

AHEAD Newsletter

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May 07

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£120,000 for gay harassment

Welcome to the 6th edition of the AHEAD newsletter. This edition focuses on sexual orientation cases heard at the employment tribunal.

Jonah Ditton was awarded £118,309 for discrimination on the grounds of sexual

orientation, reports *the Times*. Ditton worked as a sales executive for CP Publishing for only 8 days. He was expected to earn £80,000 p.a. The tribunal described the abuse as humiliating and degrading. What was his employer's response? CP Publishing was not represented at the hearing.

This is the highest

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Sexual Orientation

Regulations 2007 (covering goods, services, facilities and public functions) are now law. Is your organisation ready?

Anne Hayfield provides training & consultancy services on:
Sexual Orientation Regulations 2007
LGB Employment
Confidence in LGBT issues

£ 17K for graffiti in gents toilet

Offensive and homophobic graffiti depicting a naked man's behind, genitalia and a grossly exaggerated anus is the focus of **Martin v Parkam Foods Limited (1800241/2006)**. Chris Martin is an openly gay man. He worked for Parkam Foods for several years with some breaks in service. During his employment he had been promoted to a Quality Assurance Assistant.

Martin saw the graffiti in the gents toilet in May 2005. The name "Chris" was written beside it. He complained about the graffiti to the person responsible for Human Resources, a Mr Danby. (This person has since become Managing Director despite the appalling way in which this case was dealt with).

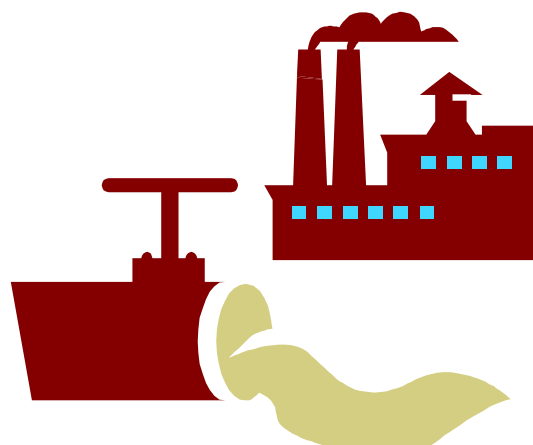
The graffiti stayed on the wall for five months.

Parkam Foods make poultry foodstuffs. They are a group of four companies with a total of 800 employees. The tribunal accepted that within a factory environment there was a certain amount of "industrial language". In a separate incident a colleague had threatened to "give him a good f***king sorting". This was written in a log book by a colleague when Martin had refused to work overtime.

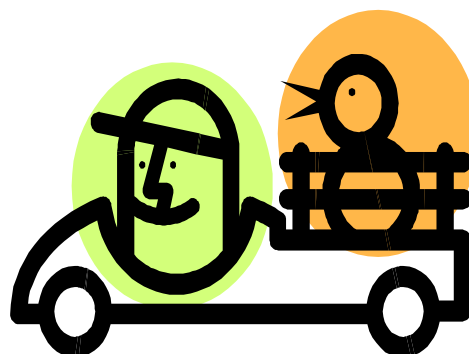
Around this time Martin was about to enter a civil partnership and in recognition of this he changed his name to Chris Hart-Martin. The name "Chris Arse-Martin" appeared next to the offensive graffiti. Martin complained to **Danby who suggested that he should seek counselling.**

The suggestion that Martin should seek counselling was one of a series of ineffective and inappropriate responses from Human Resources. He was told by another manager to "put the incident behind him". Another manager told Martin to stop harassing her and stop being aggressive. This same manager accused Martin of a "transparent attempt to exploit his sexual orientation" and mocked his assertion that he was "the only gay in the company".

Parkam Foods did have an equal opportunities policy that included sexual orientation. They had also monitored their staff and told the tribunal that they have 12 lesbian and gay employees out of 300.



In November 2005 Martin raised a further grievance. Parkam took advice from their employment law advisers and suspended him on full pay. Parkam had a policy that stated that an employee suffering from stress was entitled to be suspended on full pay. Martin received a letter telling him to stay at home. He visited his GP and consequently was out when his employers rang him. Martin's brother answered the phone and mistakenly told Packhams' that he was at work. Parkam thought Martin had got another job. Around the same time Martin submitted a sick note from his doctor. This meant that Parkam began paying him statutory sickness pay instead of his full wage. Shortly after this he resigned citing this as "the last straw".



The tribunal found that Parkam's anti-harassment policy was ineffective. The graffiti was not removed: Martin's name was painted over but the offensive drawing remained. The management put up a notice but this forbade graffiti and ignored the issue of homophobia. The tribunal found that the "Respondents have failed to comply with their own policies and procedures, and failed to investigate the Claimant's grievance with due diligence or sufficient seriousness".

The tribunal upheld Martin's claims for direct discrimination, harassment and constructive dismissal. Martin was awarded £16,836.59 in compensation of which approximately £15,000 was for the sexual orientation discrimination. This figure reflects the fact that Martin found a new job shortly after his resignation.

If you know of someone who might want this n/l tell them to send me a blank email & their phone number - just in case the email bounces

ACAS has recently produced research covering sexual orientation and religion or belief cases. The summary of the research is available on their website www.acas.org.uk. One could conclude from ACAS's research that despite the law employers are still not taking seriously harassment against lesbians and gay men. Ditton v CP Publishing (on page 1) is a good example of this.



Gaman v Bristol County Sports Club

Next is an almost textbook example of bad employment practice. Antony Gaman started work for Bristol County Sports Club in 1996. He was 19 years old. Tony was a barman and the only employee of the Club, an unincorporated association. He was not provided at the outset with a written statement of terms and conditions. He worked long hours – exactly how long was disputed by both parties. The tribunal settled on an average of 75 hours per week.

Tony worked at the Club for two years before being allowed to take one night off per week. In practice the Club was reluctant to pay for someone to provide cover so often Tony would work on his night off anyway.

Tony lived in a flat at the premises. The Club said it subsidised his rent to keep it low and this arrangement should be considered part of his salary. Tony said that the rent was low because the flat was in a poor state of repair. The tribunal decided that his flat, although tied to his work, did not form part of his wages.

Tony provided food for the club members as part of his job. He kept the profits from its procurement although there no records were kept.



Acas Research

Gaman v Bristol County Sports Club continued

Tony's employer also broke the working time directive in that often he worked 6 hour shifts with no breaks. He also frequently worked Saturday evenings until 4.00am on Sunday, with bookkeeping and cleaning duties on Sundays. However, the tribunal did accept the Club's position that Tony was able to have a 24-hour break in between closing on Saturday night/Sunday morning and opening on Monday.

Tony is a gay man. One of his ex-boyfriends, Colm, was a committee member. Tony's current boyfriend Mark also spent a lot of time at the Club either socialising or helping him. Some of the committee and members of the Club knew that Tony was gay. He formally came out to the Committee in July 2005 when he complained of homophobic language such as **"that faggot behind the bar"** and **"keep your backs to the wall"**. Tony occasionally joined in with homophobic jokes but the tribunal accepted that he did this to blend in. The tribunal thought Tony found the remarks humiliating and offensive but didn't think they had a strong impact on him. They accepted that the Club had an alcohol fuelled environment. They also noted that Tony had called Louise Par-

sons "a whore" in front of her 11-year-old daughter.

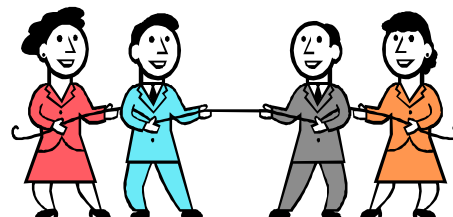
Tony had a level of autonomy to get assistants to help him but the Club could not afford to pay anyone else. As a sole employee Tony felt pressurised to improve trade.

Trouble between employee and employer started in 2004. Christmas of that year saw Tony doing Christmas lunch assisted by Colm with Mark at the bar. Tony asked one of the committee members, Mr Vickery, to cover the bar while he and Mark had a break. When Tony was about 20 minutes late returning Vickery got annoyed and an argument broke out. While this was resolved, it was not forgotten.

The death of a close family friend, Colm's violent assault and, the precarious financial position of the Club combined with Tony's health issues to leave him feeling very pressured. He asked a friend to open the bar for him while he escaped with Mark for a drink. Vickery arrived at the Club where he was greeted by Tony's friend whom he had not met before. Tony and Vickery had another argument. Tony accepted that he was under a lot of stress and lost control. Shortly after this Tony was signed off by his

doctor for four weeks with work related stress.

The Club arranged to cover Tony's duties by hiring an assistant called Louise Parsons. When Tony returned to the Club to collect his wages (it was normal practice for Tony to help himself to his wages from the takings in the safe) Louise obstructed him and instead asked for his rent. Tony lost his temper and started throwing things.



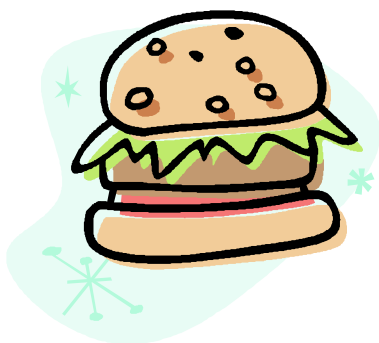
Tony later apologised in writing for this outburst. The Club's attitude was that Tony was contributing to his own stress. **The tribunal found that the situation at work played a major part in Tony's stress levels.**

While Tony was off sick the Club discussed his behaviour and performance including dismissal. In August the Club offered Louise Parsons a part-time post. Louise was the daughter of a Club committee member who had been the perpetrator of homophobic abuse. Tony was not consulted about the appointment

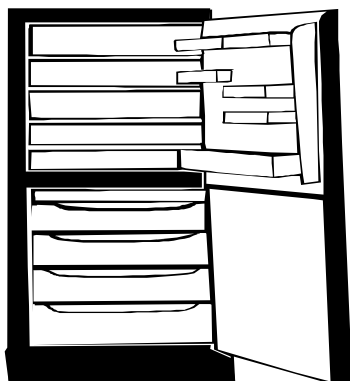
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Gaman v Bristol County Sports Club continued

and the two did not get on. He gave her unpleasant jobs such as cleaning the deep fat fryer. The two finally fell out over an incident involving a hamburger.



One of the fridge freezers broke down. Louise told Tony and he reacted by switching it off and on again. Louise was appalled. Tony is then alleged to have cooked a hamburger from the faulty freezer and served it to a customer. Louise took out a grievance against him which became part of an ongoing investigation.



Tony expected Louise to as-

sist him on one of the busier evenings but instead she joined the other club members in a brewery trip. This annoyed Tony and when she returned an argument took place between him and Mark and other club members including members of Louise's family. Mark Parsons made a threat to Tony to **"knock your f***ing head off and your boyfriend's head off too"**. Tony wanted to bar Parsons but this view wasn't shared by his employers. Reluctantly Tony agreed to serve Parsons.

Tony put his concerns about the threats of violence in writing. The Club's Committee were considering disciplinary action over the hamburger incident as well as other issues such as leaving the premises unattended. Tony took a couple of weeks off as holiday.

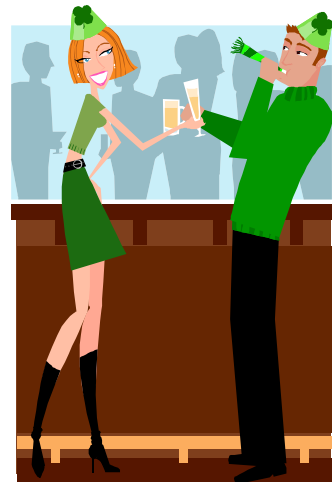
The Club dismissed Tony for threatening conduct, poor timekeeping and unacceptable treatment of staff. These issues had not been put to Tony as formal warnings and so the Tribunal concluded that Tony had been unfairly and wrongfully dismissed.

The Tribunal also found that

Tony had been discriminated against on the grounds of sexual orientation.

Other failures were noted including breaches of the working time regulations involving long shift hours and poor break provision that together meant that Tony was not being paid the minimum wage.

The Tribunal decision therefore ended with many - although not all - issues being decided in Tony's favour. The claim, however, was dismissed without any compensation being awarded. Tony withdrew his claim. This could mean that the financial affairs were settled out of court or it could mean the Club came to some other agreement with him.



£40K for X(after sending porn to his colleague)

X v Y 2201308/2006

X accidentally sent an extremely explicit video message of an intimate sexual nature intended for his partner to a female colleague Mrs AB. She received the message at home. Her husband contacted X who admitted sending the message. Mrs AB complained to Y who arranged to meet X. The managing director of Y told X that he had no option but to resign. He told X "that if he had a whole lot of men in front of him and had to say which was the pervert, he never previously thought the Claimant was a pervert." He also told X that if the matter went to a disciplinary hearing he would have no chance. A few days later X was dismissed. He was told **"There are half a dozen companies who can use your talents but you cannot come back here"**.

The tribunal found that the decision to dismiss X was taken before there could be a disciplinary hearing. At an appeal hearing HR had a closed mind. The tribunal concluded that Y dismissed X on the grounds of sexual orientation. The tribunal also

concluded that the dismissal was procedurally unfair as each step was incomplete.

The tribunal did not accept that if a sexually explicit message was sent by a heterosexual person with heterosexual content that Y would have behaved any differently. Nevertheless, the tribunal found in X's favour and awarded him **£39,268.74 including £6,000 for injury to feelings.**

Y did not turn up to the employment tribunal hearing.



Steward insulted on Ship

Hooper v P&O Ferries (Gibraltar) Ltd (1103012/06/LH)

Andrew Hooper was an assistant steward on board the Pride of Burgundy. At the time of the tribunal Hooper was still employed by P&O

Ship case continued



Ferries but had transferred to another vessel. Hooper's claim for discrimination and harassment on the grounds of sexual orientation was based on events that took place in July 2006. His manager, Mr Niazi, made a series of comments such as, "Ask Steven to give you a blow job as you look miserable". Steven is Hooper's partner. He also repeatedly asked other questions such as "Why are you gay?" and "Don't you like to look at women?". In addition there were several other personal comments relating to Hooper's and his partner's financial affairs and private life e.g. "Do you go to saunas?" and "How can Steven afford his car?" Niazi also appears to have commented of Steven, "He likes the taste of blood". *(I personally do not understand the significance of this last comment.)*

In coming to its conclusion, The Tribunal regarded this

Ship case continued

case as centring around the credibility of Hooper and Niazi. On the balance of probability the Tribunal regarded Hooper as more credible than Niazi. It also regarded as important the fact that the complaint had been made so soon after the harassment had occurred - to the ship's Captain who witnessed that Hooper was upset. Hooper had no motive to lie. Indeed he had risked his position by complaining about a manager.

The company's investigation

into these incidents was found wanting. Hooper was not told of his right to appeal and the minutes of the grievance meetings should have been signed off by Hooper and Niazi.

The tribunal awarded £4,149.92 compensation of which £4,000.00 was for injury to feelings.



Who am I?

Anne Hayfield is an independent trainer and consultant who has over twenty years experience in the equality & diversity arena. Here are some examples of her work:

She has worked with senior managers on the development of equality and diversity strategies at, for example, **Coopers and Lybrand** and **BT**. Work of this type places emphasis on the development of necessary leadership skills that are needed to communicate these sensitive issues to staff. Her down to earth approach is useful in encouraging front-line staff to adopt better working practices. This is illustrated by her courses for caretakers at **Industrial Dwellings Society** and care assistants at **Greenwich Healthcare Trust**. She has devised hundreds of courses, workshops and seminars working with a mixture of **Labour**, **Liberal** and **Conservative** councillors at **Cleveland County Council** and Police Officers at the **Ministry of Defence Police Force**. Anne has also acted as mentor to one of the equalities officer at the **British Broadcasting Corporation**. Anne's work at **Lesbian and Gay Employment Rights** includes pioneering training for trade unionists in this issue.

She has been involved with three training packs on the Sexual Orientation Regulations. The first of these, "**Work Out**" is based on Lesbian and Gay Employment Rights casework experience. It can be purchased from Anne. "**Making Equality Simple**" was co-authored with Mohammed Aziz and published by the **National Council for Voluntary Organisations**. This can be downloaded from the NCVO website www.ncvo-vol.org.uk Anne advised BDP media on their "Sexual Orientation" training pack produced in collaboration with Stonewall. This pack can be purchased via the website www.skillboosters.com.

Reaney takes on Bishop of Hereford

A gay man who was refused a job as a youth worker within the diocese of Hereford has had his case heard by the Cardiff employment tribunal. The hearing took place in April 2007. John Reaney, the gay man, is arguing that he is being discriminated against on the grounds of sexual orientation. The Bishop of Hereford says that Reaney was refused the post because of the Church of England's teaching on sex outside of marriage.

The Right Rev Anthony Pridis, the Bishop of Hereford, told Reaney that any person in a sexual relationship outside marriage, whether they were heterosexual, gay, bisexual or transgender, would have been rejected for the post. He went on to say "What is at issue is the lifestyle, practice and sexual behaviour, whether the applicant is homosexual, heterosexual or transsexual."

The Bishop added that his diocese had ordained a transsexual woman as a priest. In September 2005 Sarah Jones, who was a man for 29 years, was described by Bishop Priddis as a "superb candidate" for the post.

Reaney has had support from the Lesbian and Gay Christian Movement. His case is expected to test the religious exemption in the

Sexual Orientation Regulations 2003. Stonewall is supporting Reaney's case. Reaney is being represented by Sandhya Drew from Tooks Chambers.

Christian Institute fights again

The Christian Institute has applied for a judicial review on the Sexual Orientation Regulations (Northern Ireland). The Institute boasts that they have £200,000 in their legal fund to protect religious freedoms. If the High Court rules that the SO Regs unduly interfere with religious liberty then it could have an impact on parallel regulations in the rest of GB.

The Lesbian and Gay Christian Movement have pointed out that the Sexual Orientation Regulations do not infringe on religious freedoms. Christian organisations do not have to perform civil partnerships nor do they have to christen the children of parents who are lesbian, lesbian or bisexual. They do not have to provide a funeral service for lesbians, gay men or bisexual people.



Where are the women ?

This newsletter has featured cases that have been won by men. BUT Miss N Caulian was awarded nearly £8,000 for unfair dismissal and sexual orientation discrimination against her former employers Palace Court Hotel. ALSO Miss Gaunt & Miss Freeman won their cases of sexual orientation discrimination against the Senad Group for an undisclosed amount. In the latter case the women were represented by Birmingham CAB. In both of these cases the decision was only one page long so I do not have any further details.

