

Maria Galvan v Herbel Restaurants Ltd trading as KFC

Claim of race and sex discrimination (both direct and indirect) in the Industrial tribunal which settled on 10 April 2015.

Summary

The Claimant is from the Philippines. She was married with two children, her second child having been born in Northern Ireland. Both her children were cared for by her parents in the Philippines until 2011, so that she could work and earn money for her family.

The Claimant first came to Northern Ireland in February 2004 on a one year working Visa to work in the First Respondent's Lisburn Road KFC restaurant as a 'team member.' Prior to this she had worked in a KFC restaurant in the Philippines for 5 years and had been a manager for 3 of those years. The Claimant was issued with a 5 year working visa in 2006. She had also been promoted to Team Leader to Supervisor and then to Manager and thereafter was continuously employed by the Respondent working across a number of restaurants in Belfast, Antrim and Lisburn. She also worked in the Flagship store in Bangor. The Claimant gained full residency in 2011 and she and her family got British citizenship in March 2013.

The Claimant resigned from her post on 27 July 2013 claiming that she had been unfairly constructively dismissed. She alleged that she had been treated less favourably on grounds of her Race and Sex by her line manager who was the Respondent's Area manager. She alleged that this treatment spanned a number of years.

The Claimant alleged that matters become difficult for her at work after commencing her third contract with the Respondent in or around October 2006. She alleged that she was employed in the role of Supervisor and was based in the Flagship Restaurant in Bangor but worked across a number of stores and in fact was expected to undertake the duties and responsibilities of a Manager. The Claimant alleged that this situation continued until March 2008, when she was eventually appointed as Manager in the Respondent's Ann Street Restaurant and then received the correct rate of pay. The Claimant believed that she ought to have received pay at the Manager's rate during the period 2006-2008. She compared herself to Northern Ireland Managers who always received the appropriate rate of pay and believed that her line manager took advantage of her because she was not from Northern Ireland. She was also expected to move around a lot which caused her stress and inconvenience.

In addition to the pay issue the Claimant alleged that in the period 2006 until 2012, she was subjected to harassment from her line manager. She alleged that this manager would frequently shout at her and demean her in front of other staff members and make comments such as '*You Filipinos are brought over here, you do whatever we ask you to do, you go wherever we ask you to go.*' The Claimant also alleged that she rarely got credit for her achievements. She alleged that her manager often said things like '*You*

Filipinos are getting *'big headed'*, and that she would receive constant unjustified criticism.

The Claimant believed that her manager would use the fact that she was in Northern Ireland on a working visa to force her into working longer hours and to get her to provide cover for Managers in other restaurants. The Claimant alleged that there were periods when she worked 122 hours per week even though she was only contracted to work 39 hours. The Claimant alleged that she was reluctant to raise any objection in case this resulted in her losing her job and her right to reside in Northern Ireland.

In terms of sex discrimination, the Claimant alleged that she recalled an incident in or around 2010/2011 when her line manager overheard her and another employee say that they would like another baby and allegedly responded to this by saying *'Filipinos are not allowed to get pregnant because yous Filipinos just want to come over here to get pregnant.'*

For the most part, however, the Claimant's allegations regarding sex discrimination centred on her manager's treatment of her after she obtained residency and brought her children over to Belfast in 2011. The Claimant alleged that prior to her children arriving in Belfast, she explained that this would impact on her flexibility in terms of moving around different restaurants and working additional hours and that she would only be able to work her contracted 39 hours per week. Despite this, the Claimant alleged that her manager continued to put pressure on her to work additional hours and to work across a number of restaurants after her children moved to Northern Ireland.

The Claimant alleged that she did attempt to complain informally on a number of occasions to the Operations Manager about the way her Line Manager was treating her but on each occasion was told to *'give her another chance'*. Eventually the Claimant lodged a formal grievance in November 2012 and agreed to move to the Lisburn restaurant under a new manager pending the outcome of the Respondent's investigation. However the Claimant alleged that she soon realised that her complaints were not being taken seriously and it was becoming increasingly difficult to work in Lisburn due to her child care responsibilities. The Claimant asked for her hours to be reduced. A request that the Respondent later declined on the basis that all managers had to be full-time. The Claimant offered to take a demotion to facilitate the reduction. This too was later rejected by the Respondent on the basis that she had failed to make a formal application.

In these circumstances the Claimant felt no option other than to resign. Subsequent to submitting her resignation, the Claimant raised a further grievance regarding the aforementioned treatment including the Respondent's failure to deal with the earlier grievance. The Claimant attended a grievance meeting on 23 September 2013. She was advised of the outcome by way of letter dated 15 October 2013. Her grievances were not upheld and her appeal was later rejected.

In settling the case with the assistance of the Labour Relations Agency the Respondent

agreed to pay the Claimant £10,000. The Respondent agreed to furnish the Claimant with a reference. It re-affirmed its ongoing commitment to the principle of equality of opportunity in employment and further affirmed its commitment to ensuring that its policies, practices and procedures comply in all respects with best practice and with its obligations under the provisions of the Race Relations (NI) Order 1997, as amended, and the Sex Discrimination (NI) Order 1976, as amended, and the corresponding codes of practice. The Respondent welcomed the opportunity to meet with the Commission to review its equal opportunities policies, practices and procedures to ensure that they are effective and conform with all the requirements of equality legislation and, in particular, those under the Race Relations (NI) Order 1997, as amended. The Respondent undertook to implement within a reasonable time scale any reasonable recommendations the Commission may make, including any recommendations concerning the provision of equality awareness training to management and staff.