

THE INDUSTRIAL TRIBUNALS
(NORTHERN IRELAND)

Case Ref No: 03342/97 D
03343/97 RR

Mark Robins
22 Loran Road
Larne, Co Antrim
BT40 2BX

APPLICANT

and

Norfil Ltd
25 Randalstown Road
Antrim
BT41 4LJ

RESPONDENT

DECISION

The applicant was unlawfully discriminated against on the grounds of his national origin contrary to the Race Relations (Northern Ireland) Order 1997. The respondent is ordered to pay to the applicant the sum of £3,000 in compensation. The complaint under the Disability Discrimination Act 1995 is dismissed having been withdrawn by the applicant in the course of the hearing.

Appearances:

Mr G Grainger, Barrister-at-Law, for the applicant, instructed by Carnson Morrow Graham, Solicitors.

Mr B Lockhart, Barrister-at-Law, for the respondent, instructed by Johnston's Solicitors.

1. At the commencement of the hearing the applicant withdrew his complaint under the Disability Discrimination Act 1995. This complaint is dismissed.
2. The applicant complained under the Race Relations (NI) Order 1997 which, so far as it is relevant to the facts of this complaint, came into force on 4 August 1997 - see Race Relations (1997 Order) (Commencement) Order (NI) 1997. The basis of the complaint was that the applicant, an Englishman by national origin, was abused on this account by a number of his colleagues at the respondent's premises in Antrim. The respondent company was Indonesian-owned and the manager in Antrim was Indian. The applicant did not allege discrimination by the owners or by the management except under Article 32 of the 1997 Order. The respondent did not dispute that the applicant had been abused by some of his fellow workers but relied upon the defence provided by Article 32(5). No argument was presented to the tribunal to suggest that -
 - (a) the Order did not render unlawful abuse directed at an Englishman on the grounds that he was an Englishman; or
 - (b) acts such as those done by some of the applicant's colleagues were not done by them in the course of their employment.

The tribunal believes that the abuse given to the applicant by some of his colleagues was given by them in the course of their employment and that it was unlawful racial abuse under the Race Relations (NI) Order 1997.

3. The applicant alleged verbal abuse and written abuse prior to the commencement of the 1997 Order in August 1997 which would have been unlawful after August 1997. We accepted evidence in relation to these events for the purposes of understanding the full context of the abuse suffered after 4 August 1997. We did not admit evidence in relation to the steps taken by the respondent after the presentation of the applicant's complaint to the tribunal.
4. The applicant accepted that he worked for some 9 months after he started without being subjected to racial abuse. There was then a period when there was what the applicant termed 'reasonably good humoured banter'. In or about January 1997 this banter became offensive to him. It emanated in the main from employees in other shifts when he was working overtime rather than his own shift. In April 1997 he noticed a number of offensive remarks written about him on record cards and he reported these to his shift manager. He showed him the record cards and did so on a number of occasions. To the applicant's knowledge, nothing was done. On 16 August the applicant saw on a record card a comment stating "too many English bastards with only one eye who don't know what they are doing." When he reported this he was told that nothing could be done as the writing could not be recognised.
5. The applicant alleged also that at this time it was pointed out to him that there was writing in the main toilet which stated - "what has one eye, a big mouth and cries all day?" - answer "an Englishman/bastard." He reported this, allegedly, to the Personnel Manager before he, the applicant went on holiday on 22 August. When he came back from holiday on 8 September, this graffiti was still there. The applicant had lost an eye in an accident. He was English. He took these comments to refer to him. Prior to


perhaps 4/5 times each shift and on "B" shift this happened every time he worked on that shift. The applicant had threatened resignation to his supervisor on at least 2 occasions but the supervisor had talked him out of it.

6. We accept that the applicant was abused because he was English. Much of this abuse occurred before the Race Relations (NI) Order came into effect. We are satisfied that some person(s) wrote on a record card after the Order came into operation in terms which were racially abusive and in terms which made clear that the abuse referred to the applicant. We are satisfied also that there was abuse in the main toilet and on balance of probabilities believe that the applicant drew this to the Personnel Officer's attention before he, the applicant, went on holiday. We believe that these 2 incidents took place in a context where racial abuse had been given to the applicant earlier and before the Race Relations Order came into operation. We believe that supervisory staff knew that such abuse was taking place though of course we are confined to matters which took place after the Order came into force when determining both liability for those acts and the appropriate remedy.

7. We do not believe that the respondent took such steps as were reasonably practicable to prevent employees from doing unlawful acts under the Race Relations (NI) Order 1997 even when such acts were pointed out to him. It is not enough for an employer to ask an employee who is being racially abused to identify those who are doing it or who might be suspected of doing it. It is, of course, quite permissible to do so but if the person being abused declines to make such an identification the matter cannot simply be left there on the basis that there are no other reasonably practicable steps. In considering an employer's reactions in such circumstances, the key words are "steps which are reasonably practicable". It is hardly a reasonably practicable step to prevent abuse to return a record card with racially abusive material on it to its original position without amendment. It is management's responsibility to manage and reasonably practicable steps should not be ignored because they might not be totally successful. And whilst a decision to avoid action which can make matters worse can be understandable, inaction is not acceptable when the situation for the abused employee deteriorates. We believe that the respondent closed its eyes to this problem to the extent that the Personnel Officer in his replies to questions under Article 63(1)(b) of the Race Relations (NI) Order 1997 was positively misleading in denying knowledge of complaints of abuse from the applicant. Problems of racial abuse have to be faced. Attempts have to be made to eliminate such abuse where it occurs. Reasonably practicable steps may not in the end be successful - but some determined effort has to be made before a defence under Article 32 can be established. We do not minimise the difficulties for employers but the Order will have little success if employers do nothing rather than risk making matters worse. Action taken under other anti-discrimination legislation in Northern Ireland shows just what can be achieved in circumstances considerably more threatening than those set out in this case.

8. We believe that the applicant was angered and frustrated by the treatment he received from a minority of his colleagues and by inaction from management. We are looking at a short period of time from the Order came into force until the complaint was presented and at 2 specific instances. There is no financial loss. We think there was a serious injury to feelings and award £3,000 to the applicant.

President



Date and place of hearing: 7/8 April 1998 at Belfast

Date decision recorded in register and issued to parties: 21 APR 1998 CA

INTEREST NOTICE

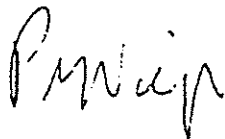
INDUSTRIAL TRIBUNALS

INTEREST ON AWARDS IN DISCRIMINATION CASES

The Industrial Tribunals (Interest) Order (Northern Ireland) 1990 provided that interest shall accrue on a sum of money payable as a result of an award of an industrial tribunal where that sum remains unpaid in whole or part 42 days after the decision containing the award was issued to the parties. In relation to awards made under the Equal Pay Act (NI) 1970, the Sex Discrimination (NI) Order 1976, the Disability Discrimination Act 1995, or the Race Relations (NI) Order 1997, the Industrial Tribunals (Interest on Awards in Sex and Disability Discrimination Cases) Regulations (NI) 1996 and the Race Relations (Interest on Awards) Order (NI) 1997 determined that interest shall accrue from the day immediately following the day the decision containing the award is issued to the parties. However no interest is payable on the award if the full amount of the award is paid within 14 days after the day of issue of the decision to the parties. Interest does not accrue on costs or expenses awarded by the tribunal.

In this application, please note that -

1. the decision day is 21 April 1998 being the day the decision was sent to the parties;
2. the calculation day is 22 April 1998 being the day immediately following the decision day; and
3. the stipulated rate of interest is 8% being the rate of interest in force on amounts awarded by decree in the county court on the decision day.



Secretary of the Tribunals