



# EMPLOYMENT TRIBUNALS

**Claimant**  
**Mr Richard Powell**

**v**

**Respondent**  
**Lawsons (Whetstone) Ltd**

**Heard at:** Watford by Cloud Video Platform

**On:** 2 March 2021

**Before:** Employment Judge Bedeau

## **Representation**

**For the Claimant:** In Person

**For the Respondent:** Ms C Nicolaou, Consultant Solicitor

## **JUDGMENT**

The claim of harassment related to race against a third party is struck out as the tribunal does not have jurisdiction to hear and determine it under sections 26 and 40 Equality Act 2010.

## **REASONS**

1. The claimant's claim form was presented to the tribunal on 6 April 2020, in which he made the single claim of harassment related to race, section 26 Equality Act 2010. In the response it is averred that the tribunal does not have jurisdiction to hear and determine the claim as it is against third party and section 40, Equality Act 2010, had been repealed insofar as it concerns third-party harassment.
2. The case was listed by the tribunal on 13 December 2020, for a preliminary hearing, in public, to hear and determine the respondent's strike out application.
3. I did not hear any evidence, only submissions.
4. The respondent is an independent timber, building and fencing supplier covering London and the South-East. It has a depot in Camden where the

claimant works as a member of the sales counter staff. He commenced employment with the respondent on 5 January 2015.

5. It is not disputed that on 16 November 2019, while the claimant was on duty, a regular customer of the respondent, Mr PBH, a representative for a company, MB, was shouting at another member of staff on the counter when the claimant intervened and informed him that he should not behave in that way in the presence of customers. Mr PBH replied that it was only banter and showed the claimant a video recording on his mobile phone of a black security guard who was standing in front of a No Entry sign that depicted a black stick man. The claimant's reaction was to say to Mr PBH, that he felt offended by the video. The claimant is black, and Mr PBH is a white South African.
6. The claimant lodged a complaint about Mr PBH's conduct which was investigated by the respondent. Initially he did not want Mr PBH to be banned permanently from the premises but later during the course of the grievance process, he changed his mind and asked for a permanent ban.
7. He attended a grievance meeting and put forward his concerns. Mr PBH was spoken to by the respondent's managers, who asserted that the claimant had referred to his age and that he, the claimant, was an unofficial betting broker.
8. Of importance was the outcome of the grievance which was that there would be no further contact between the claimant and Mr PBH when he attends the depot. The respondent acknowledged that Mr PBH's conduct was unacceptable. He apologised, and was prevented from attending the depot for several weeks. He had not been permanently banned.
9. The claimant's case was that Mr PBH was not permanently banned because his company brings £30,000 worth of sales to the respondent every month and the respondent did not want to lose that business.
10. I repeatedly asked the claimant what was the reason for the grievance outcome and he told me that it was the respondent's desire to keep the business with MB. If that be the case, the respondent's decision was unrelated to his race or to race.
11. I further pointed out to him that there is no longer a claim for third-party harassment. That part of section 40 Equality Act 2010 had been repealed by section 65, Enterprise and Regulatory Reform Act 2013.
12. I considered the Court of Appeal judgment in the case of *Unite the Union v Nailard* [2018] EWCA Civ 1203, in which it was held that,

"It follows from the foregoing that the repeal in 2013 of sub-sections (2)-(4) of section 40 means that the 2010 Act, for better or for worse, no longer contains any provision making employers liable for failing to protect employees against third party harassment as such, though they may of course remain liable if the proscribed factor forms part of the motivation for their inaction...", paragraph 99.
13. I decided to strike out the harassment claim as the tribunal does not have any jurisdiction to hear and determine it.

14. The claimant then suggested that the respondent's conduct in dealing with his grievance was to prefer the evidence given by Mr PBH. He, the claimant, was not questioned about the allegations of ageism and gambling, which he denied. Further, the notes taken at the grievance and the appeal hearings, missed out crucial evidence which led him to question how much weight had been given to his grievance. Having regard to these factors, he felt that as a black person, he had been treated differently from that of Mr PBH by the respondent.
15. These were new factual allegations and a new claim which were objected to by Ms Nicolaou, Solicitor on behalf of the respondent, who argued that the claimant's claim form was prepared by lawyers at the time who no longer represent him, and they did not include a claim of direct race discrimination. She submitted that what the respondent did was to address the claimant's grievance and for the past 15 months there had been only one inoffensive interaction between him and Mr PBH. It is too late for him to be allowed to raise another claim.
16. Not knowing the precise nature of the claim and the details of it, I order that the claimant should state in writing by not later than **4.00pm 23 March 2021**, whether he intends to pursue any further claims against the respondent and, if so, to provide further information in writing to the respondent's legal representatives and to the tribunal by that date.
17. I also order that the respondent shall by not later than **4.00pm 13 April 2021**, respond to the application to amend, if made, and whether it should be dealt with on the papers or at a preliminary hearing in public.

.....  
Employment Judge Bedeau

2 March 2021  
.....

Sent to the parties on:  
23 March 2021  
.....

.....  
For the Secretary to the Tribunals