

THE EQUALITY TRIBUNAL

EMPLOYMENT EQUALITY ACTS 1998-2011

DEC – E2014-010

Olesia Berezovskaja

[represented by Grogan and Associates Solicitors]

versus

**Vector Workplace and Facility Management Ltd,
Campbell Catering Ltd and Aramark Ireland Holdings
Ltd** [represented by Peninsula Business Services (Ireland) Ltd]

Keywords: Employment Equality Acts, Race, Conditions of Employment, Harassment

Dispute

1.1 The case concerns a claim by Ms Olesia Berezovskaja, a Lithuanian National, against Vector Workplace and Facility Management Ltd, Campbell Catering Ltd and Aramark Ireland Holdings. Both parties at the hearing agreed that the correct respondent was Vector Workplace and Facility Management Ltd and complaints were withdrawn against Campbell Catering Ltd and Aramark Ireland Holdings Ltd. Her claim is that she was discriminated against in relation to her conditions of employment on the grounds of race, contrary to the Employment Equality Acts 1998 - 2011[hereinafter referred to as 'the Acts']. She also claims harassment within the meaning of Section 14A of the Acts. I am precluded, under Section 101 of the Acts, at looking the discriminatory dismissal aspect of the case as the Employment Appeals Tribunal issued a decision regarding the dismissal on 26th March 2013.

1.2 Through her legal representative, the complainant referred a complaint under the Acts to the Director of the Equality Tribunal on 26th July 2011. On 13th June 2013, in accordance with his powers under Section 75 of the Acts, the Director delegated the case to me, Orlaith Mannion, an Equality Officer, for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part VII of the Acts. On this date, my investigation commenced. A hearing was held on 26th June 2013 as required by Section 79(1) of the Acts.

Summary of the complainant's case

2.1 The complainant is a Lithuanian National. She was employed as a Cleaning Supervisor at a rate of €10.75 @ hour. She submits that she was instructed to give a training course in Russian to other staff. She submits that when she did so Ms A (Area Manager) said 'Blah Blah Why don't you speak English'.

2.2 She submits that she did not receive a contract of employment in a language she could understand.

2.3 Cases cited were *Khumalo v Cleary and Doyle*¹, *Campbell Catering Ltd and Aderonke Rasaq*², *Zhang v Towner Trading*³, *Golovan v Porturlin Shellfish Ltd*⁴

Summary of the respondent's case

3.1 Ms A, a Romanian National, refutes that she made the comment alleged or any similar comment. Ms Berezovskaja was the Cleaning Supervisor at X Bank. It was agreed from the outset that she would translate for the people who worked to her as most of them had poor English and her English was excellent.

3.2 The complainant received a contract of employment on 22nd January 2008 along with other staff. It was in English but Ms Berezovskaja was fluent in same. She carried out cleaning audits for the company in English. Her letter of resignation was also in English.

Conclusions of the Equality Officer

4.1. Section 6(1) of the Act provides that discrimination shall be taken to occur where on any of the discriminatory grounds mentioned in subsection (2) one person is treated less favourably than another is, has been or would be treated. The discriminatory grounds in this case is race, Therefore, the issues for me to decide are:

- (i) whether Ms Berezovskaja was discriminated against in relation to her conditions of employment by the respondent
- (ii) whether she was harassed within the meaning of Section 14A of the Acts

Conditions of employment

4.2 Generally, I preferred the evidence of the respondent. The witnesses for the respondent spoke with clarity and conviction and had documentary evidence to reinforce their recollection of events (e.g. contract of employment, records of meetings etc.). Ms A gave cogent evidence of how she arrived in Ireland from Romania ten years ago with barely a word of English. For this reason, she submits

¹ Equality Tribunal DEC-E2010-003

² Labour Court Determination No. EED048

³ Equality Tribunal DEC-E2008-001

⁴ Equality Tribunal DEC-E2008-032

that she would be slow to condemn somebody for not speaking English as she realises it is difficult to learn especially if you are working mainly with people from your own community. On the balance of probabilities, I find that Ms A did not say what the complainant alleges that she said. I also accept the respondent's evidence that it was a mutual decision that Ms Berezovskaja would translate instructions as well as details regarding their basic terms and conditions for her colleagues.

4.3 Regarding the contract of employment, I am satisfied from the direct evidence at the hearing that the complainant's English (as well as what her role entailed) was good enough to read and understand her terms and conditions of employment in English. Therefore, this aspect of her case fails. The complainant has failed to establish a *prima facie* case of discrimination regarding her conditions of employment.

Harassment

4.4 Section 14 (7) of the Act defines harassment as any form of unwanted conduct related to any of the discriminatory grounds and being conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

4.5 I am not satisfied that *enough* evidence has been adduced to demonstrate that the complainant was harassed on the ground of race. First of all, as discussed in Paragraph 4.2, I do not accept that Ms A said 'Blah, Blah. Why don't you speak English'? Even if she had, I do not find a solitary and minor incident like this would constitute an act of harassment that would create a hostile atmosphere sufficient to shift the probative burden to the respondent. Therefore, this strand of her case does not succeed.

Decision

I have concluded my investigation of Olesia Berezovskaja's complaint. Based on all of the foregoing, I find, pursuant to Section 79(6) of the Act, that

(i) the complainant has failed to establish the facts from which it may be presumed that the respondent discriminated against her on the grounds of race, relation to conditions of employment

(ii) the complainant was *not* harassed on the ground of race contrary to Section 14A of the Act

Orlaith Mannion
Equality Officer