EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
	v	
Mr D Wright		Pottiebee Inc Limited

Heard at: Watford **On**: 18 February 2021

Before: Employment Judge Bloch QC

Appearances
For the Claimant: In person
For the Respondent: No attendance

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

"This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video (CVP)]. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

JUDGMENT ON REMEDY

1. The claimant is awarded the sum of £1,500 in respect of his claim of sex discrimination, as follows:

Lost income	£ 200 (net)
Injury to feelings	£1,300
Total	**£1,500**

2. By a claim form submitted to the tribunal on 16 April 2020, the claimant made a complaint of sex discrimination. In his claim form he set out the basic facts which he confirmed in evidence to me today. The claim form states:

> "On 15th March 2020, I saw an advert on Facebook from a company looking for people to work as babysitters. It appeared that you chose which hours you worked so that it was perfect for me as I work full-time but could do with some extra money to cover below inflation pay rises in the civil service, especially with child number three on the way.

I looked at the site and it made reference to hiring mothers because of the experience in raising kids. I assumed this meant parents and was similar to the advertising slogans "why Mums go to Iceland" or "Yorkie: It's not for girls". I then tried to apply. The applications form's first question was "are you a mother?". You had to answer "Yes" to get to the next page. Again, assuming this was due to a mistake and meant parent I said yes. I continued with the application and entered all my information accurately, including my name and a photo of my driving licence clearly showing my identity.
There was a problem with the app verifying my identity so the next morning I phoned the respondent to get some help. They then informed me that they were only allowing women to work for them as sitters. When I asked why that was they said that it was because it was easier to advertise that way. They couldn't tell me any genuine occupational requirement for a female. They said I couldn't talk to anyone else to discuss this. I am currently an experienced father to two (soon to be three) children. I volunteer with the pre-school class at Sunday School and volunteer as an instructor with the Air Cadets, dealing with children from 12 to 18.

Later that day I received an e-mail saying:

> "Hi there,
> We just wanted to tell you that we only allow mothers to become sitter mums on Pottiebee at this instance. We have clearly stated it in the App. The fact that you lied to us about your identity will leave us with no choice but to eliminate you from the platform with immediate effect.
>]Please be aware that lying about your identity is a serious punishable (sic) & will not be tolerated. This decision is final and cannot be chamged (sic).
>
> Team Bottiebee"

"This has really upset me because it is simply exacerbating the claim in certain circles that fathers are incompetent parents and unable to care for children. It's telling me that my experience counts for nothing simply because of my gender and that I cannot be trusted to care for children. It is very distressing to be dismissed in this way because of my gender"

3. The respondent failed to enter a response to the claim and default judgment was issued. By a letter dated 22 September 2020, the Employment Tribunal informed the respondent that judgment had been issued. It stated that the respondent was entitled to receive a notice of any hearing but may only participate in any hearing to the extent permitted by the Employment Judge who hears the case.

4. The respondent was given notice of the hearing today but did not appear.

5. The claimant gave evidence to me today confirming the facts of the claim as quoted above. He told me that he was a policy adviser in the Civil Service and had been so for four years. His salary was some £50,000 per month. and he worked in the Department of Education. He was the father of two children and now of a third who was born in June. He works Mondays to Fridays, 9am – 4pm and his wife, who is a peripatetic teacher, works approximately 15 hours per week. Their eldest child is at school and in relation to their younger child, until now they have made use of some nursery and childcare facilities. His wife is now on maternity leave. The

claimant works at Sunday School one hour every four weeks, and at Air Cades, two hours on a Friday during term time. He came across the advert on Facebook whilst he was scrolling through it. He had been looking at second incomes and it seemed that "cookies" had triggered the advert.

6. The claimant has a Maters law degree from Cardiff University in Canon Law. When he saw the advert, he did not think that in this day and age the respondent meant that fathers could not apply. He assumed that the bulk of the target audience was mothers and that was why the advert was set out in that way. Only the next day, when he was told that he could not apply, did he realise that they were engaging in something that appeared to be wrong.

7. The claimant was able to assist very little in relation to the respondent. He knew it was a start-up trying to get into the application-based space. They are apparently still operating having filed documents with Companies House in January of this year. As to his own experience the claimant said that he had occasionally done ad-hoc paid babysitting for friends at "mates rates". He showed me the advert on the internet and that referred to the possibility of earning up to £150 per day.

8. Realistically, the claimant accepted that when trying to project forward the amount of work which he might have obtained from the respondent but for its unlawful conduct, one had to take account of the pandemic. Plainly in the light of the pandemic the respondent would not be doing as well as it might have expected to do.

9. Equally, the claimant had not been able to obtain substitute work by way of mitigation of his loss, particularly in the circumstances of the pandemic. The claimant told me that he was really upset as a result of what occurred. A large part of his identity is tied up in looking after his children and he is also involved with the Air Cadets as set out above. To be told that he could not do this job because of his gender was goring. He sees himself as a "hands-on" father who would have been very good at doing this sort of work. He said that when he is not working he does 90% of the childcare in the house.

10. It is, of course, extremely difficult to project at this stage what the claimant might have earned if the respondent had not discriminated against him on the grounds of gender. There are many imponderables - in particular the the pandemic is likely to have reduced substantially the amount of work he could have done for them. Also, it is not clear to me what the effect of the new child in the house might have been. It may well have been a further factor reducing the amount of extra working time available by him.

11. Doing the best I can I have awarded a relatively small sum representing five hours a week at a net amount of £10 per hour, resulting £200 net for four weeks. Given the pandemic and his home circumstances, it is likely that this source of income would not have continued beyond four weeks. That seems to me to be a realistic figure of actual loss in all the circumstances.

12. The more difficult point for decision was the amount to award in respect of injury to feelings. The Court of Appeal gave specific guidance on how

Employment Tribunals should approach this issue in the case of Vento -v- Chief Constable of West Yorkshire Police (2) 2003 ICR318CA. The Court of Appeal set out certain bands and said that the flexibility within each band was considerable, allowing tribunals to fix what they considered to be fair, reasonable and just compensation in the particular circumstances of each case.

13. The latest Presidential Guidance has upgraded the Vento guidelines, claims presented to the tribunal after the 6 April 2020 as follows:

    13.1 A lower band of £900 to £9,000 for less considerable cases;
    13.2 A middle band of £9,000 to £27,000 for cases that do not merit an award in the upper band; and
    13.3 An upper band of £27,000 - £45,000 (for the most serious cases), with the most exceptional cases capable of exceeding £45,000.

14. I have no doubt that this case fits into the lower band of £900 - £9,000 and indeed the claimant's claim of £7,500 set out in his claim form, realistically acknowledges this.

15. I have had more difficulty in assessing where in that band this case should fall. On the one hand, I accept the claimant's evidence that he was hurt by his treatment and in particular what followed the day after he had seen the advert. I can see that in his position he regarded this as an under-valuation of a father's role in childcare which was hurtful given his own "hands-on" position in this regard. I would add that even at the date of the hearing, the advert has not yet been changed by the respondent.

16. Against that, I would set off the following factors:

    16.1 This was a one-off occurrence (taking the two days together and this is a significant factor according to the case law on the subject);

    16.2 This treatment was from person whom the claimant has never met before, nor since. It was remote, that is not to say that one cannot be hurt remotely but it would seem to me that where the treatment is from people whom you do not know such as work colleagues, the hurt is likely to be less and when experienced remotely in this way.

    16.3 The claimant is obviously a man of some sophistication and training with (as I have said) a Masters Degree in Law. It occurs to me that he must have realised at a fairly early stage, that the treatment was not directed at him personally and even if it was directed at a class of people, (such as fathers) that it was utterly ill-informed in the modern day so that the slight was more likely to be a result of ignorance than intentional harm;

    16.4 This was not a case where an employee is denied or indeed dismissed from his primary job. It was a relatively small addition (if the claimant had been successful) to his principal source of earnings.

17. Doing the best I can, I conclude that injury to feelings falls at the lower end of the first Vento band but not right at the bottom. It seems to me that although likely to be of relatively short duration, the upset caused to the claimant was more than minimal, indeed substantial.

18. In all the circumstances the amount which I award the claimant under this head is £1,300, giving the claimant a total of **£1,500**, as follows

Net loss of income	£ 200.00	(£10 x 5 hours at £10 x 4 weeks)
Injury to feelings	£1,300.00	
	£1,500.00	

19. I record that I have found the claimant an honest witness who was not "over-egging the pudding" and was attempting to assist the tribunal in a realistic manner.

Employment Judge Bloch QC

Date: 26 April 2021

Sent to the parties on: 06 May 2021

For the Tribunal Office

Note
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.