Calling a colleague “bald” can amount to harassment related to sex

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In the recent case of Finn v The British Bung Manufacturing Company Limited an Employment Tribunal held that calling an employee "bald" was harassment related to sex. This was the case even though the "bald" comment was held to have been made on only one occasion.

What happened in this case?

Mr Finn was employed as an electrician by The British Bung Manufacturing Company Limited (**the Company**) for nearly 24 years. In May 2021, he was dismissed for misconduct. Following his dismissal, Mr Finn brought a suite of claims against the Company including for harassment on the grounds of age and sex, wrongful dismissal, ordinary unfair dismissal, automatic unfair dismissal relating to health and safety and whistleblowing protected disclosures, detriments relating to health and safety and whistleblowing protected disclosures, and victimisation.

Mr Finn brought certain of those claims, including the harassment claim which is the focus of this article, against a colleague, Mr King, who, Mr Finn claimed, had called him an "old bald c***" in July 2019 and, again, in March 2021. After the first comment, Mr Finn had been prepared to let bygones be bygones, and did not raise a formal complaint. There was no evidence of further tensions between Mr Finn and Mr King until the second comment was made in March 2021.

Following the second comment, Mr Finn left the workplace and only returned some two weeks' later. Upon his return, he attended a meeting with the Company's Managing Director and Company Secretary at which he produced a statement which clearly displayed the words "West Yorkshire Police" at the top of the document. The Company maintained that by reporting the

matter to the police, Mr Finn had breached the relationship of trust and confidence between himself and the Company, and the Company dismissed him following a disciplinary hearing.

The dismissal took place despite repeated protestations by Mr Finn and his son (who was a police officer at West Yorkshire Police) that the matter had not, in fact, been reported to the West Yorkshire Police and was not logged within the police system.

What was decided?

The Employment Tribunal dismissed Mr Finn's claim of harassment related to age as it held that Mr King had not used the word "old" when he had described Mr Finn as a "bald c***" in July 2019 and that he had not used the words "old bald c***" in March 2021. In any event, the Tribunal held that men of all ages could suffer from baldness and not just those who could be described as old.

However, Mr Finn was successful in his claim for harassment related to sex. The Tribunal found that Mr King had threatened Mr Finn in July 2019 and called him a "bald c***". The Tribunal found the word "bald" used in this pejorative manner was unwanted conduct. Whilst the Tribunal accepted that "industrial language" was commonplace on the factory floor, it found that Mr King had overstepped the mark by making remarks about Mr Finn's appearance. The Tribunal reasoned that there was no evidence that Mr Finn complained about the term "c***" used towards him but, instead, complained about the words "old" and "bald" which demonstrated that Mr Finn had been particularly affronted by those words, indicating that the conduct was unwanted.

Mr King admitted in evidence that he had intended to threaten and insult Mr Finn in July 2019 and the Tribunal held that Mr King's use of the word "bald" had both the purpose and effect of violating Mr Finn's dignity and creating an intimidating,

hostile, degrading, humiliating or offensive environment for him.

On the facts before it, the Tribunal established that there was a clear link between the unwanted harassing words on the one hand and the protected characteristic of sex on the other, given that baldness predominantly affects men and that Mr King had set out with the intention of denigrating Mr Finn based on his baldness.

Although Mr Finn's claim was 18 months out of time, the Tribunal held that it was just and equitable to extend time to allow Mr Finn to bring his claim.

What does this mean for employers?

The takeaway from this case is that Employment Tribunals are willing to interpret the law purposively and extend time where necessary to allow individuals to bring claims against employers where there are good grounds to do so.

Employers should take steps to ensure that training on bullying, harassment and discrimination is regularly provided, refreshed, and documented so that colleagues understand the risks of overstepping the mark when commenting on another colleague's personal appearance and characteristics.

If a colleague raises concerns over remarks that have been made about their personal appearance, it is advisable to investigate matters thoroughly to determine whether further action should be taken against the alleged perpetrator, and to improve the culture of your workplace generally. Failure to take such steps could lead time-consuming grievances and Tribunal claims and poor staff morale.

Finn v The British Bung Manufacturing Company Ltd and anor

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss

any issues relating to the content of this article, please contact employment lawyers James Hockley (jameshockley@bdbf.co.uk), Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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