THE INDUSTRIAL TRIBUNALS

CASE REF: 9858/18

CLAIMANT: **Damian Anysz**

RESPONDENTS: **1. Sizzlers NI Ltd**
2. Kate Clarke

DECISION

1. The tribunal is unanimously satisfied that the first and second named respondents treated the claimant less favourably on racial grounds, in that he was subjected to harassment. The respondents are ordered to pay to the claimant the sum of £14,000.00.

2. The tribunal is unanimously not satisfied that the claimant was unfairly constructively dismissed. His claim in that regard is therefore dismissed against both respondents.

3. The tribunal is unanimously satisfied that the respondents failed to provide the claimant with a statement of his terms and conditions. The respondents are ordered to pay to the claimant the sum of £1,204.88.

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Browne**

Members: **Mrs E Gilmartin**
Mr M McKeown

APPEARANCES:

The claimant was represented by Ms S Bradley, Barrister-at-Law, instructed by the Equality Commission for Northern Ireland.

The respondents were represented by Ms S Treacy of Peninsula Business Services.

ISSUES AND EVIDENCE

1. The primary issues for resolution were the claimant's assertions that the respondents had:

   (i) Directly discriminated against him on the grounds of his race.

   (ii) Harassed him on the same grounds.

(iii) Victimised him for making a complaint about their treatment of him.

(iv) Unlawfully constructively dismissed him.

2. The claimant, a Polish national, was employed as a commis chef by the first respondent, which was at the material time owned and run by the second respondent, who was one of two directors. The first respondent is now insolvent, but was represented at the tribunal hearing. No defence was entered on its behalf.

3. The claimant was employed by the respondents from 19 November 2016 until 15 July 2018.

4. Towards the end of May 2017, the claimant was sworn at by June Fullerton, a long-standing member of the respondents' staff. The claimant had asked her if she needed any assistance, to which she replied *"You should go back to your own fucking country"*. The claimant complained about this to Heather Ballentine, the head chef, and to Noleen McErlean, deputy head chef.

5. As a result, Ms Fullerton apologised to the claimant, and they resumed what had seemed to be a cordial working relationship.

6. Upon the claimant's return from holiday at the end of June 2017 however, Ms Fullerton appeared to him to be brusque in her dealings with him. It also appeared to him that she was talking about him in a derogatory way to other staff.

7. Whilst he complained again to Heather Ballentine, she in his opinion did not believe him. It was only when a local colleague confirmed to her that Ms Fullerton regularly referred to the claimant as a *"fucking foreigner"* who should go back to his own country that Ms Ballentine believed the claimant.

8. The claimant was therefore upset, not only because of the way that Ms Fullerton was disparaging him to his colleagues, but also that he was not believed until a local employee confirmed it.

9. On 4 August 2017, the claimant reported to Cathy Fitsimmons, restaurant manager that he believed that Ms Fullerton had deliberately collided with him while she was carrying a metal tray. A statement of complaint was recorded by him, but that was the last he heard of the matter, and the statement has not been seen since. The evidence would appear to confirm that no action was taken to further investigate the matter.

10. On 26 August 2017, the claimant was told by a colleague that Ms Fullerton had been shouting about him. It would seem that Ms Fullerton was made aware that the claimant had repeated the allegation to another colleague, and shouted that the claimant was *"a fucking foreigner"*, who should *"fuck off back to where he came from"*. The claimant was very upset by this, but Ms Fullerton shouted at him that he was *"a fucking foreigner"* and a *"stupid cunt"*.

11. The claimant was very upset about this, and was on the point of resigning on the spot, but was calmed down by a colleague. Heather Ballentine was on the premises, and was aware of what had occurred.

12. It is of note that the second respondent in her response and witness statement indicated that Ms Fullerton was suspended for this behavior. The evidence however shows that no such action was taken until November 2017, as a result of another allegation against her by the claimant.

13. The claimant's evidence was that the second respondent was made aware at the time of the incident, and spoke to Ms Fullerton about it, but no action was taken, and the claimant was not interviewed about it.

14. Another incident occurred on 16 September 2017, involving what appeared to the claimant to be the deliberate unbalancing by Ms Fullerton of bottles of sauce being filled by the claimant.

15. The claimant gave evidence, confirmed by his GP notes, that as a result, he attended his doctor on 18 September 2017. His doctor recorded that the claimant then told him that he had complained to his boss, but that nothing had been done. He also said that he wished to continue working, as he [otherwise] enjoyed his job. His doctor prescribed a drug for depression.

16. The claimant also gave evidence that Ms Fullerton continued to disparage him as a *"fucking foreigner"* to colleagues, and muttered in a similar vein when walking behind him.

17. On 11 November 2017, the claimant was filling a refrigerator, and claimed that Ms Fullerton deliberately slammed the door shut on his arm, leaving a red mark. He immediately reported this to Noleen McErlean, showing her the mark, in response to which she 'phoned Ms Clarke, the second respondent, who was not on the premises. By the time she arrived, the mark had disappeared.

18. Ms Clarke had a private discussion with Ms Fullerton about the matter, as a result of which both appeared to the claimant to be very upset, and Ms Clarke shouted that all staff should get on with their work and not upset her any more.

19. The claimant on 19 November 2017 was asked to sign a statement about the incident, but he was not interviewed, and that was the last he heard about it from the respondents.

20. The evidence showed that Ms Fullerton was sent home on 11 November, pending investigation. She on 13 November 2017 returned her apron and car park pass. The respondents presumed this to be by way of resignation, which Ms Fullerton then informed them it was not. In a letter to her of 13 November 2017, the second respondent invited her to an investigation meeting on 1 December 2017, to consider the incidents of swearing and the "fridge" incident.

21. During that investigation meeting, Ms Fullerton said that she had called the claimant a *"foreign cunt"*, which was consistent with his account. When asked about how she now felt about it, she replied *"I might say it again … it just depends on the temper"*.

22. Ms Fullerton denied the fridge incident, and it appeared that no evidence was sought from Ms McErlean, even though it was she who had seen fit to contact Ms Clark when the claimant made his complaint to her.

23. Ms Fullerton was suspended on full pay, and in consequence of the investigation meeting, she was invited to a formal disciplinary meeting concerning the swearing incident (but not the fridge incident), due to take place on 11 December 2017.

24. Ms Fullerton did not attend that meeting, and made no attempt to contact the respondents in advance to say that she would not be there, or why.

25. The meeting was rearranged for 14 December 2017, at which she stated that she had had a dental appointment on 11 December, in response to which no comment was made by Ms Clark, who was conducting the disciplinary meeting.

26. Ms Fullerton stated that she would call the claimant such names again. She referred to the fridge incident; no questions were put to her about it, other than to ask her if it's like would happen again.

27. She said that the claimant was just telling *"lie after lie"*.

28. The second respondent wrote to Ms Fullerton on 21 December 2017, saying that she was *"pleased to report that due to your length of service and clean employee record that your suspension is lifted with immediate effect … Furthermore, from carefully reviewing the evidence and following your reason for your action, I believe that gross misconduct has been substantiated and therefore we are issuing a final written warning … Thank you for your patience and co-operation during the course of the investigation".*

29. It is of note that the claimant was given no information as to the conduct or outcome of his complaints. He also never received any information about the respondents' grievance or disciplinary policies.

30. Whilst there were no subsequent confrontations between the two, the claimant was of the clear impression from Ms Fullerton's conduct that she was constantly undermining him to the other staff. He repeatedly was aware of her appearing to lead discussions with other staff nearby, but they looked away whenever he caught their eye, from which he concluded that he was the subject of discussion.

31. The claimant felt that there was no point in complaining to the respondents, either directly or through his immediate superiors about such conduct, because he considered that his previous complaints had not been taken seriously.

32. He also felt that Ms Fullerton also deliberately made his ability to do his work more difficult, for example by unnecessarily moving the frying pans away from where he needed them to be.

33. In early July 2018, he overheard Ms Fullerton referring to him as *"that idiot who was running around looking for the pans"*. As soon as she realised that he was present behind her, she stopped talking.

34. The claimant formed the clear view that this was another example of Ms Fullerton undermining him in what seemed to him to be continuation of her previous treatment of him, albeit without the overtly racist language.

35. He was unaware throughout this that Ms Fullerton had received any warning about her earlier conduct of shouting racial abuse at him.

36. The claimant reported this incident to his manager Heather Ballentine, but nothing was done, and the second respondent stated in evidence that she had no recollection of it being reported to her.

37. It was therefore part of the claimant's case that the feeble and tardy response of the respondents to the behavior of Ms Fullerton, coupled with what he viewed as a wholly inadequate penalty, meant that she had no qualms about continuing to humiliate him, and to and undermine him to other staff, as long as she did so in a more covert way, to avoid detection.

38. The respondents' conduct also gave him no confidence that he would be protected by them, which in his view was confirmed by the lack of action when he complained in July 2018 about the frying pan incident.

39. Whilst that incident in itself might not have been as overt or serious as the earlier conduct of Ms Fullerton, it nevertheless was the claimant's case that it gave a telling glimpse underneath the surface of something untoward in his treatment, from which the tribunal could reasonably conclude that his complaints were potentially well-founded.

40. It also formed part of the claimant's case that he never received a copy of his contract of employment, despite his repeated requests, notably after Ms Fullerton returned to work at the end of December 2017, with no prior notification to the claimant, or explanation to him of her having undergone any disciplinary process.

41. The second respondent's case was that he did receive a copy of his contract of employment, but there was no evidence as to when. No copy or template could be found by the respondents; the second respondent stated in evidence that it had been *"misplaced"*.

42. It should also be borne in mind that no defence case was mounted at the hearing on behalf of the first respondent in answer to any of the claimant's complaints.

43. Another strand of the claimant's case of race discrimination was in the employment by the respondents of Patrick Totten as a chef in February 2018, who started his employment while the claimant was away on leave in February 2018. The claimant considered that Mr Totten was recruited by the respondents to replace Steven Johnston, who previously had shared duties with the claimant.

44. The claimant's evidence was that Mr Totten from the outset did not share the burden of work, resulting in the claimant's tasks increasing. This caused the claimant to feel that he was again being denigrated by the respondents, on the grounds of race, despite his complaints about Mr Totten's performance.

45. The claimant also found Mr Totten to be personally aggressive towards him. In one incident, he thought that Mr Totten was deliberately hiding chicken from him while the respondents were using a mobile catering van to provide catering at the Balmoral Show in May 2018. When the chicken eventually was found, the claimant's evidence was that Mr Totten told him to *"open your fucking eyes"*. He also said *"You be careful, Damian"*, which the claimant took as a threat.

46. When the claimant reported it to the second respondent, she was extremely cross with both men for acting in what she told them she thought was a childish fashion. The claimant's evidence was that she blamed him for the incident, and that he was the problem.

47. The claimant stated in his evidence at the tribunal hearing that Mr Totten had also used the term *"foreigner"* during this incident, which was the first time he had raised it in these proceedings.

48. The claimant also discovered that Mr Totten was being paid at a considerably higher rate of pay than he was receiving, which he again put down to being because of his race.

49. The respondents accepted that Mr Totten was paid significantly more than the claimant, or than Steven Johnston had been paid, which had been slightly less than that paid to claimant. Their explanation for this was that Mr Totten was a very experienced chef, whose demands for a higher rate of pay they had no option but to meet, because they were desperate to find someone, and it was extremely difficult to recruit anyone.

50. The claimant also considered that Mr Totten excluded him, on the ground of his race, from food which Mr Totten prepared for the rest of the staff.

51. When the claimant returned to work in late June 2018 from his wedding in Poland, he found that he had more hours of work. It was also his evidence that nobody at work spoke to him. Again, he considered that this was on the grounds of race.

52. The claimant's case was that the respondents' treatment of him, which he perceived to be on the grounds of race, was such that he felt that he had no option but to resign on 12 July 2018, leaving his employment on 15 July 2018.

53. It was put to him that there was no mention of discrimination, by Mr Totten or anyone else, in his resignation letter of 12 July 2018. He concluded it by saying *"Thank you for the knowledge I got during my time there and the experience I got"*. The claimant told the tribunal that he just wanted to give notice, and that he did not think he had to put in why he was leaving.

LAW AND CONCLUSIONS

54. The legislation relevant to the claimant's case is set out in the Race Relations (Northern Ireland) Order 1997 ("the 1997 Order"):-

> **Racial discrimination**
>
> *"3.—(1) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Order if—*
>
> *(a) on racial grounds he treats that other less favourably than he treats or would treat other persons; or*

(b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but—

(i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and

(ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and

(iii) which is to the detriment of that other because he cannot comply with it.

(2) For the purposes of this Order segregating a person from other persons on racial grounds is treating him less favourably than they are treated.

(3) A comparison of the case of a person of a particular racial group with that of a person not of that group under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other."

Victimisation

"4.—(1) A person ("A") discriminates against another person ("B") in any circumstances relevant for the purposes of any provision of this Order if—

(a) he treats B less favourably than he treats or would treat other persons in those circumstances; and

(b) he does so for a reason mentioned in paragraph (2)

(2) The reasons are that—

(a) B has—

(i) brought proceedings against A or any other person under this Order; or

(ii) given evidence or information in connection with such proceedings brought by any person; or

(iii) otherwise done anything under this Order in relation to A or any other person; or

(iv) alleged that A or any other person has (whether or not the allegation so states) contravened this Order; or

(b) A knows that B intends to do any of those things or suspects that B has done, or intends to do, any of those things.

(3) Paragraph (1) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith."

Harassment

"4A.—(1) A person ("A") subjects another person ("B") to harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(1B) where, on grounds of race or ethnic or national origins, A engages in unwanted conduct which has the purpose or effect of—

(a) violating B's dignity, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect."

Applicants and employees

"6.—(1) It is unlawful for a person, in relation to employment by him at an establishment in Northern Ireland, to discriminate against another—

(a) in the arrangements he makes for the purpose of determining who should be offered that employment; or

(b) in the terms on which he offers him that employment; or

(c) by refusing or deliberately omitting to offer him that employment.

(2) It is unlawful for a person, in the case of a person employed by him at an establishment in Northern Ireland, to discriminate against that employee—

(a) in the terms of employment which he affords him; or

(b) in the way he affords him access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or

(c) by dismissing him, or subjecting him to any other detriment."

55. The reference in Article 6 (2)(c)to dismissal is grounded in the legislation contained in Article 127 (1) (c) of the Employment Rights (Northern Ireland) Order 1996, which states:

"127.— (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to paragraph (2), only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) he is employed under a limited-term contract that terminates by virtue of the limiting event without being renewed, or]

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire; and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given."

56. In reaching its conclusions, the tribunal considered that there were two clear evidential strands which emerged.

57. The first strand was the conduct towards the claimant by June Fullerton, and the subsequent handling of that conduct by the respondents.

58. The second strand was centered around the appointment of Patrick Totten, and his conduct towards the claimant, along with his rate of pay, and the respondents' handling of the claimant's complaints.

59. It is the claimant's responsibility to prove facts from which the tribunal could conclude, in the absence of an adequate alternative explanation that the respondent's treatment of the claimant was on grounds of religious belief or race. Once facts have been established from which discrimination could be inferred, the burden shifts to the respondent to show that there is another explanation for the treatment.

60. It is clear that a difference in status is not enough to establish the inference of discrimination (***Madarassy v Nomura International Plc [2007] IRLR 246***). Where the claimant relies on actual comparators to show less favourable treatment, it is necessary to compare like with like. In addition, the claimant may rely on the evidential significance of non-exact comparators in support of an inference of direct discrimination.

61. Especially since the ruling of the House of Lords in ***Shamoon v Chief Constable of the RUC [2003] IRLR 285 HL***, there has been a movement towards treating the question of whether less favourable treatment was on the proscribed ground - the "reason why" issue - as the crucial question for tribunals to address **(*Aylott v Stockton on Tees Borough Council [2010] IRWR 994 CA*; *JP Morgan Europe Ltd v Chweidan [2011] EWCA Civ 648*)** rather than focusing on the characteristics of actual or hypothetical comparators. As put by Mummery LJ in ***Aylott***, *"Did the claimant, on the proscribed ground, receive less favourable treatment than others?"*

62. The tribunal received valuable assistance from Mr Justice Elias' judgement in the case of ***London Borough of Islington v Ladele and Liberty (EAT) [2009] IRLR 154***, at paragraphs 40 and 41. These paragraphs are set out in full to give the full context of this part of his judgement.

> *"Whilst the basic principles are not difficult to state, there has been extensive case law seeking to assist Tribunals in determining whether direct discrimination has occurred. The following propositions with respect to the concept of direct discrimination, potentially relevant to this case, seem to us to be justified by the authorities:*
>
> > *(1) In every case, the Tribunal has to determine the reason why the claimant was treated as he was. As Lord Nicholls put it in **Nagarajan v London Regional Transport [1999] IRLR 572, 575** – 'this is the crucial question'. He also observed that in most cases this will call for some consideration of the mental processes (conscious or sub-conscious) of the alleged discriminator."*

63. It must be borne in mind that, in this case, the claimant variously alleged both deliberate collective and mass unconscious bias to be the potential reason for the shortlisting panel's treatment of him.

64. Mr Justice Elias continued:

> *"(2) If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial: see the observations of Lord Nicholls in Nagarajan (p.576) as explained by Peter Gibson LJ in **Igen v Wong [2005] IRLR 258,** para 37.*
>
> *(3) As the courts have regularly recognised, direct evidence of discrimination is rare and Tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the*

*two-stage test which reflects the requirements of the Burden of Proof Directive (97/80/EEC). These are set out in **Igen v Wong.** That case sets out guidelines in considerable detail, touching on numerous peripheral issues. Whilst accurate, the formulation there adopted perhaps suggests that the exercise is more complex than it really is. The essential guidelines can be simply stated, and in truth do no more than reflect the common sense way in which courts would naturally approach an issue of proof of this nature. The first stage places a burden on the claimant to establish a prima facie case of discrimination:-*

> *'Where the applicant has proved facts from which inferences could be drawn that the employer has treated the applicant less favourably [on the prohibited ground], then the burden of proof moves to the employer.'"*

65. Key to this test is that the less favourable treatment has an evidence-based direct or inferential connection to the prohibited ground. It would be rare to have, for example, conduct or records which contained evidence incapable of any other interpretation than that discrimination on prohibited grounds was intended.

66. The tribunal therefore remained alert to anything in the evidence which, whilst superficially innocuous, might give even a brief glimpse of something untoward beneath the surface, capable of providing an insight in to something sinister lurking beneath.

67. Mr Justice Elias again continued:

> *"If the claimant proves such facts, then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If he fails to establish that, the Tribunal must find that there is discrimination. (The English law in existence prior to the Burden of Proof Directive reflected these principles save that it laid down that where the prima facie case of discrimination was established it was open to a Tribunal to infer that there was discrimination if the employer did not provide a satisfactory non-discriminatory explanation, whereas the Directive requires that such an inference must be made in those circumstances: see the judgment of Neill LJ in the Court of Appeal in **King v The Great Britain-China Centre [1991] IRLR 513**.)"*

68. The task of the tribunal in determining whether or not the first test had been met was made much more straightforward by the nature of the disciplinary procedure against Ms Fullerton, during which she admitted the substance of the claimant's complaints.

69. The substance of her abusive language, which the tribunal concluded was less favourable treatment in the form of harassment, could not have been clearer as to its source, namely Ms Fullerton's vocal contempt for the claimant's foreign origin, and the fact that he had come to Northern Ireland to live and work.

70. Her less favourable treatment of him was therefore on the ground of the protected characteristic; consequently, there was no requirement on the claimant to provide a comparator.

71. The burden therefore shifted to the respondents to provide an adequate explanation. No case was advanced on behalf of the first respondent, as a result of which the tribunal concluded that there had been discrimination by it against the claimant on the ground of race.

72. The tribunal also concluded, from the evidence and in the absence of any challenge from the first respondent, that the claimant's evidence as to June Fullerton's conduct towards him ended only in early July 2018, involving the frying pans, was true.

73. The tribunal therefore was satisfied that the claimant's complaint to the tribunal, received on 5 September 2018, was within time.

74. As such, the tribunal has concluded that the harassment continued, albeit in a less overt way. The behaviour might have included an element of victimisation for making his complaint, resulting in the disciplinary process. The conduct was by the same individual, with clear evidence from her previous verbal abuse as to the primary reasons for it. It had also been stated by her during the investigation process that it might recur, depending upon her temper at the time. The tribunal concluded that, whilst less overt in its expression, it was satisfied on balance that it could properly be classified as a continuation of the harassment.

75. It was the second respondent's case that she, in her capacity as a director of the first respondent, had taken reasonably practicable steps in order to prevent further harassment.

76. The tribunal concludes however that she was probably aware from a very early stage about the *"foreign cunt"* incident in August 2017. Her witness statement appears to attempt to gloss over this by intimating that she took immediate action, whereas nothing was done until yet another incident took place, and some months later.

77. The seriousness with which the investigation was conducted was significantly undermined by the placatory language used in the letter to the perpetrator. This included thanking her for co-operation, when in fact she had failed to turn up, without prior notice or satisfactory explanation. It also thanked her for her patience.

78. This was in stark contrast to the complete absence of communication with the claimant, who was completely unaware of any process, or of any penalty. The tribunal has concluded that he reasonably felt that it was he who was regarded as the problem, as confirmed by the second respondent's repeated declarations that none of her staff had ever complained before.

79. It was also clear from correspondence that the respondents were anxious for Ms Fullerton not to resign, as they thought that she had. The tribunal concluded that the sanction imposed by the second respondent on Ms Fullerton was consistent with the respondents not wanting to upset Ms Fullerton more than they wished to do right by the claimant.

80. The tribunal is satisfied that the failure of the second respondent to act appropriately was not an omission, but part of a deliberate course of action, resulting in the behaviour continuing, albeit in a less overt form.

81. If the respondents had been serious about the welfare of the claimant, and to ensure that there was no repetition of the conduct, the very least that could reasonably be expected was that the claimant would be informed of the disciplinary process and the formal warning. This would not only reassure the claimant that his complaints had been upheld, but also that Ms Fullerton was on notice to cease her harassment of him.

82. The tribunal therefore concludes that she can properly be held to be jointly liable with the first respondent.

83. The tribunal is satisfied that the claimant was never supplied with a statement of his terms and conditions of employment. Whilst the second respondent stated that he had been, she was unable to provide any internal records to verify it.

84. The tribunal is not however satisfied that the hiring, pay and conduct of Mr Totten was discriminatory. The tribunal accepts the explanations provided by the respondents as to the dilemma in which they were placed by the departure of Mr Johnston. This, accompanied by the lack of evidence of any discriminatory language or conduct, leads the tribunal to conclude that it was not satisfied that the claimant's decision to resign was unfair constructive dismissal. His claim in that regard is therefore dismissed against both respondents.

REMEDY

85. As regards the discrimination aspect of this case, the tribunal has considered the guidelines in ***Vento***. It has concluded that the appropriate level of injury to feelings falls in the middle band. The abuse to which he was subjected was demeaning and undermining, and included a clear whispering campaign by one member of staff to isolate him from his colleagues. What once had been an environment in which he felt welcome and valued became one where he felt that he was at the mercy of the mood of another member of staff. That situation was permitted and compounded by the respondents, by failing to address and resolve the original misconduct by Ms Fullerton, thereby enabling her to repeat and escalate her treatment of the claimant, leaving him reasonably and genuinely to feel that he was regarded as the problem.

86. There is no evidence that Ms Fullerton's conduct reflected the views of the respondents. The tribunal concludes however that the prevailing circumstances, namely a failing business and a lack of experience in dealing with such matters cannot offset or excuse the respondents' failure to deal in an appropriate way to stop and ensure no repetition of the genuine distress suffered by the claimant. The tribunal therefore considers that £14,000.00 is the appropriate sum to be paid by the respondents to the claimant for his injury to feelings.

87. The tribunal further is satisfied that the equivalent of four weeks' pay, namely a total of £1,204.88 is the appropriate remedy for the respondents' failure to provide him with a written statement of his terms and conditions.

88. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 16 April 2019, Belfast.

Date decision recorded in register and issued to parties: