

YOUR WEEKLY BULLETIN OF WIT AND WONDER



JET SETTER

My thrilling clickbait odyssey.



CONSTRUCTIVELY HARASSED..?

An important new decision by the EAT.



CRUNCH POINT

Chirpy Hampshire teen appreciates getting to keep leg.

FLY GIRL

The cost to rent a private jet might surprise you.

This is what I'm told as I browse the internet this week, in a headline with 'sponsored' faintly hovering above it - in other words it's just an advert. It reassures me that despite this world of cookies and sophisticated digital stalking, Big Brother really doesn't know me that well.

Although... maybe it DOES, because I was suddenly intrigued to find out. Just because.

WE LOOK FORWARD TO WELCOMING YOU ABOARD the website told me, even after I'd refused its whole plateful of cookies. I felt a bit guilty, as if I was visiting a lonely neighbour purely to check that they were still alive, but really had no intention of staying to chat.

They wanted to show me their lovely photos of their family of jets. They wanted to boast about all their achievements. "Look - the Praetor 600's just got a new fresh air system! We couldn't be more proud!" They were blindly optimistic that I would actually CHARTER A JET despite having no clue of my net worth.



Eventually I had to make my excuses and leave, returning to my normal life where over 50s healthcare plans and anti-ageing serums are more realistically attempting to seduce me.

Mainly because I now realise I had no way of finding out just *how* surprised I might be at the cost of renting a private jet (£1,550? £223? A tenner?) without signing up with my name, email and phone number and submitting to contact from a Dedicated Account Manager for further discussion.

I think, actually, I would prefer to speak to an Undedicated Account Manager. I suspect they'd be easier to steer off topic, into a more entertaining conversation (Strictly or I'm A Celeb, perhaps?) than their Dedicated colleagues. They wouldn't take it so hard when I failed to rent a jet, because, honestly, they just weren't that dedicated. In fact, the pressure would be so low they would, in fact, stand much more chance of me suddenly flipping out and *actually renting a jet*.

But no. I didn't leave any details. I just edged back out the way I came in. And now I wait for the advertising bots to recalibrate my profile and start offering limos, luxury cars, world cruises, £2.5m country seats... It's a nice self-esteem booster, if nothing else...

What wildly unlikely advert gambits are you laughing at right now? Do tell us over on our Facebook page.

REDEFINING HARASSMENT

And speaking of self-esteem boosting brings me to the case of *Ms M Driscoll v 1) V&P Global Limited 2) Mr F Varela* 2021 which concerns the very opposite.

TAKE NOTE - this is one of the rare occasions the Employment Tribunal (ET) departed from previous case law and ruled that a constructive dismissal may, in some cases, amount to an act of harassment.

Ms Driscoll began working for the company in April 2019 as an executive assistant. She resigned four months after she was hired, claiming that the Chief Executive of the company, Mr Varela, had made various comments which amounted to harassment based on sex, race, and disability. Ms Driscoll filed a claim against the company for constructive dismissal and harassment. She alleged that the harassment took the form of the comments made by Mr Varela which culminated in her resignation. She was unable to claim unfair dismissal because she had less than two years' service.

The ET struck out Ms Driscoll's claim of constructive dismissal. In doing so it relied on the case of *Timothy James Consulting Ltd v Wilton* [2015] which ruled that "as a matter of law, a constructive dismissal could not amount to an act of harassment".

Ms Driscoll appealed the ET's decision, arguing that *Wilton* should not be followed because it is inconsistent with anti-discrimination EU Directives.

The Employment Appeal Tribunal (EAT) upheld Ms Driscoll's appeal, concluding that "a constructive dismissal is, in principle, capable of constituting an act of harassment, within the meaning of section 26 of the Equality Act 2010". In reaching its decision the EAT reasoned that *Wilton* had been decided without the benefit of EU Directives and relevant case law and so was "manifestly wrong". Justice Ellenbogen noted that the relevant EU Directives prohibit harassment in relation to dismissals and that 'dismissal' is to be widely construed. She wrote that there was "no principled basis upon which... the word dismissal should be taken to exclude constructive dismissal". The EAT was therefore satisfied that "as a matter of law, where an employee... resigns in response to repudiatory conduct which constitutes or includes unlawful harassment, his or her constructive dismissal is itself capable of constituting 'unwanted conduct' and, hence, an act of harassment, contrary to [the Equality Act 2010]".

The EAT consequently reinstated Ms Driscoll's claim of harassment and the claim was remitted back to the ET to be decided.

This case establishes that a constructive dismissal can constitute "unwanted conduct" amounting to harassment. This is significant for employers for two reasons:

- First, an employee with less than two years' service may still bring a claim if treatment amounting to harassment caused them to resign.
- Second, where a constructive dismissal claim is brought as a harassment claim, the employee's compensation may be uncapped.

This is an EAT decision and so will be followed by Employment Tribunals in the future.

EVENTS SEASON

2021

DEC 15
HR Hangout -
Understanding
the Menopause



I SHOULD BE SO LUCKY



The animal attempted to pull her under and do its customary death roll, but other rafters beat it back, leaving her with a badly mauled lower leg and foot and a dislocated hip.

The headline?

'I was very lucky,' says Amelie Osborn-Smith.

Ummm...?

Respect to her for the upbeat and brave response, but I guess it all depends on how you look at luck. I would hazard that the rest of the rafters, whose limbs didn't so nearly end up as a snack for a deadly reptile, were slightly *more* lucky.

Mind you, nobody defines what kind of luck 'lucky' actually is, do they? And in the interest of positive mental attitude it's best to agree. She is definitely lucky to be alive.

The news of a Hampshire teenager attacked by a crocodile was enough to make me pause, mid-bite, at breakfast this week. According to the BBC website, Amelie Osborn-Smith,

18, from Andover, was whitewater rafting in Zambia when the croc sank its teeth into her leg.

As are we all today. Because an aquaplaning out of control bus *didn't* slam into us. Glass half full...

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