

HARASSMENT OR NOT?

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IN *RAJ V CAPITA BUSINESS SERVICES*, AN EMPLOYMENT TRIBUNAL HELD THAT A FEMALE MANAGER MASSAGING A MALE EMPLOYEE'S SHOULDERS FOR 2-3 MINUTES, WHILST UNWANTED CONDUCT, WAS NOT HARASSMENT UNDER S.26 OF THE EQUALITY ACT 2010.

When Mr Raj was dismissed by Capita Business Services Limited in August 2017, after almost a year's employment there, he brought a claim in the Employment Tribunal for harassment. He alleged that when he was at his desk, his female manager massaged his shoulders, neck and back on several occasions. Mr Raj claimed that this constituted unwanted conduct related to his gender and was also of a sexual nature for the purposes of bringing a claim for harassment.

The Employment Tribunal found that the conduct was unwanted and created an intimidating, hostile, degrading, humiliating or offensive environment for Mr Raj, which is the first stage of a two-stage test to establish harassment. However, the tribunal concluded that the conduct was not sexual in nature or related to gender. Instead, the reason for it was "misguided encouragement". Therefore the second stage of the two-stage test (that the behaviour must be due to one of these protected characteristics) was not satisfied.

The tribunal agreed that the manager had given Mr Raj massage-type contact lasting 2-3 minutes which was long enough to make him feel uncomfortable (rather than the light tap according to the manager's version of events). However, there was no evidence of the manager behaving in this way with anyone else of any gender. The tribunal concluded that the conduct related to a "gender neutral" part of the body in an open plan office. Although the conduct was uncomfortable and unwise, it did not constitute harassment under the Equality Act. The Employment Appeal Tribunal upheld the decision.

Although this behaviour didn't amount to harassment; please don't try it at work! The behaviour was inappropriate and did make the Claimant feel uncomfortable. This case also begs the question whether the outcome would have been the same were it the other way round, with a male manager and female employee. If the roles were reversed, would a tribunal be more likely to find similar conduct related to gender or sexual in nature?

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