



# EMPLOYMENT TRIBUNALS

**Claimant:** DAOJING DING

**Respondent:** (1) BEIJING BUFFET RESTAURANT LIMITED  
T/A YO YO IN BEIJING  
(2) D&H GLOBAL BUFFET LTD

**Heard by: CVP** On: 12, 14 and 15 February 2024

**Before:** Employment Judge Omambala KC  
Tribunal Members: J Hallam and J Purkis

## Representation

Claimant: In person,

Respondent: Mr Julian He, Paralegal

# JUDGMENT

- (1) The First Respondent has contravened section 26(1) of the Equality Act 2010 by harassing the Claimant for a reason related to the protected characteristic of sex.
- (2) The First Respondent has failed to provide the Claimant with a written statement of particulars of her employment.
- (3) The First Respondent is ordered to pay the Claimant the following sums by way of compensation:
  - (i) Compensation for injury to feelings in the sum of £7,000;
  - (ii) Compensation for loss of earnings in the sum of £4,512.78;
  - (iii) Compensation for failure to provide written particulars of employment in the sum of £600.00;
  - (iv) Interest in the sum of £1,569.00.
- (4) The Tribunal therefore orders the First Respondent to pay the Claimant a total award in the sum of £13,681.78 .
- (5) The claim against the Second Respondent is dismissed.

# REASONS

1. The Claimant is a woman of Chinese national origin. Her first language is Mandarin. She was employed by the First Respondent as a Dessert and Sushi

Chef from 9 August 2021 until 24 April 2022.

2. The First Respondent is a buffet restaurant which provides what it describes as “oriental cuisine.” It employs twenty people. The Second Respondent is said to have purchased the First Respondent’s business. By a letter dated 14 March 2023 the sole owner and only director of the Second Respondent, Yongdong Huang purports to certify that the Second Respondent “takes the legal liability-responsibility from the Beijing Buffet Restaurant Ltd.”
3. This is a claim of unlawful harassment related to the protected characteristic of sex. The claim arises from a single incident which took place in the Claimant’s workplace on 26 December 2021.  
At a preliminary hearing on 22 March 2023, Mr He told the employment tribunal that the First Respondent had been purchased by a new company, D& H Global Buffet Ltd, who had agreed to accept liability for the Claimant’s claims. As a result, the Second Respondent was joined as a Respondent to these proceedings, and it was left to this Tribunal to determine who would be fixed with liability if the Claimant’s claim succeeded.

**The Issues**

4. The issues which this employment tribunal has to determine are helpfully set out in the Claimant’s claim form and summarised in the record of a closed telephone preliminary hearing which took place on 22 March 2023. The representatives of the parties confirmed that each of the issues identified by Employment Judge Ahmed remain in dispute:-
  - 4.1 Did the First Respondent engage in harassment by reference to section 26(1) of the Equality Act 2010 (“EA 2010”) or sexual harassment of the Claimant pursuant to section 26(2) EA 2010 in that:  
  
On 26 December 2021, Mr Huang of the First and/or Second Respondent referred to the Claimant as “BB” or “BBB” which in Mandarin is alleged to have sexual connotations.
  - 4.2 Was the above conduct related to a protected characteristic of the Claimant, namely her sex?
  - 4.3 Did the alleged conduct have the purpose or effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
  - 4.5 If so, was it reasonable having regard to all the circumstances for the conduct to have that effect?
  - 4.6 If the claim succeeds which Respondent(s) is liable?
  - 4.7 If the claim succeeds what remedy should be awarded to the Claimant?
5. The Tribunal received an agreed bundle of documents. It read witness statements and heard witness evidence from the Claimant and from two witnesses on behalf of the Respondents: Mr Huang and Ms Xing. Mr Huang was the manager of the First Respondent at the time of the alleged incident and is now the sole owner and director of the Second Respondent. Mr Huang is alleged to have harassed the Claimant. Ms Xing is the former Operations Manager of the First Respondent. Both parties also produced skeleton arguments.
6. During the course of the Respondents closing submissions reference was made

to further evidence they wished to admit. It transpired that on 23 January 2024 the Respondents had applied to admit evidence in the form of a letter from a Ms S Liu. On 30 January 2024 the Tribunal granted the Respondents permission to put the document before the Tribunal at the final hearing. It made clear that the question of its admissibility, validity as expert evidence and the weight, if any, to be attached to it will be matters for the final hearing. Arrangements were made for the letter to be provided to the Tribunal. Its contents were considered by the Tribunal before the Tribunal made its decision.

7. The Tribunal and the parties were assisted by an interpreter.

### **Fact Finding**

8. The First Respondent is an all-inclusive buffet restaurant in Lincoln. It provides what it describes as a wide range of Chinese and Japanese food.
9. At the material time the First Respondent employed twenty people. Two of those employees were women: the Claimant and Ms Xing.
10. Mr Huang qualified as a chef in China in 1993 and became a Head Chef in 1996. He came to the UK in May 2006. He managed the kitchen and kitchen staff at the First Respondent. He did not attend the First Respondent's premises every day because he worked in a large Chinese restaurant in London. He attended the First Respondent's premises for one or two days at a time approximately every two weeks.
11. Mr Huang was an acquaintance of the Claimant's husband who was also a chef.
12. Ms Xing was the First Respondent's Operations Manager. She was appointed because she could converse in English and had relevant business and accounting skills. Ms Xing did not have any experience of managing a kitchen or a restaurant.
13. The Claimant began working for the First Respondent on or about 9 August 2021. She was employed as a dessert and sushi chef. She was also required to prepare salads. The First Respondent had found the position of sushi and dessert chef very difficult to fill and the role had been vacant for about a month before the Claimant was taken on. The Claimant was not provided with a written statement of the particulars of her employment at the commencement of her employment or at all.
14. The Claimant worked in a quieter part of the kitchen away from where the stir-frying and other noisier activities took place. The Claimant was the only person responsible for the sushi, salad and dessert sections. The Claimant performed her work diligently. The Claimant had not received any formal warnings about her work or her conduct at work.
15. In October 2021 the Claimant gave notice that she wanted to resign from her employment with the First Respondent because she was unhappy with her working conditions. Her work colleagues and Mr Huang in particular persuaded her to stay.

### **26 December 2021**

16. The Claimant was at work on 26 December 2021. She had started work at 10 am and was due to work until 10pm with a two-hour break during her shift. Mr Huang was not at the First Respondent's premises. He had arranged for the work to be done and was in London with his family for the Christmas holidays.
17. The restaurant had been very busy during the day. Ms Xing had received some complaints from customers about the food which was available. She called Mr Huang and told him that he needed to return to the restaurant because she did not know what to do.

18. At around 8.30pm the Claimant and a colleague were preparing for the closing of the restaurant. The Claimant and her colleague were chatting to each other about how Mr Huang had arranged the bank holiday working and rest days. There were a small number of customers in the restaurant. It was no longer busy.
19. A short while later Mr Huang arrived at the restaurant. He was angry. He approached the Claimant and without warning began shouting and swearing. He walked between the Claimant and the counter, pointed his finger at her and used vulgar and derogatory language which included the "F-word" and a word in Mandarin which is used as an insult and historically refers to female genitalia. The Claimant was shocked, frightened, and distressed by Mr Huang's unprovoked outburst.
20. The Claimant ate with her colleagues and finished her shift. Before she went home Mr Huang spoke to her to try and explain his behaviour. He said he had wanted the Claimant to get on with her work.
21. At home the Claimant remained disturbed by Mr Huang's treatment of her. She was very upset, nauseous, had diarrhoea and was unable to sleep.

**27 December 2021**

21. The Claimant attempted to carry on with her usual work routine and attended work the next day. However, she was late for work and had difficulty concentrating. When she saw Mr Huang, she began to cry and was unable to stop.
22. Mr Huang was sufficiently worried that he contacted the Claimant's husband on "WeChat" a Chinese language messaging service. He told him that "Last night I went insane and scared Ding. Last night and this morning I have been apologising to her."
23. In a message a few minutes later at 11:53 Mr Huang says, "Let's not repeat what happened...Of course I would accept the ton of accusations against me. I really should not throw a tantrum with a woman....Now I have calmed down I understand how she feels....I am really very sorry. Apologies" Mr Huang asked the Claimant's husband to call her and to tell her to go home and get some rest.
24. At 15:29 when he saw the messages the Claimant's husband messaged Mr Huang. He told him to take her to the hospital to see a doctor.
25. Mr Huang then asked Ms Xing to accompany the Claimant to Lincoln hospital where she was seen by a doctor and advised to undertake a period of rest and not to return to work until she had recovered.
26. The Claimant contacted her GP surgery on 29 December 2021 and attended a face to face appointment with a nurse practitioner on 30 December 2021. In a consultation in which the Claimant was recorded as 'tearful' she explained that she had had an altercation at work with her boss on 26 December 2021 who had called her names and been threatening and aggressive towards her. She said that since then she had felt extreme stress and panic, was sweating, experiencing palpitations and not sleeping. She was prescribed beta blocking medication and anti-anxiety medication for 14 days.
27. The Claimant attended a further consultation on 5 January 2022. She was provided with information about the self-certification rules and the 'Steps2Change' IAPT service which provides talking therapies for depression and anxiety disorders.
28. The Claimant submitted statements certifying her a not fit for work from 25 January

2022 to 17 April 2022.

29. The Claimant attended the Accident and Emergency department at Lincoln Hospital complaining of chest pains, palpitations and shortness of breath which were believed to be panic attacks or anxiety on 4 March 2022. She was referred for assessment by a mental health practitioner for a mental state examination who directed her back to her GP.
30. The Claimant engaged with the talking therapies service over one and a half sessions before returning to China at the end of April 2022.

**Law**

31. The parties agreed that the alleged contravention in this case was a breach of section 26(1) of the Equality Act 2010 (“the Act”) and the relevant protected characteristic was sex. The First Respondent accepted that it was vicariously liable for any unlawful conduct of its employees pursuant to section 109(1) of the Act.
32. Section 26(1) provides:  
“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.
33. Section 26(4) provides that:  
“In deciding whether conduct has the purpose or 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;
  - (c) whether it is reasonable for the conduct to have that effect.
34. ‘Unwanted conduct’ can include spoken words, physical gestures, facial expressions and aggression. In this context, ‘unwanted’ means unwelcome or uninvited conduct. The assessment of whether conduct was unwanted or not should be considered by the recipient’s point of view.
35. The statute requires a connection between any unwanted conduct and the relevant protected characteristic. The unwanted conduct does not have to occurred because of the protected characteristic. It does have to be ‘related to it’ and those words are to be given a broad meaning and require a broader enquiry. In deciding whether conduct is related to the relevant protected characteristic, the employment tribunal may take into account the context in which the conduct took place.
36. The requisite environment may be created by a single act of unwanted conduct related to a relevant protected characteristic.

*Burden and Standard of Proof: section 136*

37. The Claimant bears the burden of proving her case. The standard of proof is proof on the balance of probabilities.
38. If there are facts from which the employment tribunal could decide, in the absence of any other explanation, that the Respondent has breached section 26(1) of the Act by harassing the Claimant for a reason related to sex, then it must hold that the harassment has occurred unless the Respondent shows that it did not breach section 26(1) of the Act.

39. In making its assessment the employment tribunal must consider all of the evidence as to the facts.

### **Submissions**

40. Both parties provided written submissions which were supplemented by oral submissions at the hearing. The Tribunal is grateful to both parties for their submissions.
41. In summary the Claimant submitted that the totality of the altercation with Mr Huang on 26 December 2021 should be considered by the employment in determining her claim. The Claimant submitted that the altercation was plainly unwanted conduct by Mr Huang. Some of the language used by Mr Huang during the altercation was related to sex in that it contained a derogatory term used to describe female genitalia in Mandarin. The Claimant alleged that Mr Huang behaved as he did because he thought she was weak and that he was superior to her because she was a woman. The effect of the incident on the Claimant was noted by the Respondent at the time and is well documented. Her dignity was violated, and the environment required for a successful harassment claim was created. The Claimant suffered physical and mental health symptoms as a result of the incident which impacted on her life and relationships and endured over time.
42. On behalf of the Respondents it was contended that the Tribunal should only have regard to the alleged use of the term which the Claimant said was an insult and originally referred to female genitalia in Mandarin. The phrase is denoted by a particular character in Mandarin. During the hearing the parties described it as “BB” or “BBB”. The Respondents argued that the Claimant had failed to establish that the words used were a reference to female genitalia. They contend that there was no unwanted conduct by Mr Huang related to the Claimant’s sex. The Respondents contend that Mr Huang did not intend to harass the Claimant. They also dispute the Claimant’s account of her symptoms and their duration.
43. At this hearing both Respondents were represented by Mr He. Mr He made no oral or written submissions on who should be fixed with liability for the Claimant’s claims in the event that they succeeded.

### **Conclusions**

44. The employment tribunal considered it necessary and appropriate to consider all of the features of the incident at the Claimant’s workplace on 26 December 2021. The Claimant’s ET1 which was drafted when she was a litigant in person makes clear that it was the words, actions and demeanour of Mr Huang that gave rise to her complaint of unlawful conduct. To focus solely on the use of a particular expression or word in isolation as the Respondents invited it to do, seemed both artificial and wrong.
45. This employment tribunal did not read the list of issues contained in the record of a closed telephone preliminary hearing on 22 March 2023 as intending to confine the tribunal seized of the substantive claim to considering only whether Mr Huang’s reference ‘to the Claimant as ‘BB’ or “BBB” which in the native language of the Claimant is alleged to have sexual connotations.’
46. A list of issues is a useful case management tool, but it does not replace the pleadings in a case. The parameters of a claim are defined by the forms ET1 and E3 as amended.
47. The Tribunal noted that alongside the ET1 and the amended particulars of claim, the Claimant’s witness statement and skeleton argument also made clear that her claim was wider than the single allegation that Mr Huang used a particular allegedly insulting and offensive expression. Further, when the issues were discussed at the

outset of the hearing the Claimant again explained the scope of her harassment allegation. The employment tribunal is satisfied that the Respondents' understood the case that the Claimant was inviting them to meet and had an appropriate opportunity to challenge her evidence and to put their case on all of the matters in dispute so that there could be a fair trial of all of the issues in the case.

48. The nature and the context of the altercation between the Claimant and Mr Huang were disputed in the witness statements and oral evidence adduced by the parties.
49. The Tribunal first considered whether the Claimant had proved facts from which, if unexplained, the Tribunal could conclude that the incident on 26 December 2021 was unwanted conduct related to sex. Having regard to its findings of fact and for the reasons set out at paragraphs 50-58 below, the Tribunal finds that the Claimant has proved such facts.
50. The Respondents sought to place the incident on 26 December 2021 in the context of the Claimant being a generally unsatisfactory and lazy worker who had spent the day and previous days avoiding her work, distracting and talking to colleagues and causing Mr Huang to suffer stress from complaints from customers.
51. However, the employment tribunal heard undisputed evidence that when the Claimant had resigned from her employment in around October 2021 Mr Huang had asked her to return and her colleagues were keen to have her back because she was a good and diligent worker. No evidence of any disciplinary warnings given to the Claimant were provided to the hearing. Ms Xing explained that she was too busy to formally warn the Claimant. Despite asserting that on 26 December 2021 there were numerous customer complaints about empty trays in the sushi and dessert bar the Claimant was responsible for, the Respondents have failed to produce any evidence to support their assertions. The employment tribunal did not find the Respondents' evidence on this matter satisfactory or credible. It preferred the Claimant's evidence that she worked conscientiously for the First Respondent.
52. Mr Huang's account of what happened on 26 December 2021 when he entered the First Respondent's premises between 8.30pm and 9.00pm has not been consistent.
53. The day after the incident when he messaged the Claimant's husband he said, "Last night I went insane and scared Ding [the Claimant]." Some hours later he said, "I really would like to apologise for being so shouty last night."
54. In the grounds of resistance filed on behalf of the First Respondent on 22 May 2022, it is said that:

"Mr Huang has on many occasions interrupted the Claimant's conversations through verbal warnings where the Claimant remained oblivious and carried on chatting.  
[6] Eventually Mr Huang became frustrated and raised his voice telling the Claimant in a Chinese common slur, for all involved in the conversation to stop 'BB', an equivalent to "blah, blah" in the English speaking world, and get back to work."
55. In his witness statement which he signed on 23 October 2023, Mr Huang said, "I lost my temper on seeing this [the Claimant talking to a colleague in front of the buffet counter in front of customers and with the sushi and dessert sections empty] and shouted in the direction where the Claimant and a male colleague were standing." His witness statement also referred to him explaining to the Claimant that he was "angry" and why he was "angry". However, in oral evidence in chief, Mr Huang said that he had raised his voice a little because of the distance between

himself and the Claimant and her colleague. He said he was not angry. He said he was “a bit disappointed.” Mr Huang was not able to explain to the employment tribunal why his witness statement, which contained a statement of truth, and which he confirmed was true at the start of his evidence, referred to him being angry and having lost his temper.

56. Ms Xing told the tribunal that she witnessed part of the incident on 26 December 2021. Ms Xing’s witness statement also stated that Mr Huang “lost his temper.” When asked how she formed this view Ms Xing said that Mr Huang’s face “looked red” and “strict.” She said that she was about 2 or 3 metres away. She described that as being “quite far away on the other side of the tables.”
57. The Tribunal have concluded that Mr Huang shouted at the Claimant and lost his temper during the incident on 26 December 2021. On balance it is satisfied that he also pointed his finger in her face and waved his hands around as he moved around.
58. As to the content of Mr Huang’s outburst, the grounds of resistance accepted that he used a “Chinese common slur” but stated that he did not intend to refer to female genitalia. In May 2022, the First Respondent was not disputing that the meaning of the words shouted at the Claimant were insulting and could be understood to refer to female genitalia. Instead, it was asserted that it was not Mr Huang’s intention to insult the Claimant in this way.
59. The Tribunal therefore went on to consider whether the Respondents have, on a balance of probabilities, proved that the treatment in question was in no sense whatsoever related to sex.
60. At the first preliminary hearing in this case on 20 September 2022 where both parties were represented, it is noted that the words which Mr Huang accepted he used can have the connotation relied on by the Claimant.
61. At this hearing the Respondents submitted that the Claimant had failed to prove that the words she relied on had the meaning she described. The Respondents’ criticised the documents which the Claimant adduced to support her interpretation of the word or phrase used. The Claimant had provided translations of screenshots of internet searches she had carried out and an article on a phenomenon known as “Beijing scolding.” The Respondents contended that the former search results were not verifiable, and the latter article was irrelevant.
62. Mr Huang’s first explanation was that he had used an expression similar in meaning to “blah, blah.” In his witness statement he says he used a slang term which means “to talk nonsense.” In his oral evidence he said he had called the Claimant a term equivalent to ‘a chatterbox’ and that the phrase “BB” or “BBB” was intended to mimic the sound of a car horn.
63. The employment tribunal admitted the letter provided by the Respondents dated 19 January 2024. The letter was apparently written by Shi Wen Liu, Principal of Yinghua Chinese Language School. The tribunal did not see the enquiry which produced the response from Ms Liu but noted that the enquiry purported to come from Mr Huang. The tribunal did not consider Ms Liu was a witness capable of giving expert opinion evidence but exercised its discretion to admit the document on the basis that it might be relevant to the issues to be determined. The employment tribunal did not place significant weight on the contents of the letter bearing in mind that Ms Liu had not attended to give evidence and her evidence could not therefore be tested. The employment tribunal notes that Ms Liu accepts that the expressions intended and used by Mr Huang and contended for by the Claimant sound similar but have different meanings.



64. The employment tribunal have determined that Mr Huang used the words alleged by the Claimant and behaved in the manner alleged by the Claimant. It preferred the oral evidence given by the Claimant to the oral evidence from Mr Huang, which was at times inconsistent, evasive, and obfuscating. No explanation for the variation in Mr Huang's explanation has been provided. The Claimant gave a convincing account of the incident in her oral evidence to the Tribunal. The essential elements of that account have been consistent since the incident occurred. The Tribunal find that the Claimant has not exaggerated or embellished the details of the incident. The tribunal find that the words used by Mr Huang could and were intended to be understood to relate to female genitalia. They are related to a relevant protected characteristic, namely sex.
65. The employment tribunal is satisfied that Mr Huang's conduct on 26 December 2021 was unwanted conduct within the meaning of section 26(1) (a) of the Act for which the First Respondent is vicariously liable as his employer.
66. The employment tribunal is satisfied and finds that the unwanted conduct both violated the Claimant's dignity and created the necessary adverse environment for her. It notes that the incident took place in the Claimant's place of work, in the presence of work colleagues and members of the public. Mr Huang's conduct was unprofessional, disrespectful, angry and aggressive. He used vulgar language and shouted at the Claimant.
67. The employment tribunal has considered whether the purpose of Mr Huang's outburst was to violate the Claimant's dignity and/or to create an adverse environment within the meaning of section 26(1) (b)(ii). On balance the employment tribunal has concluded that it was not Mr Huang's purpose. Mr Huang's outburst was the result of a temporary but complete loss of control. To use his own words, that night he "went insane."
68. The employment tribunal is in no doubt that Mr Huang's use of language and his other conduct had the necessary effect of violating the Claimant's dignity and creating an adverse environment. The tribunal accepts that the Claimant found Mr Huang's conduct towards her deeply distressing and humiliating. The evidence from the Claimant and the Respondents as to the Claimant's demeanour on 27 December 2021 and in the days after the incident support this conclusion. That evidence is further supported by entries in the Claimant's GP records. The effect of this single incident had enduring consequences for the Claimant.
69. The employment tribunal has had regard to evidence about the Claimant's temperament and to the cultural background of those involved. It notes that Mr Huang was in a position of seniority and trust compared to the Claimant and that for the Claimant this exacerbated her sense of offence and humiliation. Taking those matters into account the Tribunal find that it was reasonable for Mr Huang's unwanted conduct to have the adverse effects on the Claimant which have been described in written and oral evidence.
70. The Respondents submitted that the presence of a male colleague during this incident is a relevant factor in determining whether the incident on 26 December 2021 is capable of amounting to unlawful harassment.
71. Firstly, and for the avoidance of doubt, the employment tribunal find that Mr Huang's outburst was targeted at the Claimant. He had been told by Ms Xing that the Claimant had been chatting to colleagues all day and that customers had been complaining about the lack of availability of various foods including sushi and dessert for which she was responsible. As a result, his Christmas break with his family in London had been interrupted and Ms Xing had summoned him back to

the restaurant in Lincoln because she was not responsible for managing the kitchen and she did not know what to do.

72. Secondly, the employment tribunal is satisfied that the incident on 26 December 2021 was an example of conduct which, whilst it could have been generally offensive to other workers, was particularly offensive to the Claimant because of her protected characteristic, namely her sex.
73. Accordingly, the employment tribunal finds that the First Respondent has harassed the Claimant in contravention of section 26(1) of the Act.

### **Remedy**

74. Having concluded that there has been a contravention of section 26(1) of the Act the Tribunal considered the question of remedy. It reminded itself that the aim of an award of compensation is not to punish the Respondent, but in so far as it is possible to do so, to put the Claimant in the position she would have been in had the unlawful harassment not occurred. Only the losses caused by the unlawful conduct are recoverable and it remains for the Claimant to prove her losses.
75. The Claimant's witness statement set out her evidence on remedy issues. She supplemented that evidence with oral evidence on remedy.
76. The Tribunal accepts that the Claimant was deeply affected by the incident at her workplace on 26 December 2021. In the immediate aftermath she was shocked, tearful, had poor appetite, low mood and was unable to sleep.
77. The Claimant attended her GP and received medical treatment.

### **Medical Treatment**

78. The Claimant contacted her GP surgery on 29 December 2021 and attended a face to face appointment with a nurse practitioner on 30 December 2021 in which she said that since the incident she had felt extreme stress and panic, was sweating, experiencing palpitations and not sleeping. She was prescribed beta blocking medication and anti-anxiety medication for 14 days.
79. The Claimant attended a further consultation on 5 January 2022. She was provided with information about the self-certification rules and the 'Steps2Change' IAPT service which provides talking therapies for depression and anxiety disorders.
80. The Claimant attended the Accident and Emergency department at Lincoln Hospital complaining of chest pains, palpitations and shortness of breath which were believed to be panic attacks or anxiety on 4 March 2022. She was referred for assessment by a mental health practitioner for a mental state examination who directed her back to her GP.
81. The Claimant submitted statements which certified her as not fit for work from 25 January 2022 to 17 April 2022.
82. The Claimant engaged with the talking therapies service over one and a half sessions before returning to China at the end of April 2022. The Claimant said that she had continued treatment in China.
83. By her schedule of loss, the Claimant sought compensation for injury to feelings, loss of earnings, personal injury and sundry expenses.

### **Injury to Feelings**

84. The Tribunal was satisfied that it was just and equitable to make an award of

compensation for injury to feelings. In doing so the Tribunal had regard to the general principles in assessing an injury to feelings award set out in *Prison Services v Johnson* [1997] IRLR 162, to the Presidential Guidance on Employment Tribunal awards for injury to feelings and psychiatric injury and to its sixth addendum updating the *Vento* bands.

85. Having carefully considered the evidence before it the Tribunal has concluded that an award in the lower *Vento* band is appropriate to reflect a single occurrence of harassment. It notes that the incident did not lead to the Claimant leaving her employment and that Mr Huang apologised to her later in her shift on 26 December 2021 and again via her husband.
86. The lower *Vento* band is £1,100 to £11,200. The Tribunal makes an award of **£7,000** in respect of injury to the Claimant's feelings. The Tribunal considers that an award in this sum is proportionate to compensate the Claimant for the harm she suffered and for the fear, hurt, anger, distress, anxiety, humiliation and upset caused by the unlawful treatment.

### **Injury to Health**

87. The Tribunal does not make a separate award in respect of personal injury. It was not satisfied that it had sufficient reliable evidence to do so. Instead, it has sought to reflect the injury to the Claimant's physical and mental health in its assessment of the award for injury to feelings. In doing so it has had regard to JSB guidelines for general damages for less serious psychiatric injury with temporary symptoms that have adversely affected daily activities.

### **Loss of Earnings**

88. There was a dispute about the Claimant's earnings. She told the Tribunal that she was paid £550 per week, receiving £300 per week gross by bank transfer and the balance in cash. Payslips provided by the First Respondent detailed payments of £300 per week (gross) to the Claimant which were supported by a summary of payments made to the Claimant from the First Respondent's bank statements.
89. The Claimant sought payment for loss of earnings for the period from 27 December 2021 to 20 October 2022. It is common ground that the First Respondent paid the Claimant only £287 for this period. The Respondents denied that the Claimant was entitled to any compensation for loss of earnings and argued in the alternative that any payments in respect of loss of earnings should cease at the latest in April 2022 when the Claimant travelled to China.
90. The Tribunal accepts that the Claimant was unable to work as a result of her mental health from 27 December 2021 until 24 April 2022 when her 'fit notes' ceased. It is satisfied from information recorded in the Claimant's GP records and from her evidence that the First Respondent's unlawful harassment of her was an operative cause of her ill health.
91. The Tribunal has concluded that the Claimant should receive loss of earnings for the period 27 December 2021 to 24 April 2022. After 24 April 2022 the Claimant was not available to work in the UK having returned to China to spend time with family members and friends.  
It calculated that the following sum is therefore owed to the Claimant as loss of earnings: **£300 x 16 weeks = £4,800 (gross) less £287 = £4,512.78 (gross).**  
That is £287.22 x 16 less 287= £4,308.52 (net).

### **Sundry Expenses**

92. The Claimant has not presented evidence of payments for treatment and medication undertaken in the UK and in China. Accordingly, the Tribunal does not make any award in respect of these items.

**ACAS Code of Practice on Disciplinary and Grievance Procedures.**

93. The Respondents made some criticism of the Claimant for failing to respond to an invitation to attend a grievance meeting. In fact, the First Respondent wrote to the Claimant on 21 February 2022 indicating a willingness to hold a discussion with the Claimant once she had recovered but no meeting was arranged until the First Respondent wrote to the Claimant on 24 May 2022 offering a meeting on 31 May 2022. By this time the Claimant had already initiated the early conciliation process. A certificate was issued on 25 March 2022. Her claim was lodged on 24 April 2022.
94. In these circumstances, the Tribunal has decided not to make any reduction in compensation to reflect the Claimant's failure to engage in a grievance meeting on 31 May 2022. It considers that had the First Respondent wished to understand and resolve the Claimant's concerns there were opportunities to do so before the early conciliation process was commenced.

**Section 11(1) Employment Rights Act 1996**

95. The Respondents conceded that the Claimant did not have a written contract of employment or a written statement of the particulars of her employment with the First Respondent.
96. The First Respondent was therefore in breach of its duty to provide the Claimant with a written statement of particulars of employment pursuant to section 1 of Employment Rights Act 1996 at the outset of her employment. Its breach had not been remedied by the time these proceedings were brought.
97. The Tribunal has determined that it is just and equitable to make an award to the Claimant of two weeks' pay in respect of the First Respondent's breach of duty. Accordingly, the Tribunal orders the First Respondent to pay the Claimant the sum of **£600** pursuant to section 38(3) of the Employment Act 2002.

**Interest**

98. The Claimant is entitled to receive interest on sums due to her in respect of compensation for injury to feelings and past loss of earnings.
99. The Tribunal has calculated the interest due to the Claimant in respect of its award of injury to feelings in accordance with regulation 6(1)(a) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations, 1996, SI 1996/2803.
100. The date of discrimination was 26 December 2021. The date of calculation was 15 February 2024. The applicable rate of interest is 8%. The Tribunal therefore awards the Claimant the sum of **£1,199.78** (being 782 days x 8% x 1/100 x 1/365 x £7000)
101. The Tribunal has calculated the interest due to the Claimant in respect of its award of loss of earnings in accordance with regulation 4 of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations, 1996, SI 1996/2803. Interest is calculated on the Claimant's net loss of earnings. The midpoint is The applicable rate of interest is 8%. The Tribunal therefore awards the Claimant the sum of **£369.23** (being 391 days x 8% x 1/100 x 1/365 x £4,308.52).

**Which Respondent is Liable?**

102. The Claimant believed that she was employed by the First Respondent. She issued her claim against the First Respondent. Her pay slips identified the First Respondent as her employer, and it was the First Respondent that ultimately sent

the Claimant her P45. As noted above the Claimant was not provided with a written contact of employment or a written statement of particulars. The Tribunal did not see any contractual information in relation to the Claimant or any other employee.

- 103. The First Respondent responded to the Claim form and acknowledged its status as the Claimant's employer.
- 104. The parties agreed and the Tribunal has found that Mr Huang and the Claimant were employed by the First Respondent. The Tribunal has not been referred to any evidence to indicate that the Claimant's employment transferred from the First Respondent to the Second Respondent before it terminated on 24 April 2022.
- 105. The Tribunal has received no evidence that the First Respondent has ceased to trade, is insolvent or is in administration.
- 106. The fact that the Second Respondent has agreed to satisfy any judgment made against the First Respondent does not make it the Claimant's employer. The Respondents have advanced no basis upon which it is said that a finding could or should be made against the Second Respondent.
- 107. In these circumstances the employment tribunal dismisses the Second Respondent from these proceedings.

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Employment Judge Omambala KC

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Date: 20 February 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

**Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>