

**JUDGMENT**

**EQUAL OPPORTUNITY TRIBUNAL  
OF WESTERN AUSTRALIA**

**No. 24 of 1992**

**VONDA KREPP**

**(Complainant)**

- against -

**ROCKY VALCIC  
Trading as CAPEL BAKERY**

**(Respondent)**

**BEFORE: Mr L W Roberts-Smith, Q.C - Acting President  
Mrs B Buick - Member  
Ms P Harris - Member**

**Counsel for the Complainant - Mr G Innes  
Counsel for the Respondent - Mr R Kroon**

**HEARD: 24, 25 and 26 May 1993**

**REASONS FOR DECISION**

**(Delivered: 30 June 1993)**

EQUAL OPPORTUNITY TRIBUNAL

No. 24 of 1992

In the matter of a complaint by:

VONDA KREPP

(Complainant)

Against

ROCKY VALCIC Trading as CAPEL BAKERY

(Respondent)

Capel is a small country town in the Southwest of Western Australia. It is approximately 200 km south of Perth and about 19 km south of Bunbury.

It is situated between Bunbury and Busselton in the Southwest's cattle and dairy district. It has a population of somewhat less than 5000 people. The area is one of the primary sources of mineral sands in the State.

In or around the town itself there are about 10 retail shops, an hotel, a butter factory and two mines. There are not a lot of employment opportunities, especially of part-time or casual work for women with families to look after.

It was to Capel that the Complainant Vonda Krepp and her husband Colin came about 15 years ago.

Mr Krepp is employed by Westralian Sands, a mineral sand-mining company.

The Krepps have two sons and a daughter, presently aged 23, 21 and 14 years old respectively. The eldest son is recently married and lives in Capel. The second son joined the Army some time before the events out of which this case arose.

Mr Rocky Valcic is a Master Baker and Pastrycook. He has had the Capel Bakery (“the Bakery”) for the last 17 or 18 years.

The Bakery is located at 217 Forrest Road, Capel. Forrest Road is the main street. The premises are quite old, possibly about 50 years. Fronting directly on to Forrest Road is the shop itself, which is quite small. Looking into the shop from the street entrance, the shop-counter runs along the left side and then at a right angle to run parallel to the front window but at the back of the shop.

Behind the shop itself is the residential part of the premises.

Behind the counter to the right of the shop there is a doorway leading into a narrow corridor which runs through to the back of the building. To the left of this corridor is the Respondent’s private accommodation.

About halfway down the corridor a door on the right opens into the kitchen.

The kitchen is approximately 3.34 metres wide and 3.86 metres long, wall to wall. The actual floor space is less than that by approximately 1 metre on three sides. That is because along the left side wall from the door space is taken up by two refrigerators, an electric stove, a wood stove, cupboards and a kitchen bench (including a sink).

At the relevant times there was a kitchen table in the middle of the room. There were ordinarily three chairs at it. One was immediately opposite the doorway, but on the other side of the kitchen. Behind that chair was the sink. When viewed by the Tribunal the chair was approximately 30 cm from the edge of the sink, in the position which it probably would have been had someone been sitting in the chair at the table. There were two other chairs at the table, one each to the right and left sides from the door.

Continuing through the corridor one comes to the back door of the house and shop premises.

The actual bakery itself is in a separate building some 16 metres from the back door.

When the Tribunal viewed the premises the bakery van was parked at the side of the bakery building and parallel to it and the back of the house, at a distance of approximately a metre from the bakery building. We understand that is where the van is usually parked when loading deliveries.

The mixing of dough and actual baking of bread, pastries and cakes is done in the bakery building.

Cooking of the pie mixes and the like is done in the kitchen of the house.

The only full-time or permanent employees are the bakers, including apprentices. There may be a total of up to 14 staff employed. The others are part-time or casual employees whose duties may involve serving in the shop, assisting or working in the kitchen, bread slicing, doing the books for the business, or driving the bakery van.

It was obvious from the evidence generally that the Respondent's conduct of the business was somewhat disorganized. He generally left the staff (other than the bakers, at least) to decide amongst themselves what rosters they would work, so as to accommodate their family and social commitments and personal preferences. However, he would occasionally decide to change the rosters around himself. He would also put the casual staff on or off work from time to time, depending upon how the business was going. His own hours were irregular, although he worked mostly at night because that was when the baking was done. He may or may not have been in the kitchen during the day, although probably most often he would be there in the mornings, sitting at the table.

One witness, Mrs A (whose name was suppressed pursuant to section 122(1)(c) Equal Opportunity Act 1984 ("the Act")) said nothing was ever done in a uniform way; staff would come in not knowing what they were going to walk into day by day.

Mrs Krepp had worked at St John of God's Hospital, Bunbury, for about 4 years up to 1989. She then decided to have some time off work and was not employed for some two years. She then applied for a part-time job at the Bakery.

She was initially employed by Mr Valcic as a shop assistant.

There was some difference in the evidence as to whether she commenced that employment in mid-June 1991, as she said, or whether it was on 1 July of that year, as the Respondent said. Her recollection was based on the fact that not long after she started she had a birthday cake made there for her daughter, whose birthday was on 30 June. She recalled that Mr Valcic made the cake and that when she went to collect it, together with sausage rolls and cakes, she had to make up a pie-mix which was needed by the Respondent that morning.

The Respondent had no actual recollection of when she started. His evidence was based on the fact that the wages book showed her first pay was for the week ending 6 July 1991.

The point is not important, although given the basis of the Complainant's recollection and the somewhat disorganized and casual way the business was run (including, apparently, some occasional difficulty with the bookwork), we think it likely Mrs Krepp did start shortly before her daughter's birthday.

In the end, we think nothing turns on this and we do not consider it goes to the credibility of either party.

What is said to have happened after the Complainant commenced employment with the Respondent may perhaps best be set out by reference to the Points of Claim filed on behalf of Mrs Krepp. They recited (so far as is relevant for this purpose) -

- “3. Within the first week of the complainant's employment the Respondent commenced a course of behaviour whereby he persistently subjected the complainant to unwelcome sexual advances, unwelcome requests for sexual favours and other unwelcome conduct of a sexual nature, and the Complainant had reasonable grounds for believing that objection to this conduct would disadvantage her in connection with her employment.

The conduct included:

- (a) The Respondent would throw small items at the Complainant's breasts usually the rings from the cans of beer he consumed.
- (b) Attempts by the Respondent to rub himself against the Complainant as she walked past him.
- (c) Attempts by the Respondent to grab the Complainant's breasts.

- (d) Attempts by the Respondent to pinch the Complainant's buttocks.
  - (e) When the Complainant worked at the sink area the Respondent would often sit at the nearby table, lean back on his chair and attempt to rub his arm against the Complainant's buttocks.
  - (f) On one occasion the Respondent poked the Complainant in the region of her genitals with a biro.
  - (g) The Respondent would frequently ask the Complainant whether her husband had "given her one" and whether she would "give him one".
  - (h) On one occasion the Respondent told the Complainant she had nice lips and said he wondered whether her other lips were as nice.
  - (i) The Respondent would draw crude pictures of male genitals in the Complainant's presence.
  - (j) The Respondent would shape bread to look like buttocks and ask the Complainant whether the bread looked like her bottom.
  - (k) On occasions when the Complainant had completed her tasks the Respondent would ask her to go out the back with him.
4. On each of the occasions when the Respondent engaged in the conduct complained of in Point 3 above, the Complainant would make it clear that the conduct was unwelcome. In addition the Complainant tried to avoid being near the Respondent. Despite the fact that the Complainant made it very clear that the behaviour was unwelcome the Respondent's conduct continued on a daily basis."

The Points of Claim then go on to plead that by September 1991 Mrs Krepp had decided to leave her employment as she was no longer able to tolerate Mr Valcic's treatment of her. However, about 19 September Mr Valcic told her he was going to transfer her from Shop Assistant to Bread Carter (ie, van driver). On or about 1 October the Complainant told another employee of the Respondent that she was considering lodging a complaint of sexual harassment against him. At about 11.30 am the following day she received a telephone call from the Respondent in which he said "What's this about threats I hear?" and asked her to quit. It is then pleaded that when she refused to quit he sacked her.

The Complainant took the matter to the Western Australian Industrial Relations Commission, which upheld her claim and on 28 November 1991 found she had been unfairly dismissed and ordered her reinstatement from 2 December 1991, without loss of entitlements, including back wages.

When the Complainant duly arrived at the Bakery on 2 December the Respondent promptly sacked her again on the ground that he could not “afford her wages”.

It is pleaded that the Respondent’s conduct constituted sexual harassment within the meaning of section 24(3)(a) and (b) and contrary to section 24(1)(b) of the Act. It is said that further and in the alternative, the Respondent discriminated against the Complainant on the ground of sex contrary to section 11(2)(a) and (d) of the Act.

Finally, it is pleaded that as a result of the Respondent’s conduct the Complainant suffered emotional upset and embarrassment. She claims damages for hurt, humiliation and stress.

A claim for damages for financial loss was abandoned at the hearing, and leave to amend the Points of Claim accordingly, was given.

In his Points of Defence the Respondent denied each and every allegation of sexual harassment or discrimination.

It is convenient now to refer to the evidence. The following account of it is a summary only, and does not purport to be comprehensive. In reaching our findings however, we have of course had regard to the whole of the evidence, not merely that to which we specifically refer.

The Complainant gave evidence herself and called 3 witnesses. The Respondent likewise testified on his own behalf. He called a further 6 witnesses.

Mrs Krepp told the Tribunal that when she commenced her part-time position of shop assistant at the Bakery she initially worked every afternoon from about 1.30 to 4.30. Her main duties were serving in the shop and doing the ordering.

Not long after she started Mr Valcic decided to change the Complainant to the morning shift from about 8.30 am to 1.30 pm, three mornings a week. That occasioned some change in her work, in that apart from serving in the shop she was required to make up the pie and pasty mixes in the kitchen. That included peeling and cutting the vegetables that had to go in them. The staff rostered on used to

work by themselves. They always worked on their own, except for a short time each day when the changing shifts overlapped.

According to the Complainant, there were some nine or ten staff at that time.

She and two other women worked in the shop and kitchen. The others were Dawn Whitten and Sue Scott.

There were three people who took it in turns to drive the delivery van. They were a man by the name of Derek and two women, Heather and Kerry Scott.

There were two apprentices and a bread -slicer working in the bakery building itself. The apprentices were Karl Hicks and Damien Orr. The bread-slicer was Kim Ingram; he started work about a week after the Complainant.

The other employee was David Woof, a baker, who started there a couple of days after the Complainant.

In her evidence, Mrs Krepp said that Mr Valcic would help with the baking at night and sit at the table in the kitchen most of the day. He was always drinking. As she tried to work around him in the kitchen he would sit at the end of the table and throw the tops from his beer cans at her. He always aimed them at her breasts. When this first happened she was confused and it worried her. She told him to stop it and not to be so stupid.

She told the Tribunal the Respondent used to do the same thing to Sue Scott, and she was there herself once to collect her pay when he did. She said that on that occasion Sue Scott was doing some ordering at the kitchen table and the Respondent was kicking her feet under the table and throwing things at her breasts. According to the Complainant she remonstrated with the Respondent, asking him how he could expect Sue Scott to do her work with him throwing things at her.

Despite her reaction, the Respondent subsequently continued this behaviour towards the Complainant herself. It used to happen all the



time. And there were other things. He used to pinch her on the bottom and would often try to grab her breasts. She said she learned to get smart and get out of his way pretty quickly.

She had difficulty getting past him as she worked in the kitchen. He would push himself out to try to rub himself up against her. To avoid this, she used to go the long way around the kitchen table or out of the door rather than go past him.

He used also to make comments of a sexual nature to her. For example, when she arrived in the morning he would ask her,

“Did you get one last night? Will you give me one?”

She understood him to be talking about sex. At first she would respond by telling him not to be so disgusting; but she later stopped answering, thinking if she did not respond he would stop making the comments. But it made no difference; he did not stop. She said this sort of thing made her feel cheap - she felt cheap all the time she worked there.

He would do other things too. She said he used to do lewd drawings and ask her what they were. One was a drawing of a penis. She found this activity disgusting, and told him so, but he just laughed.

One incident she found particularly distressing was when he said to her

“You’ve got nice lips. I wonder what your other lips are like.”

She took this to mean her vagina. She told him he was disgusting. The comment made her feel “like a tramp”.

Generally, when the Complainant was mixing and cooking ingredients or washing up at the sink he would lean back on his chair and rub his arm against her bottom. She would tell him to stop it.

Another incident which caused her much distress happened when she was looking at a calendar on the kitchen wall, to organize her holidays, and she put one leg up on the chair as she did that. The Respondent

was then sitting in his customary chair at the table by the sink. He had a biro in his hand. As she was looking at the calendar he poked her in the vagina with his biro. She slapped his hand, knocking the biro flying, and told him

“Don’t you ever do that to me again.”

This incident happened just before she was due to finish work, so she left the Bakery and went home. She was distressed and disgusted and was reduced to tears by what he had done.

When she was first working afternoons and would tell him she had finished her work he would suggest to her that she could shut up the shop and go out the back with him. She took that to mean he wanted her to have sex with him. (“Out the back” was a reference to the Respondent’s living quarters behind the shop and across the corridor from the kitchen.) Such suggestions made her feel “like a slut”. She told him he was disgusting.

He would often tell her to pull her jumper up because she had “a nice bottom”.

She told the Tribunal he used to make bread to look like buttocks and scrotums and leave them on the counter and then refer to them and say “Have you got a bottom like this” and laugh.

These things made her feel terrible. She told him he was sick.

These things happened when the two of them were alone, although she recalled that on one or two occasions when he rubbed her bottom or made a lewd or suggestive remark there was someone else present.

She told her husband she was having “a bit of a hard time” with the Respondent. She did not tell her husband the details, just that she was having trouble with Mr Valcic.

Not knowing how bad it really was, her husband told her she was pretty tough and could handle it. She thought she could have, normally, but said to him this was different, that she could not handle him and that she thought she would have to leave the job.

This was just before she went on holidays, September some time, she thought.

When asked by her Counsel, Mr Innes, why this was different, she replied -

“Well, I’ve had passes made at me before in a workplace but this was different. These weren’t passes; these were vulgar, horrible, suggestive and filthy things. You know, I just... just the way he thought he could poke and pull any part of my body and say what he liked as if he paid the wage and he could do as he liked with me.”

She went on holidays. The first day she was back the Respondent told her he was going to put her on to driving the delivery van. This was apparently because Kerry Scott had left.

She saw this as a great opportunity, knowing that if he did that she would be able to stay because it would mean she could work and have very little contact with him. She said she desperately needed her job.

And so Mrs Krepp started driving the van.

This involved starting earlier than in the shop, about 6.30 or 7.00 am.

The orders for delivery had to be made up in trays and loaded into the van from the bakery building.

The first time she went with Heather Scott, who was to show her what to do.

The two of them had previously not had much to do with each other. They had not actually worked together before that. In fact about the only prior communication between them of any significance was when the Complainant telephoned Heather Scott from work to tell her of the biro incident.

They talked as they drove.

One of the things they discussed was the Respondent’s conduct towards the Complainant. Mrs Krepp told Mrs Scott what had been happening to her and that she was

“Still seriously thinking about taking him for sexual harassment.”

They also talked about Heather Scott's daughter-in-law, Sue Scott.

When the Complainant had been working mornings in the shop, and Sue Scott had come in to do the afternoon shift, there would be conversation about where the Respondent was and how he was behaving that day; it bothered both of them that he was around.

According to Mrs Krepp, Sue Scott had told her that the Respondent had pinched her on the bottom once; that he used to get his beer out of the fridge and run it around the back of her neck when he walked around her; and that he used to throw things at her breasts. Sue Scott did not like any of this.

Mrs Krepp said the only other person they spoke to about this was Sue Hickey. The latter was a good friend of Sue Scott's. When Sue Hickey started work there the Complainant went into the room where the other two were and asked whether Sue Hickey knew about the Respondent. Sue Scott said -

"I've already warned Sue... about what she might expect from Rocky."

So when in the van with Heather Scott, the Complainant spoke about Sue Scott. In cross-examination, she told the Tribunal she just said she felt sorry for Sue Scott because she was so young and the Complainant did not think she was handling it very well. It was the Complainant who did most of the talking; Heather Scott mostly just listened.

The Complainant drove the van for about 2 weeks.

On one of those days she had to cash a cheque for the staff wages and bring the money back to the Bakery. She was late, and there was some difficulty about that, but in the Tribunal's view, this was of no great consequence in the course of subsequent events.

Then one Sunday night, Heather Scott telephoned the Complainant, who was supposed to drive the van the next day. According to the Complainant, Heather Scott said Rocky Valcic had said to telephone her and say that she (the Complainant) would not be required to come in the next day.

On the Monday night, Heather Scott telephoned Vonda Krepp again, and told her she would not be required to work on the Tuesday.

The Respondent himself telephoned on the Tuesday night, to tell Mrs Krepp that there was a problem with the van and he would be driving it in on the Wednesday to have it fixed. Heather Scott also telephoned about an hour after that. When the Complainant asked her what was going on Heather Scott ventured the thought that the Respondent might have in mind giving the Complainant's job to his daughter's boyfriend (the daughter and boyfriend were about to arrive from England).

When asked in chief how she responded to that the Complainant testified that she said -

“Well, I've joined the Union, Heather. He can't do that. He just can't (sic) take my job away from me. I'm not going back into the shop with him again. You know, if he just thinks he's going to take me out of the van and put me back in the shop...”

And being asked why she didn't want to go back into the shop, she said -

“I couldn't work with him again after all the sexual harassment I went through.”

When she mentioned the Union, the Complainant was referring to having joined the Transport Workers' Union. She had telephoned a TWU representative the day before (on 1 October 1991) and had been accepted as a member, subject to payment of the \$100 membership fee. She paid that on 2 October 1991, as was evidenced by the receipt exhibit C.

About 11.00 am on 2 October 1991 the Respondent telephoned the Complainant and the following conversation ensued -

“He said 'Vonda?' and I said 'Yes, Rocky?' And he said 'Are you threatening me?' I said 'I haven't threatened you, Rocky.' He said 'I want you to leave' and I said 'I don't want to leave.' He said 'Well, I've sacked you.' I said 'Well, I've joined the Union, Rocky.' and he said 'Well, you bring the Union in.' and then he hung up.”

The Complainant's impression was that he had sacked her because she had told Heather Scott on the telephone the previous night that she was “going to take him for sexual harassment”. That was the only threat she could think of.

Mrs Krepp testified she subsequently phoned Heather Scott that night to ask why she had told Mr Valcic what the Complainant had said to her. As the Complainant recounted it, Heather Scott simply said she did not think the Complainant should have joined the Union; she should have had more loyalty to her boss.

In fact Mrs Krepp did complain to the Union and proceedings for unfair dismissal were later instituted in the Western Australian Industrial Relations Commission. The case was heard before Senior Commissioner Halliwell, who, in a judgment delivered 26 November 1991, concluded that she had been unfairly dismissed and ordered her reinstatement with effect from 2 December 1991 without loss of entitlements. Those orders were formally made on 28 November 1991.

The Reasons for Decision and Orders of the Industrial Relations Commission were tendered by the Complainant under section 119(a) of the Act. Pursuant to section 119(b) this Tribunal adopts the finding of the Commission that the Complainant was indeed unfairly dismissed by the Respondent on 2 October 1991 - not simply because she was not given the requisite one hour's notice, (as was contended by Counsel for the Respondent) but because there were no proper grounds for the dismissal, as is apparent from a reading of the Senior Commissioner's Reasons for Judgment. We also note in passing that the evidence given by Mrs Heather Scott to the Industrial Relations Commission does reflect sentiments entirely consistent with the remarks Mrs Scott had expressed to Mrs Krepp about the Union and loyalty to her boss, in the telephone conversation on 2 October 1991.

In accordance with the order of the Industrial Relations Commission, the Complainant arrived at the Bakery on 2 December 1991 to resume work. She got there about 6.30 am.

The Respondent walked over to her, handed her an envelope and said

“Vonda, you're sacked.”

In the envelope was a letter, a copy of which was tendered as exhibit D. The letter was signed by the Respondent and read -

“Mrs Vonda Krepp, I no longer have a job for you as it has been abolished because I could not afford your wages.

Therefore your employment is hereby terminated in accordance with the Bread Carters Award by the giving of one hour's pay in lieu of notice."

The Respondent testified in evidence that he had telephoned the Confederation of Industry to find out what he should say in the letter and it had actually been written for him by Sue Hickey because he could not read or write.

When told she was sacked for the second time, Mrs Krepp asked Mr Valcic whether he wished her to go home or to finish work. He told her to make up the orders. So she did that and then left. She did not receive her termination pay until some time later.

That seems to have been enough for the Complainant. She sought other work. It was difficult. She described it as

"Hard; very hard"

because there was just no work around.

But she persisted, and did find other casual employment, first at the Bunbury Steam Laundry and then grape picking. Both were very hard work compared to the Bakery. It was 8 hours a day. The grape-picking was done in Summer, and necessitated her working out in the sun nearly all day, three days a week. The laundry, too, was very hard work. It involved untangling and sorting clothes from large bins. This required continuous arm work which was very hard on the back. She found that after 8 hours of it her neck ached badly. She suffered a lot of backaches from doing this work.

Financially however, she was slightly better off than the Bakery, because although the hourly rates of pay were about the same these jobs gave her more hours.

The grape-picking lasted for 6 weeks. She worked at the laundry until about 12 months ago. After that she did volunteer work as a receptionist at Bella Maria Homes, and that was later changed to paid work, which she was still doing at the time of hearing.

Mrs Krepp explained that part of the problem was that she had been trying to get a job in the actual town of Capel ever since they moved there because travelling to work is very hard on a mother with

children. It was apparent the Bakery job in itself was a very good one as far as she was concerned, and it had the very great advantages that it was in Capel itself and involved hours of work that were (most of the time at least) convenient for her.

When she lost that job in the circumstances as she had described them, she was really upset. Apart from the sexual harassment and her awareness of why she had lost the job, the loss of it meant she had to travel to get to work and she had the additional anxiety of whether or not she would actually have work week by week.

The harassment itself, she said, would never leave her. She would never forget it. She said -

“...it’s just that he made me feel so cheap and I was just so angry that he thought he could just grab and poke any part of my body whenever he felt that he could. I just think it’s unfair.”

so far as the other effects of it all were concerned, the Complainant said she had never been one to play much sport or participate generally in that sort of social activity. So it made no particular difference there. However, she had the impression that people in the town were talking about her and the situation generally. She was personally “very stressed out about it” (to use her description) and it came to her attention that she was the subject of local gossip. She got to the stage where she was unable to go down the street even to shop; she would instead send her daughter while she waited in the car. It is only recently that she has begun again to go to the local shop - and now only because it has new owners.

The distress occasioned by this experience was greater because they will probably be living in Capel for the rest of their lives.

Her eldest son was very upset about it all and the effect of her evidence was that it was upsetting for the family generally.

Mr Kroon, who appeared for the Respondent, cross-examined the Complainant at some length.

In broad terms, it was suggested to her that the relationship between her and Mr Valcic was much more amicable than she had portrayed it



in her evidence in chief, that she would often stay for half an hour or so after work to have a drink with him, laughing and joking; that the Respondent was of a happy and joking disposition with all the staff and that he simply did not do the things of which she now complained. She adhered to what she had said in her evidence in chief.

When it was pointed out to her that she had said on the one hand that she had been subjected to sexual harassment from the very first, but on the other she had said she enjoyed the job, she replied -

“I liked the job. I didn’t like the harassment. I loved the job; it was great. It was good working in the shop, you know; it’s a small town and most of the people you know. They come in and have a chat. It was just a really good job.”

Mrs Krepp was cross-examined about counselling she had been getting from Centrecare. She said she first began to go there about 4 years ago when her youngest son joined the Army. She just needed someone to talk to. Her family are all in the Eastern States. The counselling developed over time (as these things tend to do), and she was attending Centrecare in Bunbury weekly whilst she was employed at the Bakery. She did discuss with her Counsellor the sexual harassment she was receiving from the Respondent. However, that particular Counsellor left and from 15 November 1991 she saw a different Counsellor.

Mr Kroon put to her that she did not mention to her Counsellor until after she had been dismissed from the Bakery, that she had been sexually harassed there by Mr Valcic, and pointed to a letter from Centrecare signed by the second Counsellor (exhibit 1) to support that. The Tribunal is of the view that the letter does not purport to do any more than confirm the period over which the Complainant was seeing the second Counsellor. There was some indication why there was no letter from the first Counsellor, and the Tribunal is not prepared to draw any inference adverse to the Complainant from the lack of evidence from the first Counsellor.

Much of what was put to the Complainant was of course the subject of evidence from the Respondent. Broadly, though, the point being pressed by Mr Kroon was that the Complainant was bitter because she had been dismissed by the Respondent (because she was causing problems with other staff and because he needed to cut his costs due

to a downturn in business) and that she was simply seeking revenge. When that was put to her directly, she replied (with some force) -

“What I wanted to do was to stop people like Rocky thinking that he could just do what he damn well likes with people. That was my job. He had no right to treat me and do what...he just thought he could do it to anybody. You can't just push people around and not let them know where they are or what they're doing.”

And a little later, when asked what she hoped to gain from making this complaint, she said, again with feeling -

“So people like me don't have to put up with people like Mr Valcic any more. Sexual harassment, I'm learning, is just terrible. Unless somebody stands up and says something about it, nothing's ever going to be done about it, and I am not going to take that sort of treatment off any male ever again. This is just something I feel I have to do, and it's not easy. It's been very hard.”

After some re-examination of the Complainant Mr Innes called his next witness.

An order was made under section 122 (1) of the Act that there should be no publication of any information that might enable the identification of this witness. We shall refer to her as Mrs A.

Mrs A and her family had lived in Capel for about 13 years. She had worked at the Bakery for some 2<sup>1</sup>/<sub>2</sub> years. She gave evidence of the Respondent's behaviour towards female staff. She said he used to make lewd suggestions to them about their physical appearance. Such things were said mainly to Kerry Scott and sometimes to Heather Scott - but mostly to the former.

Mrs A said the Respondent would hide Kerry Scott's car keys and try to get her to search him to find them.

The witness said she could not recall any details of what was said; it was not said to her, she just used to

“let it go in one ear and out the other.”

She spoke of another young girl who had been employed at the Bakery for a short time, who to Mrs A's knowledge found it very difficult to be there with the Respondent. He told her he wanted to take her to Europe with him. According to Mrs A, this girl would tell her -

“...what a sleaze he was. They’re her exact words. She was rather intimidated by being there by herself with him.”

There was another young girl from the CES who was only at the Bakery for a few days. When the Respondent told Mrs A that girl was not coming back he told her the girl had been going to report him for sexual harassment.

Mrs A had also seen something of bread made in sexual shapes. She described an incident when she had walked into the Bakery (this was the bakery building at the rear of the premises) to see on the rack where the bread was cooled, bread shaped in the form of a penis and scrotum. The head of the penis was painted red. The item was in plain view and upset some members of staff, including Heather Scott, who described it as “disgusting”. The witness said she did not know who had made this, but presumed it was the Respondent.

Mrs A had never worked at the Bakery whilst Mrs Krepp was there and although they obviously knew each other they were not friends. She had only been to the Complainant’s house once, and that was recently, for the purpose of making her statement in connection with this matter.

In cross-examination Mrs A admitted she did not like the Respondent, that she had personally had a dispute with him about him not paying her correct wages and that there had also been a dispute between her husband and Mr Valcic which had got to the stage of court action but was settled in Mr Valcic’s favour. It is not necessary to go into the detail of that here. She was positive that her personal dealings with or feelings towards him had not affected the truthfulness of her evidence.

At one point Mr Kroon suggested that whatever things Mr Valcic may have said to staff it was all just lighthearted fun. This witness was not prepared to accept that; she said they were not the sort of things that a man should say to a woman employee - they were “sleazy”. And, she said, this was not just a personal reaction on her part.

When it came his turn to give evidence, the Complainant’s husband, Colin Krepp, said that he noticed a gradual change in her, beginning a few days after she started work at the Bakery. Come home from

work, she was upset and moody. This was quite unusual. He described her as usually very happy; a family person. He had not seen her that way before in the whole 17 years of their marriage.

They talked about it. She told him she liked her job at the Bakery but that the Respondent was doing and saying things which she found crude, unpleasant and annoying. She described some of these to her husband.

His first reaction, as he put it, was

“to go down and see Rocky and sort it out, sort of find out what was going on.”

He did not succumb to that first reaction because the Complainant told him she liked her job at the Bakery and that if her husband did go down and confront the Respondent about it, she would get the sack. He believed his wife to be a very strong-willed woman capable of looking after herself and so when she told him that he said it was up to her and he would stick by her decision.

While she remained at the Bakery Mr Krepp continued to see other changes in Mrs Krepp's behaviour. She was very restless at night-time (which again, was unlike her). She woke a lot, getting up during the night. She became constantly tense and her whole way of life was affected.

This continued until she was given the job driving the van. Then she became much more relaxed. She loved that job.

When she was dismissed only weeks after starting on the van she became extremely upset.

Then, after the Industrial Relations hearing, she was dismissed again. Mr Krepp testified that he thought she expected that, but she was still upset about it because it was a job close to home, they needed extra money and she knew she'd have to start travelling to Bunbury or Busselton to seek further employment. He thought it took her about 3 months after the second dismissal to get over it.

Mr Krepp explained the effect of these events on the family. As for himself, he said -

“... what really annoyed me most of all was if I went down the street and I’d run into Rocky, that ... you know, the things that he was saying to my wife and the things that he was trying to do and suggesting ... I was powerless to do anything about it and that really upset me, because, you know, if I’d have touched him or done anything to him, I would have been gone. That really annoyed me, that someone in this day and age can sort of do this and get away with it and you are powerless to act. So when Vonda wanted to go through the courts and that, I was in full agreement...”

He confirmed that after this Mrs Krepp found it depressing to go to town because people were talking about it (or at least she thought they were). It was so difficult for her to go into the shops that she would take their daughter and wait out the front while the daughter went in to do the shopping. It was all very distressing for her.

The last witness called for the Complainant was Mr David Woof. He had worked at the Bakery for about three and a half months, some two years ago. Mrs Krepp was there when he started.

From the outset this witness seemed most reluctant to say anything at all. He professed himself unable to recall events or conversations in any but the most general terms. He seemed hesitant and extremely cautious about what he was prepared to say. Even so, to the extent there was any substance to his testimony, Mr Woof’s evidence tended to support that of the Complainant in some material respects.

He had observed that quite often, the Respondent would sit in the kitchen at the end of the table closest to the sink. Mrs Krepp had to work around him and he made very little effort to move so she could get past.

Mr Woof said Mr Valcic would make comments “in a sly tone” and he could recall the Complainant responding on at least one occasion that it was disgusting.

He could recall Mrs Krepp complaining about Mr Valcic (although he said he could not remember the nature of the complaints).

He recalled that she was quite frustrated with Mr Valcic; and she had said she did not like it. She was not happy with the Respondent’s behaviour. She told Mr Woof that the Respondent had made a pass at her.

His memory seemed to become particularly deficient when he was asked about incidents concerning the making of bread in unusual shapes. He acknowledged that dough had been made into the shape of a penis and a breast, but those shapes were then thrown back into the mixture and not baked off. He said he, the Respondent and the two apprentices had been involved in joking with these shapes.

When asked about the interaction between himself, the apprentices and Mrs Krepp, as opposed to the Respondent and Mrs Krepp, he conveyed that the former would just joke around, there would be "nothing discriminating said", whereas the Respondent's interaction with the Complainant was different.

Cross-examined about his reasons for leaving the Bakery it became clear that he had been dismissed by the Respondent in circumstances in which he obviously felt some resentment. In re-examination he said his evidence had not been affected by that.

In his evidence, Mr Valcic said that he had started the Bakery in Capel and had been there some 18 years. He currently had 14 staff.

He explained when Mrs Krepp was employed by him and that she worked initially cooking in the kitchen and serving in the shop. He said he tried her out doing the books, but that was not successful because when he checked them at night they had not been done properly. So Sue Scott took over the books.

The Respondent said he generally left the staff to organize their own hours.

He told the Tribunal that from an early stage the Complainant upset other members of staff. He mentioned one occasion on which he found Dawn Whitten in the kitchen, crying, because Mrs Krepp had said something about getting more hours because Mrs Whitten was going to be sacked, and referred to a derogatory name Mrs Whitten said the Respondent had used to describe her.

Apart from that sort of thing the Respondent said Mrs Krepp was a good worker.

Mr Valcic explained that he used to work almost every night in the Bakery after which, in the mornings, he would sit in the kitchen and supervise the pie mix.

He emphatically denied that he ever subjected the Complainant to any sexual advances. He denied throwing beer-can tops at her as he denied each of the other specific allegations made by Mrs Krepp. If he touched her in the kitchen while leaning back in his chair - or in any other way - it would have been accidental.

As to the bread shapes, he said David Woof had introduced new shapes to the Bakery. The effect of his evidence on this was that these shapes were quite legitimate and were conventionally made in Europe and elsewhere in Australia. It just happened that some of them could be taken to resemble buttocks.

Speaking of the Complainant, he told the Tribunal there were occasions when she would stay behind after work in the afternoon to have a glass of beer with him in the kitchen. The conversation was just ordinary social conversation. She did tell him she "loved the job". These occasions she had a drink with him after work, he said, were maybe once or twice a week during the whole time she was working in the shop and sometimes when she was driving the van.

He explained how he came to give her the job driving the van. Kerry Scott, whose job it was, left. The Respondent thought giving it to the Complainant would be a way of stopping her and Dawn Whitten "fighting each other".

Mrs Krepp drove the van for two weeks before she was dismissed.

Mr Valcic described the trip when she had to cash a cheque and bring back the money for the wages. She was late back, because she had gone shopping. He was angry about that, because the money had to be there for the baking staff when they came to collect their wages. He told her not to do it again. This happened, he said, at the end of the first week she was driving the van. She then worked a second week. And so they came to the third, the week of her dismissal.

According to the Respondent, Mrs Heather Scott was to do the deliveries on the Monday, and the Complainant was to have done them on the Tuesday and Wednesday. However there was a mechanical problem with the van, and so the Respondent drove it himself on the Wednesday so he could take it for repairs. He had earlier told Heather Scott to tell Vonda Krepp that he would drive that day. Some time after that, however, Dawn Whitten told him that Heather Scott was very upset because of something the Complainant had said. So he telephoned the Complainant to ask her what was going on and why she had upset Heather Scott. He testified that he told her she had upset Dawn Whitten and now Heather Scott and that if she kept going like that he would have to "put her off". He said her reply was that he could not put her off; she was in the Union, to which he responded he did not care whether she was in the Union or not, and the conversation continued,

“ ‘I not take rubbish from nobody. I want you to do the job and don't upset the staff and that's all I ask for.’ And she say ‘I'm in Transport Union and you no can't sack me.’ And I say ‘Might as well don't come at all. If you treat me like that, might as well don't come at all.’ And that's what's happen.”

He said it had not been his intention to dismiss her when he made that telephone call.

The Respondent was quite positive in his evidence that Mrs Whitten had not mentioned anything about Mrs Krepp complaining of sexual harassment, and indeed, made it clear that the first he heard about that was after he had sacked her.

So far as the second dismissal was concerned, he explained that after the Industrial Relations Tribunal hearing he had telephoned the Confederation of Industry in Perth and they had told him what he had to write down to dismiss the Complainant. Because he is unable to write himself, he had Sue Hickey write the letter to the Complainant and that was the one he gave to her on 2 December 1991 when he sacked her the second time. He insisted that he had two reasons for terminating her employment: one was because there was not enough work for her; the other was because she upset the staff.

Following the Complainant's dismissal the second time, the Respondent and Heather Scott shared the driving.



The cross-examination of the Respondent ranged over much of what he had said in evidence in chief. One point he did make clear then was that he was definitely not aware at any time of David Woof or the apprentices making shapes of a sexual nature out of the bread dough. He denied having told Mrs A that the young girl from the CES who was employed at the Bakery only briefly had spoken of him sexually harassing her. And he denied that before he sacked Mrs Krepp, Heather Scott had told him that the Complainant had spoken to her of sexual harassment.

The first of three witnesses called on behalf of the Respondent was Mrs Sue Scott.

She had worked at the Bakery for between 18 months and two years. She finished there on 20 September 1992. When she started she worked the morning shift in the shop, but later changed to the afternoon shift. That was because the bookwork was done in the afternoon -

“We found it easier between three employees if one was to work the afternoons, so one of us did the book work.”

She would often have general conversation with Vonda Krepp at work, but her testimony was that Mrs Krepp never said anything to her about sexual harassment.

She said there were a fair few times during the course of her employment that the Complainant stayed for 15 or 20 minutes after work to have a drink with the Respondent, while she was there.

She could not recall any problems between Dawn Whitten and Vonda Krepp.

So far as she was concerned, the Respondent never bothered her while she was working there and he never did or said anything to her that would amount, in her mind, to sexual harassment.

Sue Scott denied that Mrs Krepp had complained to her about the way Mr Valcic was treating her - in particular, she denied that the Complainant had said anything about being pinched on the buttocks, or having had the tops of beer cans thrown at her breasts.

Although she had warned Sue Hickey about the Respondent, that was not to do with sexual harassment but merely of his tendency to re-arrange all the shifts or talk of sacking people when he had been drinking.

Sue Hickey described herself as a very good friend of Sue Scott's. They are contemporaries; it was through Sue Scott that Sue Hickey got her present job at the Bakery. She has been there some two years. Vonda Krepp was driving the van when she started.

Sue Hickey confirmed that Sue Scott had never warned her of any possibility of sexual harassment by Mr Valcic, and the Complainant had never said anything about it herself. She said that she personally had no complaints about the Respondent.

Sue Hickey said that Mr Valcic used to sit at the kitchen table reading the "West Australian", which he had delivered daily. She and other staff would find it at the front door and take it inside. (This was a somewhat intriguing aspect of the evidence given Mr Valcic's repeated assertions that he was unable to read or write English at all, which was the reason he needed someone to do the books - although he had some ability to recognize figures.)

Dawn Whitten told the Tribunal that she has worked on a casual basis at the Bakery for about three years, two or three days a week, as the Respondent requires her. She serves in the shop and makes the pie mix.

Her recollection was although she was working at the Bakery whilst the Complainant was employed there, they never actually worked together. At the beginning Sue Scott, Vonda Krepp and Dawn Whitten would take it in turns to work different days, but that soon changed because of the need to do the books. How that came about this witness explained as follows -

"...as you realize, if three people are doing one lot of books, it gets a bit confusing, so we changed the system and Vonda and I used to work mornings and Sue Scott used to come in in the afternoons and do the books so that she was solely in charge of the books. And that was on - - well, all our suggestion because it was just getting too bloody with everybody doing the books.

... we thought it was better because there was too many mistakes being made. Everyone was happy with that."

She later explained that Sue Scott was the obvious choice to do the books because she was young and had worked in an office. It was much better for them to be done by just one person.

Mrs Whitten confirmed that generally the staff were left to organize their own rosters, and so she and Vonda Krepp sorted out the days they would work between them.

This witness gave some evidence about the Complainant mentioning at some time that she did not think any of the other female staff liked her. Mrs Whitten thought that if there was such a feeling it was because the others had all known each other for a long time, saying they were not actually family, but like one, and

“... it’s a bit hard to break into a family, I suppose.”

and because the girls (Heather and Kerry Scott) thought she was too familiar with the young boys in the bakery. She said Mrs Krepp’s response to the last point was that they were young enough to be her sons and that was how she treated them.

She said that the Complainant had never talked to her about any concerns with Mr Valcic.

Mrs Whitten said she and the Complainant never really got on (probably because the former had a feeling that the Complainant was trying to get her out of the Bakery so the Complainant could work full time) but they never really had what she would call an argument. Their paths really did not cross that much.

Mr Kroon asked Mrs Whitten whether she had ever noticed anything on Mr Valcic’s part that would constitute harassment of his employees. She said she definitely had not. Later, she said he had never made suggestive or lewd remarks in her presence, and added -

“... people don’t make suggestive remarks to me because they don’t get a chance to do it a second time.

... I mean, I’m not that type of person ... I don’t listen to men telling dirty jokes ... I don’t tell dirty jokes and I don’t listen to them. I’ll have a joke with the girls but I don’t go on with smutty talk or anything...”

Q: “Did Mr Valcic talk in that way, a smutty way?”

A: “Of course he didn’t. I wouldn’t still be there.”

Mrs Heather Scott is still employed by the Respondent as part-time bread delivery driver. She has been employed by him for almost 4 years.

Although Mrs Krepp and Mrs Heather Scott both worked at the bakery for some time, they had very little contact with each other. They were actually together only for the first one and a half days Mrs Krepp was driving the van, whilst Mrs Scott taught her what it involved.

Mrs Scott recounted one instance when she received a telephone call from the Complainant whilst the latter was still working in the shop. The latter was tearful, and said that the Respondent had poked her with a pencil in her genital area. She was talking of an incident which had then just occurred.

The only other occasion when the Complainant had said anything to her about sexual harassment was when they were driving the van into Bunbury the first day.

They were, naturally, conversing. Most of the conversation was about Kerry Scott and an expensive present which the Respondent had given her.

“... and of course we got talking about ladies and gentlemen being aware of each other and all this kind of thing and Vonda made a couple of comments that it had happened to her and I replied with something that had happened to me in the past...”

It transpired that Mrs Krepp had there been referring to an incident unrelated to the Respondent, and Mrs Scott was talking about an incident at the local club when Mr Valcic had “played around” with a pool stick around her ankles. There were other people (including Mrs Scott’s husband) there at the time, and although what Mr Valcic did was deliberate, she regarded it as merely playful -

“...it was just being stupid and he’s not the only man that does that - not exactly with a pool stick, but a lot of men come up and tickle you or something. Well, that just happens. It’s just something that you take in your stride unless you do find it offensive.”

Returning to the conversation in the van, Mrs Scott did remember that the Complainant told her that Mr Valcic had said "she had lovely lips and were her bottom lips as lovely".

Mrs Scott said she was pretty stunned about that.

She did acknowledge some recollection that Mrs Krepp had said something about not putting up with "it" much longer in that environment and that she would have left if she had not been given the driving job.

However, Heather Scott was adamant in her evidence that the two of them did not discuss any sexual harassment concerning her daughter-in-law, Sue Scott. As far as she knew there had not been any, and she very much doubted Sue Scott would let it go on if it had happened.

Mrs Scott senior was then asked about the circumstances leading up to the Complainant's dismissal.

During the long weekend at the end of September 1991 Heather Scott shut the Bakery Shop for Mr Valcic on the Saturday. She took the takings with her. She later learned that he had called around to her house while she was not home, so she took the money to the Bakery. Mr Valcic asked her then to drive the van the following Tuesday, instead of Mrs Krepp, whose rostered day that was. Heather Scott accordingly telephoned the Complainant later on the Monday night and told her they had to switch days on the Tuesday. She said "Vonda was quite happy about it". Then on the Tuesday there was something wrong with the van and Mr Valcic decided he would drive it on the Wednesday and take it in to be repaired. He asked Mrs Scott to explain that to Mrs Krepp.

However, it was late by the time she was able to telephone the Complainant and when she did Vonda Krepp said Mr Valcic had already rung and told her he would be driving the van on the Wednesday. After that call the Complainant was somewhat concerned and asked what was going on. She was apprehensive she was going to be dismissed. She said she had joined the Union and made it clear she would not just accept being dismissed.

There was apparently also some dispute then between Heather Scott and Vonda Krepp about who was going to drive on the Thursday. Both of them wanted to do that. Mrs Krepp was going to Perth on the Saturday so all of this meant that if she was not able to drive on the Thursday she would have had only one day on that week. And she told Mrs Scott that the Respondent had agreed she could drive on the Thursday.

Mrs Scott was piqued at this, because Thursday was one of her regular days.

It was in a state of some disgruntlement after that conversation therefore, that Mrs Scott went to see Dawn Whitten and discuss it with her.

Having talked to Mrs Whitten about these developments, Mrs Scott went home. Some time later she received a telephone call from the Respondent -

“...and he said to me ‘Well, Vonda’s gone’. I said ‘What?’ He said, ‘I’ve dismissed Vonda’ and he said ‘She upset you’. I said, ‘Yes, I suppose she did Rocky. She told me - it sounds very trivial now - but, ‘she said that you were (sic) to drive Thursday’. I said ‘I was upset, but I wasn’t that upset that you needed to dismiss her’ and he said ‘Oh, well. I did ask her if she would leave and she said ‘No’, so I said ‘Best you finish then’.”

In cross-examination she stated that the Respondent had told her then that he had been speaking to Dawn Whitten.

Heather Scott then went on in her evidence to describe a telephone call from the Complainant about 5.00 o’clock that night, in which the latter was most irate, accusing Mrs Scott of being “two-faced”. (As was apparent from the Complainant’s evidence, she was under the impression that Heather Scott had spoken directly to the Respondent; she was unaware that whatever had been said by Heather Scott had been said to Dawn Whitten, and it was she who talked to the Respondent about it.)

The last witness was Damien Orr. He is an apprentice baker presently employed by Mr Valcic and has been for the last 3 years. He knew Vonda Krepp only

“vaguely, from the other shop assistants.”

He was asked about bread being baked in unusual shapes. According to his evidence those were all shapes that David Woof introduced. They included loaves which were referred to by the staff jokingly as “tits” and “bums”. These were in fact just standard bread shapes. He did say David Woof and the other apprentice modelled a penis out of bread and that was sent to Damien Orr’s brother’s fiancée.

Before turning to our assessment of the evidence and our findings of fact, it is appropriate at this stage to make a few comments on the law.

Section 24(1)(b) of the Act makes it unlawful for a person to sexually harass one of his or her employees.

“Sexual harassment” is described in section 24(3) and (4) in the following terms -

- “(3) A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and -
  - (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person’s employment or work or possible employment or possible work; or
  - (b) as a result of the other person’s rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person’s employment or work or possible employment or possible work.
- (4) A reference in subsection (3) to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.”

The Complainant’s case is put in the alternative; she asserts that Mr Valcic’s conduct constituted not only sexual harassment, but discrimination on the ground of sex, or either harassment or discrimination.

Discrimination in employment on the ground of sex is made unlawful by section 11(1) of the Act, which (so far as is relevant here) provides that -

“It is unlawful for an employer to discriminate against a person on the ground of the person’s sex...

- (a) in the arrangements made for the purpose of determining who should be offered employment;
- (b) ...
- (c) in the terms or conditions on which employment is offered.”

Discrimination on the ground of sex is defined in section 8(1) -

“8. (1) For the purposes of this Act, a person (in this subsection referred to as the ‘discriminator’) discriminates against another person (in this subsection referred to as the ‘aggrieved person’) on the ground of the sex of the aggrieved person if, by reason of -

- (a) the sex of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the sex of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the sex of the aggrieved person,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of the opposite sex.”

These sections were amended in 1992; they are set out above as they applied when the events with which we are here concerned occurred.

It is not necessary for sex to be the only or even the dominant or substantial ground for the relevant act for unlawful discrimination to be proved - it is enough if that is one of the grounds (section 5).

The allegation of discrimination is put on the basis that to subject an employee to unlawful and/or unwelcome sexual advances must constitute an interference with that employee’s right to “quiet enjoyment” of her employment and in that way amount to subjecting her to detriment within the meaning of section 11(2)(d) of the Act.

The onus is on the Complainant to prove the truth of her complaints and the burden of proof is the balance of probabilities.



Against this brief background of the applicable law, we return to the evidence before us.

There is obviously a very stark conflict between the evidence of Mrs Krepp and that of Mr Valcic. This is not a case in which events may have been misconstrued by one or either of them. Whilst there is some area in which there is potential for misunderstanding, as a general proposition it must be that the things complained of by Mrs Krepp either happened as she described them or they did not happen at all.

The suggestion advanced on behalf of the Respondent, that Mrs Krepp had invented the allegations of sexual harassment only after her dismissal on 2 October 1991, out of bitterness and as a means of revenging herself, is untenable in light of the evidence of Mrs Heather Scott, Mrs Dawn Whitten and (to a lesser extent), Mr David Woof. Mrs Heather Scott's evidence that whilst still employed in the shop Mrs Krepp had telephoned her in tears to tell her about the Respondent poking her in the vagina with a biro, and that whilst driving the van the Complainant had told her what Mr Valcic had said about her lips, is particularly significant in this regard.

In this case, we were very greatly assisted by our observations of the demeanour of the witnesses and by our assessment of their credibility based upon those observations.

There were some conflicts too between the evidence of Mrs Krepp and that of other Bakery staff, most notably Sue Scott. In particular, Mrs Krepp had said Sue Scott had suffered experiences similar to her own with the Respondent and the two of them used often to discuss it. Mrs Sue Scott, on the other hand, maintained that the Complainant had said nothing to her of sexual harassment and she never experienced any herself from Mr Valcic.

On the other hand, there was the evidence of the witness Mrs A, who spoke of lewd suggestions by Mr Valcic to some of his female employees, including Kerry Scott and, to a lesser extent, Heather Scott, and whose testimony generally conveyed a picture of conduct by Mr Valcic which that witness thought was best described by the word "sleazy".

Having seen and heard the witnesses, the Tribunal formed the view that the interrelationships between them were extremely important to a proper appreciation of their evidence.

By way of illustration, we note that Kerry and Sue Scott are Heather Scott's daughter and daughter-in-law respectively.

Heather Scott is Dawn Whitten's best friend; they went to primary school together.

Sue Hickey and Sue Scott are very good friends who also went to school together. Sue Hickey's grandparents are friends of Dawn Whitten's parents.

Sue Hickey's mother and Heather Scott are very good friends; their children grew up with each other.

Dawn Whitten's husband is a good friend of Mr Valcic and has known him for at least five years; so it seems are Heather and Sue Scott's husbands.

Thus, when Dawn Whitten in her evidence described the women who worked at the Bakery as "family", that was not very far from the reality, and we accept that notwithstanding the time she had been living in Capel, Vonda Krepp was very much the outsider in that group.

Of significance too, we think, is that these relationships are ongoing. Most of the witnesses still depend upon the Respondent for their employment, or have someone close to them who does. They and their husbands are friends of the Respondent and socialize with him playing bowls and at the Club generally. The fact that he is the "Skipper" of the bowling team also implies another dimension of his influence in relation to them.

We think their evidence was often coloured by these considerations, not necessarily deliberately nor even consciously at times, but coloured nonetheless.

Mrs Krepp was an articulate witness who gave her evidence with dignity and in a controlled manner, although there were flashes of strong emotion. She was concise and responsive. She impressed as a person with a strong and appropriate sense of right and wrong, but who was not prudish nor overly quick to take offence.

The Complainant was frank, with generally a very good recall of events and conversations, yet willing to concede uncertainty where she was not sure of something.

We are satisfied that she was a witness of truth and that subject only to a few minor aspects which may have been the product of incorrect assumptions or misunderstandings, her evidence was an accurate account of what occurred.

We were also favourably impressed with Mr Krepp, who, although a man of few words, we thought was straightforward and patently honest.

We formed quite a different view of the Respondent. He seemed to adjust his demeanour to suit what he saw as the needs of the moment. He was evasive, less than frank and generally unsatisfactory as a witness. Nothing he said caused us to doubt the evidence of the Complainant, which we accept.

In particular, the Tribunal finds that within a very short time of her starting work at the Bakery Mr Valcic commenced a course of conduct towards the Complainant which included throwing beer-can tops at her breasts, pinching her on the bottom, grabbing at her breasts and trying to contrive things in the kitchen so he could rub himself against her in a sexual way. He made sexual comments (such as telling her to pull her jumper up because she had "a nice bottom") to her which she found offensive and disgusting and which made her feel cheap. He would show her lewd drawings which affronted her. On one occasion she became particularly distressed when he said to her -

"You've got nice lips. I wonder what your other lips are like."

By that she understood him (correctly, we have no doubt) to be referring to her vagina. This made her feel "like a tramp". She

spoke to Heather Scott about that incident in the van.

We are satisfied that the biro incident occurred as the Complainant described it and that she was distressed and disgusted and reduced to tears by it.

We find too that the Respondent did on occasion suggest to the Complainant that she go out the back with him and that he meant by that he wanted her to have sex with him - which was what she understood him to mean, and which suggestion made her feel "like a slut".

We are satisfied that bread was baked in shapes which resembled breasts and buttocks, but that those were conventional shapes introduced to the Bakery by David Woof. Thus, when the Complainant and Mrs A (independently) attributed the baking of them to the Respondent, they were not necessarily correct - at least not in the sense they thought. However, the substance of Mrs Krepp's complaint about these bread shapes was not so much the shapes themselves as the Respondent's comments to her about them, namely

"Have you got a bottom like this?"

There was at least one and possibly more occasions on which bread was baked in the shape of a penis and scrotum. We are not satisfied that this was done by the Respondent nor at his instigation. It was probably done by David Woof and the apprentices. It is likely that Mr Woof was the main force behind this. We formed the strong impression that he fully appreciated his own behaviour had been questionable in this respect and it was that appreciation which accounted for his equivocation and less than forthright evidence.

We accept that the Complainant found the Respondent's behaviour towards her offensive and disgusting and that she felt cheapened and degraded by it. We likewise accept that by the time she came to have a short holiday, probably about early September 1991, she had reached the point of not being able to tolerate Mr Valcic's conduct any more and felt she had no choice but to resign, but in fact was able to continue because he changed her to driving the van.

We are satisfied that whatever precisely may have been said in the van between Heather Scott and the Complainant, it was the latter who did most of the talking and that she assumed Mrs Scott knew much more about what had been happening to Sue Scott than Heather Scott did in fact know.

The evidence does establish, in our view, that the Respondent did throw the tops from beer cans at Sue Scott's breasts and did touch her and speak to her in a sexual or suggestive way. She did not like it and she told the Complainant that. It may well have been the case that she did not speak of it to anyone else and that she generally tolerated it in the end for her own reasons. We think Sue Scott's evidence was tempered - not necessarily consciously nor deliberately - by the social network in Capel of which she is part and by a degree of continuing familial dependence upon the good will of the Respondent.

To return to the conversation in the van between the Complainant and Heather Scott, we find that Mrs Krepp did talk about what had been happening to her and did say she was still thinking seriously "about taking (the Respondent) for sexual harassment".

Mrs Heather Scott subsequently related this to Dawn Whitten in circumstances in which they both felt somewhat disgruntled or resentful about the Complainant, and as a consequence of which Dawn Whitten took the opportunity to telephone the Respondent and pass on a probably exaggerated and incorrect account of what had transpired. The Respondent then telephoned the Complainant and dismissed her. In our view a significant part of his reason for dismissing her was his belief that she had threatened to pursue a complaint of sexual harassment against him.

The proceedings in the Industrial Relations Commission then followed, resulting in a finding that Mrs Krepp had been unfairly dismissed and ordering her reinstatement from 2 December 1991 without loss of entitlements. When she arrived for work that day the Respondent again dismissed her. Whilst the financial state of the business may arguably have been a factor in that, we are satisfied a major, if not the only real, reason for it was the Respondent's desire to rid himself of what he regarded as a troublesome employee. She was troublesome to him because she was not prepared to simply accept his uncouth and

offensive behaviour towards her and because he wanted to pre-empt her making a formal complaint of sexual harassment against him. There was also, no doubt, an element of vindictiveness in the dismissal.

In our view, the conduct of the Respondent towards the Complainant did constitute sexual harassment and was unlawful under s.24 of the Act.

Mrs Krepp was Mr Valcic's employee. His conduct and comments were unwelcomed by her and she made that clear. We are satisfied that she did have reasonable grounds for believing that the taking of objection to his conduct would disadvantage her in connection with her work and employment, although her character was such that she may have made a complaint notwithstanding had he not pre-empted that by dismissing her.

Further, her objection to his conduct, culminating with what he saw as a "threat" that she would take action against him for sexual harassment, resulted in the obvious disadvantage to her of the loss of her employment.

Mrs Krepp's claim of sexual harassment is therefore made out under both s.24(3)(a) and (3)(b).

We are also satisfied that the alternative basis of discrimination on the ground of sex has been established.

The Respondent's treatment of the Complainant involved less favourable treatment of her in respect of the quiet enjoyment of her employment, by reason of her sex, than persons of the other sex would have been treated by him. He behaved towards her as he did because she was a woman and one whom he obviously found attractive (see Nathan J in *Ex parte Burns* (1985) VR 317, applied in *Hutchinson v Smirlis & Co Shoe Manufacturers* (1986) EOC 92-152 and *Hall & Ors v Shieban Pty Ltd & Anor* (1989) EOC 92-250).

We turn now to the question of relief.

The Tribunal may award damages to a maximum of \$40,000 in respect of any complaint (s.127(b)(i) of the Act). That is a true maximum and does not merely set the top of a range.

The Complainant seeks damages for emotional upset and embarrassment, hurt, humiliation and stress.

This Tribunal expressed its view of the principles applicable and the approach to be taken to assessments of damages under the Act, in *Lyon v Godley* (1990) Equal Opportunity Cases 92-287, especially at pages 77,895-6, and we adopt without repeating, what we said there.

We note that we awarded an amount of \$7000 to the Complainant in that case, for the emotional and mental distress, hurt and humiliation suffered by her. The effects suffered by that Complainant were, however, more serious and persistent than those suffered by Mrs Krepp here.

The difficult situation in which Mrs Krepp found herself and the very great personal stress and social pressure which she experienced are not to be minimized. Nor is the fact that she did not make a formal complaint until after her dismissal something which reduces their effect. It is well recognized that a distinguishing characteristic of sexual harassment is that employees subjected to it will often be reluctant to complain.

As Dr Scutt has observed -

“Many women are afraid to analyse the activity as “unacceptable” and “harassment” because such an analysis means that she must take a stand against the action, must report it - or must leave the job to escape. Many women simply hope that the activity will go away, that the man will lose interest, that she can escape by ensuring she is never alone with him.”

(Dr Jocelyne A Scutt, “An Invasion of Privacy? Questioning Victims of Sexual Harassment and Domestic Violence” 1982.

And it is not just a matter of mere physical interference -

“These assaults violate not only (the victims’) bodies but also their right to freedom and privacy”

(Adebourale Akande, “Sexual Harassment: An Employment Issue”, Equal Opportunities International, Vol 11 no 2, 1992, p.8.)

It is important that reactions to sexual harassment not be minimalised. The evidence of the Complainant's reactions and feelings in this case, as described by her and by her husband, were typical responses, as is illustrated by these extracts from participant materials in a United States Office of Personnel Management; Supervisory and Communications Training Centre, "Workshop on Sexual Harassment" -

"Understanding the psychological effects of harassment is difficult because many women's reactions are masked or minimized. Women fear being blamed, ostracised or fired, and this prevents open discussion of reactions to sexual harassment. This culture expects women to be nurturing caretakers whose primary job is to please others. Women, at home and at work, are encouraged to think about men's feelings first, and discouraged from recognizing their own. Furthermore, to deny vulnerability, women want to believe that only those who are emotionally unstable will be harassed..."

"...In addition, if a woman speaks up, she risks losing social approval. The woman is often blamed: "she asked for it;" "she's lying;" or "she's immoral".

Fear and a negative self-concept are very common responses to sexual harassment. Women fear they will be blamed, publicly shamed, rejected by peers, or lose income. Because so few women do speak up, victims of workplace harassment think they are alone, which reinforces feelings of self-blame."

"...Anger is often internalized and expressed physically (stomach and headaches or nausea) or by depression. These debilitating situations often disrupt women's lives for years, when expressing anger would be a much healthier response to a destructive situation."

The fact that women tend not to complain and the reasons for that, was discussed in "Sexual Shakedown: The sexual harassment of women on the job" (L Farley, McGraw-Hill Inc, 1978). The author wrote about the reactions women did have -

"According to both the UN survey and the Cornell questionnaire, most women respond to sexual harassment by quitting their jobs, although not necessarily right away. Among the 70% who personally experienced sexual harassment in response to the Cornell questionnaire, 9% quit immediately and another 2% asked for a transfer; but 23% first ignored it and another 13% pretended not to notice. One twenty five year old secretary who was kissed by a client wrote on her questionnaire, "I was frustrated but couldn't speak up. I got a nervous stomach from anger. Of course, I sounded off loud, but to some friends away from work. At work I just pretend it didn't happen." Apparently, the hope is, if left alone, maybe the harassment will just go away; but according to the results of the Cornell questionnaire it didn't go away at all. In fact, 75% of the time that the harassment was ignored it eventually worsened and about one-fourth of the women who ignored it were eventually hit with on-the-job penalties for not responding. It is apparently during this period, when the coercion is getting worse or the situation has begun to escalate, that many women give up and quit."



Michael Rubenstein ("Preventing and Remediating Sexual Harassment at Work - A Resource Manual" Eclipse Publications, 1989) points out (at p.8) that because men are rarely sexually harassed, it is often difficult for a man to understand the feelings of revulsion and violation unwanted sexual attention can produce, and he suggests several practical ways in which a proper appreciation of that may be instilled. He also notes (at p.9, *ibid*) the "well-documented" damage to victims' health that sexual harassment can cause, including anxiety, tension, irritability, depression, deterioration of personal relationships, hostility, inability to concentrate, sleeplessness, fatigue, headaches and other manifestations of stress at work.

It is also important that awards aimed at compensating for injured feelings should not be inappropriately low, because that would tend to trivialise or diminish the respect for public policy manifested by the Act (*Hall & Ors v Shieban Pty Ltd & Ors* (1989) EOC, 92-250 and *Alexander v Home Office* (1988) 1 WLR 968).

Comparison with other cases, while useful to some extent, at best affords only some guide to an appropriate award here. Each case necessarily depends very much on its own facts. The wide range of compensation awarded for embarrassment, stress, humiliation and the like is apparent from the table of comparative cases at pages 72,273 to 72,312 CCH "Australian and New Zealand Equal Opportunity Law and Practice", Vol 1, including the following -

\$750 for insult, upset, embarrassment and the loss of a relaxing night (refusal of hotel service on the ground of race).  
*Coe & Anor v Bobilak* (1984) EOC 92-026.

\$1000 for mental anguish and injury to a 16-year old in her first job (sexual harassment of employee, causing her resignation).  
*Orr v Liva Tool & Diemakers Pty Ltd* (1985) EOC 92-126.

\$7000 for humiliation and injury (sexual harassment of employee).  
*Aldridge v Booth* (1986) EOC 92-177 (and on appeal (1988) EOC 92-222).

\$11,000 for injury to feelings (dismissal on ground of pregnancy).

*Erbs v Overseas Corporation Pty Ltd* (1986) EOC 92-180.

\$10,000 for stress, humiliation and loss of enjoyment of life (discrimination in employment because of religious and political beliefs).

*Marett v Petroleum Refineries (Australia) Pty Ltd* (1987) EOC 92-206.

\$2500 as general damages (sexual harassment in employment).

*Hill v Guilfoyle* (1988) EOC 92-233.

\$3000 as general damages (sexual harassment in employment).

*Kiel v Weeks* (1989) EOC 92-245.

\$7000 for loss of personal dignity (racial discrimination in employment).

*Kordos v Plumrose (Aust) Ltd* (1989) EOC 92-256.

\$12,000 as general damages (sexual harassment in employment).

*Murphy v Ramus Pty Ltd* (1990) EOC 92-308.

\$3000 for anxiety and distress (sexual harassment in employment).

*A v Caboolture Shire Council* (1992) EOC 92-403.

To which we would add -

\$15,000 for non-financial loss and injury - (refusal of employment on the ground of pregnancy). The Complainant had suffered substantial emotional and psychological trauma and the award reflected both those effects and their continuation essentially over 3 years.

*McCarthy v Transperth* (unreported) Equal Opportunity Tribunal of WA no 16 of 1991, judgment delivered 23/12/92 (presently under appeal).

In the present case the Complainant suffered emotional and psychological stress and anxiety throughout the course of her

employment in the shop and then again from the time of her first dismissal. We accept that she continued to show the obvious effects of the Respondent's treatment of her and its sequelae, for some three months after her second dismissal. Having to revisit these matters during the hearing, be subjected to cross-examination about them and to have it alleged that she had invented her complaints out of revenge or bitterness towards the Respondent, was patently distressing for Mrs Krepp. In addition to these factors, the loss of personal dignity, the insult and affront to her, and the humiliation and embarrassment must all be taken into account. We are mindful too that Mrs Krepp is a long-term resident of Capel and expects to live there for the rest of her life. Although the embarrassment and social discomfort she will undoubtedly continue to experience in that environment will abate over time, we think it likely to continue for some months, if not years. Of importance too is the fact that her reaction to the sexual harassment of her by the Respondent was the effective cause of the loss of her job at the Bakery.

Applying the approach we enunciated in *Lyon v Godley* (supra) to the consequences of the Respondent's conduct on the Complainant in this case, and having regard to the general level of awards in comparable cases, we think a fair award here would be \$4000.

Finally, given the community and social pressures which have been a marked feature of this case and the long-term situation of the Complainant and her family in Capel and the Bunbury area, we consider this to be a case in which the Respondent should be required to make a public apology to her. We are conscious that it is necessary to avoid "overlapping" here and our assessment of the amount of the award does accommodate the fact that there will be a public apology. We therefore order pursuant to s.127(b)(iii) of the Act that the Respondent publish at his own expense in a newspaper or newspapers circulating in Capel and Bunbury an apology to the Complainant in terms to be agreed between them, such publication to be made within 28 days. If agreement is not reached on the terms of the apology there will be liberty to apply to this Tribunal for an order setting such terms.