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## LADY'S DIGNITY VIOLATED BY STEREOTYPE OF INDIAN FORCED MARRIAGE

In the case of **Richmond Pharmacology Ltd vs. Dhaliwal, EAT 2009 IRLR 336**, D was a British citizen of Indian ethnic origin and employed as a Project Manager by RP Ltd a contract research organisation involved in clinical trials.

On 13th August 2007 she gave 1 month's notice of resignation and on 3rd September had a meeting with RP's Medical Director who told her that the quality of her work had recently deteriorated and she should work out her notice in a professional way. He added that their paths were likely to cross again in the future "unless you are married off in India". D was distressed by the remark and refused to continue with the meeting without the presence of someone from HR. The meeting ended, following which D raised a grievance about L's behaviour which was not resolved and so she brought a claim to the Employment Tribunal alleging racial harassment contrary to Section 3A of the Race Relations Act 1976.

That Section provides that an Employee subjected to unlawful harassment when on the grounds of race, ethnic or national origins, he or she is subject to unwanted conduct which has the purpose or effect of violating his or her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him or her.

The Tribunal found the remark unwanted and unnecessary in the context of the meeting, made on the ground of ethnic origin and suggesting a stereotypical view of women from that background. It was ill judged rather than deliberately racially offensive, but given the immediate reaction and continuing sense of grievance by D, it had the effect of violating her dignity. It did not consider that D was overly sensitive and thought reasonable for her to find the remark offensive. She was given £1,000.00 for injury to her feelings and RP Ltd appealed to the EAT.

That body while describing the case as possibly borderline held the Tribunal were entitled to find that the remark amounted to harassment. It accepted that a person's dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offense was unintended. Care had to be taken not to encourage a culture of hypersensitivity, but in this case the remark which evoked the stereotype of forced marriage could reasonably have been perceived to violate D's dignity. The appeal was dismissed.

The President of the EAT Mr Justice Underhill identified the 3 elements that must be satisfied in order for an Employer to be liable for harassment.

- Did the Employer engage in unwanted conduct.



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- Did it have the purpose or effect of either violating the Employee's dignity or creating an adverse environment for him/her?
- Finally, was the conduct on the ground of the Employee's race (or ethnic or national origins).

The President's approach applied similarly to the harassment provisions of other discrimination legislation e.g. within the Sex Discrimination Act, Disability Discrimination Act, Employment Equality of Religion or Belief Regulations, Sexual Orientation, Employment Equality Aid.

The case is therefore now a primary source of guidance for Employers facing harassment claims.

As the second element makes clear, there does not have to be an intention to cause the violation, conversely he can be liable even if it does not produce the violation if it was intended, albeit those circumstances will be quite rare.

The overall criterion is objective in the sense that whilst the Tribunal would have to look at the putative victims' feelings, it has to consider whether or not it was reasonable for the Employee to experience those particular feelings or perception. So if the Employee was unreasonably prone to take offence and even if they generally did feel dignity had been violated there will be no harassment within the meaning of the Act.

As far as the final element is concerned, whilst an enquiry into the Employer's grounds for acting may well be necessary, where the nature of the conduct complained of consists for example of overtly racial abuse, the Employer can be found to be acting on racial grounds without the Tribunal troubling to consider the Employer's mental processes.

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