



# EMPLOYMENT TRIBUNALS

**Claimants:** Miss D (1)  
Miss Y (2)

**Respondents:** M Ltd (1)  
Mr K (2)

## JUDGMENT pursuant to RULE 21

1. Pursuant to the Employment Tribunals Rules of Procedure 2013, Rule 50 the parties to these claims will, in any documents entered on the Register or otherwise forming part of the public record be referred to as Miss D (claimant 1); Miss Y (claimant 2); M Limited (first respondent) and Mr K (second respondent).
2. The complaints brought by both claimants succeed.
3. The first respondent will, forthwith make the following payments to Miss D:-
  - a. Damages for wrongful constructive dismissal £148.
  - b. Unpaid wages £144.
  - c. Holiday pay £118.
4. The first respondent will forthwith make the following payments to Miss Y:
  - a. Damages for wrongful constructive dismissal £1184.
  - b. Unpaid wages £5144.
  - c. Unpaid wages £472.
5. The first and second respondents are jointly and severally liable to make a payment to each claimant of the sum of £12,500 in respect of injury to feelings with regard to the successful complaints of harassment related to sex, sexual conduct, race and religion together with, in each case, the sum of £384 as interest thereon.

# REASONS

1. I conducted a preliminary hearing for case management in respect of these two claims on 11 February 2019. Both claimants attended that hearing but there was no attendance or representation by either of the respondents. That was unsurprising in circumstances where neither respondent had presented a response to the claims.
2. It was clarified at the case management hearing that both claimants were complaining of unlawful harassment; that they had both allegedly been constructively wrongfully dismissed – that is without notice - and that they were owed wages and holiday pay.
3. For various reasons, I was not in a position to enter Judgment for the claimants at the February hearing. Although at that stage both claimants were represented by solicitors, schedules of loss had not been prepared and it appeared that the claimants had not given consideration to what level of compensation they were seeking for injury to feelings. Further, because of a passing reference in the agenda document which had been produced for the February hearing, it appeared that a criminal investigation might be proceeding against the second respondent for what was described in the agenda as ‘sexual assault’. That raised the issue of whether there needed to be a stay in the proceedings before the Tribunal whilst any criminal proceedings were concluded.

## **The basis of the harassment complaints**

4. It appeared that both claimants were complaining of harassment related to sex, harassment because of unwanted conduct of a sexual nature and harassment related to religion. It appeared that Miss Y was also complaining about harassment related to race. However there was some confusion because one part of Miss D’s claim form suggested that she too was complaining of racial harassment. I sought further clarity on this and the claimant’s solicitor wrote to the Tribunal on 1 March 2019 indicating that Miss D wished to amend her claim to add one of harassment related to race. I am prepared to grant that request. That is on the basis that the particulars of claim provided indicate that both claimants were subjected to similar treatment by the second respondent. Whilst Miss D’s grounds of claim may not make specific reference to such matters as are set out in Miss Y’s grounds of claim, it is to be noted that in Miss D’s claim form she has ticked a box to indicate that part of her claim was discrimination on the grounds of race.
5. It has taken some time to obtain any clear indication about potential police proceedings. On 7 March 2019 Miss Y forwarded to the Tribunal an email from a PC Terry. That police officer indicated that she “did not have an issue with the Employment Tribunal going ahead prior to the criminal case being finalised”. With respect, that was not the point. The concern was whether the Crown Prosecution Service had any concerns that any subsequent criminal proceedings might be compromised or whether the second respondent himself had any concerns. Nothing has been heard from the second respondent, to whom a copy of my order of 11 February 2019 was sent. However, on 4 April 2019 Miss Y again sent an email to the Tribunal in which,

possibly quoting from an email which PC Terry may have sent to the claimant's former solicitors, it was indicated that no further action was being taken with regard to any criminal proceedings against the second respondent.

6. In these circumstances I consider that it is unnecessary to delay matters any further, hence this Judgment.
7. The effect of Rule 21 of the Employment Tribunal's Rules of Procedure is that if no response has been entered to a claim an Employment Judge must decide whether on the available material a determination can properly be made of the claim. The material which is before me comprises comprehensive details of claim as pleaded by the claimants at the time when they were instructing solicitors and also the evidence which both claimants gave to me at the February hearing. I had considered it prudent to take evidence from them at that hearing to avoid a further hearing being required but that was nevertheless subject to the matters set out above being resolved in the meantime.
8. The claimant's evidence has not of course been tested in the way that it would have been tested had these claims been defended. If they had been defended both claimants would no doubt have been cross-examined in detail on the very serious allegations which they make, primarily against the second respondent. As it is, when they gave evidence before me, they confirmed that the detailed account of their treatment at the hands of the second respondent as set out in the pleaded case was true. I also questioned both claimants as to how the treatment had affected them. Miss Y described herself as being psychologically scarred and mentally drained. She said that she had had a mental breakdown and had gone to her general practitioner. It should be noted that this claimant had not provided any medical reports or other evidence. In any event she confirmed that she had not been issued with any medication. She said that she had had to sleep a lot and had not been motivated to go back to work. The claimant said that she was still worried that the second respondent may, as she put it, 'come out of nowhere'.
9. Miss D pointed out that this was the first job she had ever had and at the age of 17 she had been very vulnerable. She had tried not to acknowledge what the second respondent was doing to her although her colleague Miss Y had told her it was wrong. She said that the second respondent had made her feel "crap". She had not told her parents. She had not wanted to lose her job. She had not gone to the doctor but had bottled it up. She found it difficult to sleep or eat properly and she couldn't tell anyone. She now felt that she did not trust men or anyone.
10. Each claimant corroborated the other claimants' account of their treatment by the second respondent.
11. Both claimants believing that they could no longer put up with the treatment resigned from their employment with the first respondent on 18 October 2018. Miss Y told me that she had started a new job on 22 October 2018. Miss D told me that she had obtained a new job on 22 November 2018 and that this paid at the same rate as the job with the first respondent. Miss D's employment with the first respondent had begun on 13 August 2018 and Miss Y's employment with the first respondent had begun on 1 July.

### **Financial loss**

**Case Number: 1811654/2018**

**1811662/2018**

12. Both claimants in their schedules of loss have set out the way in which they calculate the wages holiday pay and damages for wrongful dismissal which they claim. They have been assisted by their solicitors in that regard. In default of any defence to those claims I am prepared to make the appropriate awards which in each case are against the first respondent as employer.

**Injury to feelings**

13. Each claimant seeks the sum of £12,500 (and interest). The schedules of loss make brief reference to the “continued harassment” and, in the case of Miss D to her age. In all the circumstances of their cases I am prepared to accept that what is proposed for injury to feelings is appropriate.

**Employment Judge Little**

Date 1<sup>st</sup> May 2019