the Claimant at least in part because of her rejection of his advances. The Respondents have not discharged the burden of proving that they did not discriminate against the Claimant in this way and so the complaints of harassment succeeds in relation to the dismissal.

45 The position is similar as regards the failure to pay salary and relocation expenses. In correspondence and in the response the Respondents advanced the argument that the Claimant was not employed or did not work, an argument that I have addressed above. In the absence of any legitimate reason for not being paid being advanced, I find that I could properly conclude that there was at least an element of this being because of the rejection of Mr Banayoti's advances. Again, the Respondents have failed to discharge the burden of proving otherwise. I therefore find that the complaint of harassment is well founded in this regard.

46 It follows that all the complaints of harassment are well founded. I turn then to the complaint of victimisation. Section 27 of the Equality Act provides as follows:

> (1) A person (A) victimises another person (B) if A subjects B to a detriment because –
> (a) B does a protected act; or
> (b) A believes that B has done, or may do a protected act.
>
> (2) Each of the following is a protected act –
> …….
> (d) Making an allegation, whether or not express, that A or another person has contravened this Act.
>
> (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given or the allegation is made in bad faith

47 The first question is whether the solicitors' letter of 11 October was a protected act. It made an allegation of contravention of the Equality Act as it complained of sexual harassment and direct discrimination. The allegations were not false and they were not made in bad faith, and so therefore this was protected act.

48 The first detriment relied on was failing to investigate the contents of the 11 December letter. Lest it be thought that this is something of a circular complaint, it should be noted that the complaints in that letter went beyond the allegations of breach of the Equality Act. It is evident that the Respondents did not investigate those complaints: there was simply a denial of the allegations against Mr Banayoti and the points taken about jurisdiction and employment that I have already referred to.

49 Are the facts such that, in the absence of an explanation, I could properly find that an element of the reason why the Respondents did not

investigate the Claimant's complaints was the allegations that had been made under the Equality Act? I find that it would be possible to infer this from the failure to investigate, the focus on jurisdictional arguments, and the failure to advance any explanation for there being no substantive investigation of the Claimant's complaints. That means that the burden is again on the Respondents to prove that they did not discriminate by victimising the Claimant. They have not discharged that burden.

50 In relation to the second detriment relied on, being the failure to pay salary and expenses, the same reasoning applies. It would be possible for the Tribunal to find that failure to pay was in part because the Claimant had made the allegations under the Equality Act. Again the burden of proving otherwise is on the Respondents, and it has not been discharged. The complaint of victimisation is therefore well founded.

51 I turn then to the complaint of breach of contract. I have found that there was a contract of employment in the terms of the document at page 124. The Claimant was therefore entitled to salary from 1 September until the termination of her employment, which I have found took place on 23 October. I find that the Claimant has not been paid any moving or relocation expenses. It was a term of the contract that they would be paid subject to approval. I have not heard any argument on the question of approval, but subject to anything further that I hear it seems to me that there would be an implied term or it would be understood that such approval would not unreasonably be withheld, and that therefore there has been a breach of the term as to payment of expenses, the quantum of which would have to be assessed.

52 There remain two further points for me to make. One is a point that I should have dealt with earlier in relation to the question of employment. It is the case that on one or two occasions the Claimant made reference to starting work in terms of looking forward to starting work in Malta. On another occasion in one of the messages she made some reference to her employment not having begun or the job not having begun. The latter was in the context of not getting paid, and I find that both of these were colloquial statements of the situation and should not be interpreted as meaning the Claimant was in any way recognising or asserting that she had not started or her contract of employment had not started.

53 The final question is as to which Respondents should be liable for which complaints which I found to be well founded. All of the acts of harassment were committed by Mr Banayoti. He is clearly in charge of the companies and he has spoken for them during the litigation. I am satisfied that he must also have been responsible for the decisions that were made by the companies that are relevant to the victimisation complaint. Therefore, I find that all three of the Respondents are liable in respect of the Equality Act complaints. The companies were the employer, and so it is the companies that are liable in respect of the breach of contract complaint.

54 Remedies will be determined at a further hearing on 18 December 2019.

Employment Judge Glennie

Dated: 22 Nov 2019

Judgment and Reasons sent to the parties on:

25/11/2019

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For the Tribunal Office