

# Sexual Harassment Guidance

## TRIBUNAL HIGHLIGHTS

### **Beware of Sexual Harassment: £52,000 award after employer ignored female Polish worker's harassment complaints**

*Urbanska-Kopowska v McIlroy and another t/a Mac's Quality Foods NIIT/1376/08 | Dated: 7 January 2011*

The industrial tribunal in Northern Ireland has awarded over £52,000 for sex and race discrimination after an employer ignored complaints from a Polish female worker that she was being subjected to serious sexual and racial harassment in the factory in which she worked.

Mrs Urbanska-Kopowska, who is from Poland, was employed as a production operative in the respondent's business, which prepares raw food for distribution to various retail outlets. Mrs Urbanska-Kopowska claimed that, as well as working in the factory, she was required to clean the toilets, the house of the business owner, Mr McIlroy, and the factory (including sometimes having to get rid of dead insects on the top of the freezer). Local workers were not required to do these jobs. The claimant also contended that workers from Northern Ireland were provided with the necessary protective clothing, but that she was not normally given any protective clothing. Any protective clothing that she was provided with was old and worn. This resulted in her having to buy her own boots and various other items.

A new production worker, Mr Kaczmarek, started at the factory. Mrs Urbanska-Kopowska later alleged that Mr Kaczmarek told her that he did not like working there, but would not leave because "she was his type and he would eventually have her". She also claimed that Mr Kaczmarek:

- stroked her hand while she was working on the production line as he passed by her;
- stood behind her and put his arms around her while she was working on the production line;
- used terms of endearment in Polish towards her such as "darling", "sweetheart" and "sunshine";
- took a photograph of her eating a banana in the canteen;
- commented in Polish on her having a nice bottom;
- touched her leg under the table at the Christmas dinner; and
- told her in Polish that he would like to get her drunk so that he could have sex with her.

Mrs Urbanska-Kopowska and Mrs Balciewicz (a work colleague and friend) said that Mr Kaczmarek stripped to his underwear each morning in the changing area in front of them. Both women told him that they found his behaviour inappropriate and argued that he should be changing in the toilets.

The claimant had tried to raise her difficulties with the owner, Mr McIlroy, at a meeting in October 2007. However, she claimed that Mr McIlroy "told her that he had no interest in her problem and did not want to hear about it". The production manager, Mr Blaney, allegedly told her that she and Mr Kaczmarek had to sort the problem out among themselves. The situation deteriorated after Mrs Balciewicz was dismissed, meaning that Mrs Urbanska-Kopowska did not have any support at work.

The claimant went on sick leave in December 2007 and in the first week of January 2008 sent a grievance letter alleging sexual harassment. However, a grievance meeting did not take place until April 2008. Mr Kaczmarek admitted that he had stripped in front of the female staff but denied most of the other allegations. Mrs Urbanska-Kopowska's grievance was rejected in May 2008 on the basis that it was one person's word against another. This was some four months after she had raised



formal complaint. Mr McIlroy refused to hear her appeal, saying that the appeal had been made out of time and the matter was closed.

Mrs Urbanska-Kopowska resigned in July 2008 and brought tribunal claims for sex discrimination, race discrimination and constructive dismissal.

The industrial tribunal upheld Mrs Urbanska-Kopowska's sex discrimination and unfair dismissal claims. It said that, even if Mr McIlroy had been right not to uphold her complaint, it would have been open for him to take steps to protect the claimant and monitor the situation. The claimant had been left in a position where, as far as she was concerned, there could well have been a continuing campaign of serious sexual harassment. Mr McIlroy effectively left Mrs Urbanska-Kopowska with no support or protection at all.

The tribunal generally preferred the testimony of Mrs Urbanska-Kopowska and Mrs Balciwicz. It was not at all impressed with the respondent's evidence. In particular, Mr McIlroy seemed to lack even the most basic knowledge about equal opportunities. For example, when he was questioned about his firm's equality policies, his response was to ask "what is a policy?". Having decided which version of events it preferred, the tribunal had no difficulty in finding that the conduct visited on the claimant by Mr Kaczmarek caused her feelings of violation, degradation and humiliation.

The race discrimination claim was also upheld. Both Mrs Urbanska-Kopowska and Mrs Balciwicz, as Polish workers, were given the more unpleasant tasks to carry out. They were also sworn at in Polish by the production manager, Mr Blaney. The local workers were not required to carry out objectionable tasks or sworn at in Polish or English. There were also differences in treatment in the equipment given to the foreign workers when compared to the local workers.

The claimant was awarded over £31,000 for unfair dismissal and £20,000 for injury to feelings for her successful sex and race discrimination claims.

## Helpful Hints

- Sex discrimination: it is never appropriate for an employee who has raised allegation of serious harassment to be told that they should attempt to resolve the issue informally with the individual about whom they have made the complaint.
- Race discrimination: employers should be extremely mindful about treating employees less favourably in any aspect of the employment relationship.
- Harassment: employers that frequently employ vulnerable workers such as low-paid staff or migrant workers need to be particularly vigilant and proactive about harassment issues.

