Appeal No. EAT/145/97
& EAT/1231/97

EMPLOYMENT APPEAL TRIBUNAL

58 VICTORIA EMBANKMENT, LONDON EC4Y 0DS

At the Tribunal
On 26th October 1998

Before

THE HONOURABLE MR JUSTICE MORISON (PRESIDENT)

MISS A MACKIE OBE

MR R SANDERSON OBE

EAT/1231/97
THE CHIEF CONSTABLE OF THE LINCOLNSHIRE POLICE — APPELLANT

(1) DEBORAH ANN STUBBS — RESPONDENTS
(2) ROBERT ERIC TAYLOR
(3) THE CHIEF CONSTABLE OF THE NORTH YORKSHIRE POLICE

Transcript of Proceedings

JUDGMENT

Revised

APPEARANCES

For the Appellant	MR J BOWERS QC Instructed by: The Force Solicitor Lincolnshire Police Force Headquarters PO Box 999 Lincoln LN5 7PH
For the First Respondent	MS I OMAMBALA (of Counsel) Messrs Russell Jones & Walker Solicitors Swinton House 324 Grays Inn Road London WC1X 8DH
For the Second and Third Respondent	MISS J BEALE (of Counsel) Instructed by: Mr R T Daly North Yorkshire Legal Services County Hall Northallerton DL7 8AD

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MR JUSTICE MORISON (PRESIDENT): This is an appeal against the decision of a tribunal sitting at Nottingham, which held that the Chief Constable of the Lincolnshire Police ["the appellant"] and DS Derek Walker had committed acts of sexual discrimination against DC Deborah Stubbs, the applicant in the proceedings ["the applicant"] contrary to the **Sex Discrimination Act 1975** ["the Act"]. Robert Taylor the second named respondent and the Chief Constable of the North Yorkshire Police, the third respondent, were dismissed from these proceedings.

The principle issue raised by this appeal is whether if an officer acts in breach of the Act whilst on secondment from his Constabulary to the Regional Crime Squad ["RCS"], the Chief Officer of Police for his Constabulary or the Chief Personnel of the RCS or both, are responsible in law for that unlawful conduct.

The facts in this matter are agreed and can be set out briefly.

Both DS Walker and the applicant were members of the Lincolnshire Constabulary. Each was seconded to the North East branch of the RCS. Regional Crime Squad were first established in 1965, pursuant to a Home Office circular of October 1994. RCS (NE) was established with effect from 1st October 1994 pursuant to a collaboration agreement made under s. 13 of the **Police Act 1964**. Its terms of reference are contained in a Home Office circular dated 1st May 1987. That circular contains detailed provisions relating to the constitution and management of Regional Crime Squads including the one in question. The management of RCS (NE) was supervised by the Chief Constables Management Committee ["CCMC"] which comprised the chief officer of each of the constituent forces. The RCS had no independent statutory or other

legal personality. Accordingly, it is as a representative member of the CCMC that the third respondent, the Chief Constable of the North Yorkshire Police, is a party to these proceedings.

The RCS (NE) was commanded by a Regional co-ordinator of superintendent rank. It is in this capacity that the second respondent, Mr Taylor, is a party to these proceedings. Officers of this rank and below are appointed to their positions by the Chief Constable of the Police Force to which they belong; ranks above this, Chief Constable and Assistant Chief Constable and formerly the Chief Superintendent, are made by the Police Authority and require the approval of the Home Secretary. Mr Taylor was appointed by the CCMC but subject to the consent of his own Chief Constable. His remit was to put into effect the policy determined by the CCMC and RCS (NE) committee. He had a degree of operational authority but no policy making function.

The police establishment of the RCS (NE) consisted of officers on secondment from each of the constituent forces, who returned to their home forces at the end of their secondment. There was no power within the RCS (NE) to promote any officer; this remained a matter for his or her own Chief Constable. The Home Office Circular stated that officers on secondment to the RCS "remain members of their home force for all purposes, including discipline", and might be recalled by their chief officer.

On 1st April 1998 pursuant to the **Police Act 1997**, the National Crime Squad was established. Regional Crime Squads have now ceased to exist and there is no longer any Regional co-ordinator or CCMC.

In June 1996 the applicant presented an Originating Application complaining of sexual discrimination, namely that she had been subjected to inappropriate sexual behaviour from DS

Walker. Amongst the respondents she named the Chairman of the CCMC and the Squad's Regional co-ordinator. Those two individuals applied to be removed or disjoined from the proceedings. That application was refused by a Chairman on the basis that the Regional Crime Squad was "a body of constables" referred to in s. 17(7)(b) of the Act and that these respondents could be held vicariously liable for the acts of DS Walker. On appeal to this court on 1st May 1997 the matter was adjourned *sine die* pending the outcome of the original hearing.

By a decision promulgated on 9th September 1997, the tribunal found that DS Walker had committed acts of unlawful sex discrimination against the applicant between January 1995 and April 1996. They further held that DS Walker's acts of sex discrimination were committed in the course of his employment and that accordingly his employer was vicariously liable for his actions under s. 41(1) of the Act. The tribunal held that the employer of DS Walker for the purposes of s. 41(1) was the appellant and not the RCS. It is against this decision that the present appeal had been brought.

The relevant statutory provisions

The Sex Discrimination Act 1975

S. 17 of the 1975 Act provides:

> "(1) For the purposes of this Part, the holding of the office of constable shall be treated as employment-
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> (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;
>
> (b) by the police authority as respects any act done by them in relation to a constable or that office.
>
> ...
>
> (7) In this section-

'chief officer of police'

(a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, had the same meaning as in the [the Police Act 1996],

(b) in relation to any other person or appointment means the officer who has the direction and control of the body of constables or cadets in question; ...

'specified act' means the Metropolitan Police Act 1829, the City of London Police Act 1839 or the [the Police Act 1996]."

The Police Act 1996

References to the **Police Act 1964** were substituted by the **Police Act 1996** (Schedule 7, paragraph 27) as from 27th August 1996. The 1964 Act was still in force at the time of the acts of discrimination with which this case is concerned and at the date the Originating Application was submitted. However, there are no material differences between the provisions relevant to this issue and accordingly the parties before us have referred to the 1996 Act.

S.10(1) of the 1996 Act provides:

"A police force maintained under section 2 shall be under the direction and control of the chief constable appointed under section 11."

Section 11(1) provides:

"The chief constable of a police force maintained under section 2 shall be appointed by the police authority responsible for maintaining the force, but subject to the approval of the Secretary of State and to regulations under section 50"

Section 101(1) provides:

"'chief officer of police' means-

(a) in relation to a police force maintained under section 2, the chief constable."

Definitions (b) and (c) relate to the Metropolitan Police and the City of London Police.

S. 23(1) of the 1996 Act empowers the chief officers of two or more police forces to make collaboration agreements for the purpose of discharge of police functions by members of those forces acting jointly, where they consider that such joint discharge would be more efficient or effective. In other words it is contemplated that the collaboration would be between members of the forces to which they were appointed and they would then be fulfilling their duties for the RCS. Indeed, in the course of their duties acting for the RCS they would carry warrant cards showing their authority as a constable and as a member of their home force.

S. 23(2) makes analogous provision for police authorities, with respect to matters within their control such as premises and equipment. Expenditure incurred under a collaboration agreement is to be borne by the relevant police authorities in such proportions as they agree or the Secretary of State determines (s.23(3)). The Secretary of State has power to direct chief officers and police authorities to enter into collaboration agreements (s. 23(5)).

Before turning to the parties submissions, it would be appropriate at this stage to make a number of general observations.

Firstly, the RCS employs no one at all. The civilian staff are employed by the local force or county force which has control over the area where they work.

Secondly, persons holding the office of constable may be in what might be called the traditional police service on the one hand, that is the various constabularies up and down the

country, or in more specialised and essentially different forces, such as the British Transport Police and the Parks Police or the Ministry of Defence Police, or Prison Officers as Mr Bowers helpfully pointed out. Although members of such forces hold the office of constable, their constitutional position is not quite the same as those in traditional police service. A member of the traditional police forces is not regarded as a employee because he takes an oath of office and is not to be accountable to an employer for the way he carries out his duties. He is a member of a uniformed service, whose rules and regulations are laid down by Parliament and he is subject to statutory disciplinary procedures. A member of the British Transport Police, for example, is in a somewhat different position. The transport legislation refers to him as an employee. Thus the employment legislation makes special provision for police constables and s. 17 of the 1996 Act is but one example of the way it is done.

The third general observation we would make is that those who hold the office of constable (not to be confused with holding the rank of constable) in traditional police service may be a member of the Metropolitan Police Force, the City of London Police Force or a member of one of the many County Constabularies such as the Lincolnshire Police Constabulary or the North Yorkshire Police Constabulary. The Metropolitan Police Force was established under the **Metropolitan Police Act 1839**, the City of London Police by the Act of 1839. All other constabularies are established and maintained pursuant to the provisions of now the **Police Act 1996**. Therefore, if Parliament wishes to distinguish between constables who belong to traditional forces and constables from say the Ministry of Defence Police Force, they must define the holding of an office of constable by reference to those three statutes as was done in this case, or as in the **Disability Discrimination Act 1995**, by reference to the non-traditional forces.

It follows, therefore, that whilst members of all forces, traditional and non-traditional, hold the office of constable, only those who do so under one of the three specified Acts belongs to the traditional police force. Thus, subsection (1) of the s. 17 is apt to cover all police constables whatever their force. But by reason of the definition of the chief officer of police in s. 17(7), subparagraph (a) of that subsection can apply only to those who hold the office of constable in a traditional force. Those who hold the office but do so in a non-traditional force, will look to subparagraph (b) to determine who is the head of their force.

Fourthly, s.41 of the Act renders the employer liable for what his employees have done, but there are circumstances in which an employer can escape vicarious liability. When an employee is a victim of harassment by a fellow employee, the employer will be named as respondent and sometimes the individual will also be named as a person who was responsible for the employer's liability.

We turn to the parties submissions-

Mr Bowers' principal submission on behalf of the appellant was that the tribunal failed to consider correctly whether DS Walker was "any other person" and whether the RCS was a body of constables in accordance with s. 17(7)(b) of the 1975 Act, and whether he was appointed or held an appointment with the RCS. He also submitted alternatively that DS Walker could fall within both s. 17(7)(a) and (b) at the same time.

It was submitted that where an act of discrimination involves a police officer, the tribunal must consider which chief officer of police is vicariously liable for that act. To decide that issue, Mr Bowers said that this tribunal had to consider the nature of the appointment of the officer

during the period with the RCS and decide whether the RCS was a body of constables and who had direction and control of the body of constables in question

Mr Bowers contended that the tribunal erred in considering that DS Walker and the applicant were appointed pursuant to s. 17(7)(a) of the 1975 Act. He argued that there had had been no appointment pursuant to the **Police Act 1994**, and instead both DS Walker and the applicant were appointed pro tem from the Lincolnshire police force to the RCS, as part of a collaboration agreement. Therefore they were governed by s. 17(7)(b) of the 1975 Act, and the tribunal should have considered the question of who the chief office of police was in relation to that sub-section.

It was argued that the RCS was another body of constables, and as such it was the chief officer of police who had direction and control over the officers of RCS (NE) and who was vicariously liable for the actions of his force. The organisational structure of the RCS supported this argument, he submitted. In particular, the RCS was a separate body, independent of the Home County Force, as it had its own command and control function, and recruited, or was responsible for the recruiting, of its own civilian staff; it also operated from its own property and offices, it had its own budget, its own policies on firearms and informers, and to some extent its own disciplinary and grievance procedure and equal opportunities policy. As the organisation of the RCS was under the direction of the CCMC, which was made up of the constituent members' chief officers, the RCS officers could not have been under the control of the appellant.

Mr Bowers urged us to take a purposive approach to the issue and look at who had actual responsibility for the police officers in question. The RCS had day-to-day direction and control of the applicant and DS Walker when they were appointed to the RCS and all acts of

discrimination which were found to be proved took place during that secondment. Given the nature of the RCS and the control it had over its members, it was perverse for the tribunal to find other than that the RCS was a body of constables separate and distinct to the Lincolnshire police force. He submitted that the test was one of control and referred to **Burton v DeVere [1997] ICR 1** which was concerned with an hotel which allegedly subjected its staff to a detriment, where the test was said to be one of control.

Mr Bowers also raised the issue as to whether the tribunal erred in deciding that matters of sex discrimination were in the course of employment as required by s. 41 of 1975 Act. In particular he submitted that the incidents at the Strugglers Public House and at the Stones Arms were not in the course of employment being social occasion away from the work place whilst everyone was off duty. He referred to the fact that the test to be applied was that of an industrial jury.

On behalf of the respondents, Miss Beale's main submission was that the construction of s. 17 of the 1975 Act meant that DS Walker was a person appointed to the Lincolnshire police force under s. 17(7)(a) of the 1975 Act, and remained employed by the appellant throughout his secondment to the RCS.

It was contended that the appellant could only succeed if s. 17(7)(b) applied and s. 17(7)(a) did not, but that if s. 17(7)(a) applied then s. 17(7)(b) did not and could not arise. The appellant had to establish that upon secondment to the RCS, DS Walker ceased to be "a person appointed" to the appellant under the Police Act and became "any other person" within s. 17(7)(b). On the proper construction of s. 17(7), that would require the appellant to establish

that DS Walker was the subject of a fresh appointment to the RCS, which cancelled out, revoked or otherwise annulled his original appointment to the Lincolnshire Police Force

Miss Beale submitted that the appellant could not show that s. 17(7)(a) ceased to apply to DS Walker when he joined the RCS, because his service there was pursuant to a secondment from the Lincolnshire Police Force. DS Walker therefore remained a member and employee of the Lincolnshire Police Force, and returned to service there when he left the RCS without any fresh appointment on either occasion. Accordingly, s. 17(7)(a) never ceased to apply to him and s. 17(7)(b) could not have come into play at all.

It was further submitted that the RCS was insufficiently independent and autonomous to constitute in law a separate body of constables under separate and independent direction and control, to which its constituent police officers from time to time were separately appointed, as set out in s. 17(7)(b). The RCS was established to allow joint collaboration between police forces but there was never any intention to make the RCS responsible for the officers seconded, as highlighted in the Home Office circular and the terms of the collaboration agreement.

By way of contrast, Ms Beale directed our attention to the status and management of the National Crime Squad ["NCS"]. It was created as a separate body, with its own Director General holding the rank of Chief Constable. It has its own legal personality as a statutory body corporate and has statutorily defined functions. By s. 55(2)(b) of the **Police Act 1997** police members who are on temporary service with the NCS are treated as not being members of their home forces during such service. The Director General is also made vicariously responsible for any torts committed by police members of the NCS and s. 17 of the 1975 Act has been amended to include the Director General in the definition of chief office of police.

Miss Beale submitted that had Parliament intended the RCS to be vicariously responsible for its police officers, the changes enacted on the creation of the NCS would have been unnecessary.

Ms Omambala, counsel on behalf of the applicant, argued that the tribunal properly construed the statutory provisions regarding s. 41(1) of the 1975 Act and reached a decision on the "in the course of employment" point, which it was open to do. The tribunal made clear findings that the incidents in the two public houses amounted to sex discrimination. It was not an error of law to make a finding that relaxation in a public house with colleagues immediately after work and attendance at an organised leaving party attended by fellow officers was an extension of employment. It was a question of fact for the tribunal and on the basis of the evidence before it, there was no perversity in the decision. She further submitted that in accordance with the **Tower Boot** case, to which we will refer in a moment, it was essentially a question for an industrial jury, which had been answered in this case and that we should not interfere with that decision.

We thank the parties for putting arguments before us with commendable clarity. The first issue is a matter of pure legal construction, as it seems to us, as to the meaning of sections 17(1) and 17(7(a) and (b) of the 1975 Act.

In summary, the appellant's argument is that when DS Walker and the applicant were seconded from the appellant police force to the RCS they ceased to be a person appointed to the appellant under the Police Act 1996 in accordance with s. 17(7)(a) of the 1975 Act. On secondment they came within s. 17(7)(b) of the 1975 Act, as the RCS was a body of constables

who had control over its officers. The respondents' argument, in a nut shell, is that both DS Walker and the applicant were appointed under the Police Act to be officers of the appellant, and their secondment to the RCS did not change that. Therefore, the chief officer of police answerable to their actions was always the appellant.

We entirely agree with Miss Beale's submissions. DS Walker was appointed under the Police Act to the Lincolnshire Police Force. To come within s. 17(7)(b) his initial appointment would have had to cease and he would have needed to be re-appointed under the Police Act on his return to Lincolnshire from the RCS. That did not happen because he always remained appointed to the appellant's police force.

Whilst the RCS had an internal structure for dealing with some disciplinary matters, all serious matters were referred back to the home force. The Home Office circular setting out the provisions of the RCS specifically stated that officers on secondment to the RCS remained members of their home forces for all purposes, including discipline, and this was reflected in the collaboration agreement itself and the fact that none of the civilian RCS personnel was employed by RCS but by the various home forces.

We reject Mr Bowers' contention that if his proposition for a purposive approach were not followed, then the Lincolnshire police force would be liable in respect of the actions of officers from other forces. The tribunal dealt with that circumstance, correctly in our view, when it said "Had the acts been done by an officer of another police force within the RCS, then the Chief Constable of that force would have been liable." That is plainly so. The tribunal was right to decide that the primary responsibility for discipline lies with the Chief Constable of the force to which the officer was appointed.

We find that it was clearly never intended that on secondment the officers would cease to be appointed to their home forces and re-appointed to the RCS. The very nature of the word 'secondment' suggests otherwise. This is further underlined by the recent creation of the NCS. In contrast with the RCS it is an incorporated body with its own legal personality. Instead of a Chief Constables' Management Committee as with the RCS, the NCS is under the direction and control of a Director-General, who is expressly vicariously liable for acts of discrimination committed under the Act. Parliament envisioned that whereas the home forces remained liable for acts committed by officers seconded to the RCS, there would be a change in relation to the NCS. Such a change would have been unnecessary had secondment to the RCS achieved the affect for which Mr Bowers contended with his usual skill

In our judgment, s. 17(7)(b) is referring to officers who are not appointed to the Home Office force, such as the Ministry of Defence Police. Liability for their actions requires an investigation to identify the officer who had control over the body of constables. The argument that DS Walker fell under both s. 17(7)(a) and (b) would in our judgment contradict the express words of s. 17(7)(b) "in relation to any other person or appointment". The word 'appointment' in s. 17(7)(b) is used in the same context as "appointment falling to be made" in s. 17(7)(a). In other words, s. 17(7) was designed to cover not only constables who had an appointment, but also those who were seeking to obtain one and were complaining of discrimination against them in that context.

Therefore we respectfully agree with the Industrial Tribunal's decision articulated by them at paragraphs 101 to 103 inclusive of their decision.

"101. Reverting to Section 17(1)(a), one has to identify by whom the acts complained of were done. In this case it was the second respondent. The first respondent is treated as employer of the second respondent in respect of those acts because the second respondent had been appointed to the Force of which the first respondent is Chief Constable within the meaning of the Police Act 1964. Had the acts been done by an officer of another police force within the RCS, then Chief Constable of that force would have been liable. That seems to make sense to us because the primary responsibility for discipline lies with the Chief Constables of the force to which the officer is appointed. It is that chief officer of police who can plead the statutory defence under Section 41(3) because he has the means and opportunity to train his officers in how they should conduct themselves, particularly in their working relations with the opposite sex.

102. For it is experienced police officers who are seconded to the RCS for up to 5 years. The RCS works under a collaboration agreement made in this case between the Chief Constables of the ten constituent forces. The operational activities of the RCS are under the command and control of the regional co-ordinator. Whilst he has some disciplinary powers, they remain ultimately with the Chief Constable of the seconded officer's force. There is a personnel function within the RCS but it is there to co-ordinate the personnel requirements on the constituent forces. Each officer is appraised in accordance with the rules of his home force. Variations in conditions and terms of service of those serving with the RCS have to be agreed by all the Chief Constables of the constituent forces. Failure to agree has led to different operational practices by individual members of the same RCS. This problem is now addressed by the creation of a national crime squad which, in effect, is treated as a separate police force, hence the amendment to Section 17 of the Sex Discrimination Act 1975.

103. Thus, in keeping with the nature of the RCS, it is the responsibility of the Chief Constable of the home force to ensure that officers seconded to the RCS have had equal opportunities training so that they understand and can discharge their obligations in that regard. In this case, the second respondent did not have that training. That was the fault of the first respondent so that it seems appropriate that he and the second respondent should bear liability in this case."

When considering the question of compensation the Industrial Tribunal will have to confine itself to dealing with the injury which the applicant sustained as a result of the unlawful conduct of Mr Walker and of the Force responsible for his actions, namely the appellant's. Mr Bowers suggested that the tribunal have already indicated that they might award compensation against the Lincolnshire force for which it is not liable. All we would say on that issue, as the question of remedy has yet to be considered, is that we have no doubt that the Industrial Tribunal will wish to keep clearly in mind the basis upon which the Lincolnshire Police Force have become liable for the activities of Mr Walker.

We turn to the second point. We also reject Mr Bowers' submissions on the proper interpretation of course of employment. We concur with the findings of the Industrial Tribunal, that the two incidents referred to, although "social events" away from the police station, were

extensions of the work place. Both incidents were social gatherings involving officers from work either immediately after work or for an organised leaving party. They come within the definition of course of employment, as recently interpreted by the Court of Appeal in **Jones v Tower Boot Limited** [1997] ICR 254 and the case of **Waters v The Commissioner of Police of the Metropolis** [1997] IRLR 589. It would have been different as it seems to us had the discriminatory acts occurred during a chance meeting between Mr Walker and the applicant at a supermarket, for example, but when there is a social gathering of work colleagues such as there was in this case, it is entirely appropriate for the tribunal to consider whether or not the circumstances show that what was occurring was an extension of their employment. It seems to us that each case will depend upon its own facts. The borderline may be difficult to find. It is a question of the good exercise of judgment by an industrial jury whether a person is or is not on duty, and whether or not the conduct occurred on the employer's premises, are but two of the factors which will need to be considered. On the facts of this case, the Industrial Tribunal well understood that the applicant was not and could not be thought to have been socialising with Mr Walker on either of those two occasion. Indeed, it would appear from their decision, that this was the last thing that she would have been wishing to do. It seems to us that the way it was put in the **Tower Boot** case succinctly sets out the task of the Industrial Tribunal:

> "The tribunals are free, and are indeed bound, to interpret the ordinary, and readily understandable words "in the course of his employment" in the sense in which every layman would understand them. This is not to say that when it comes to applying them to the infinite variety of circumstances which is liable to occur in particular instances - within or without the workplace, in or out of uniform, in or out rest-breaks - all laymen would necessarily agree as to the result. That is what their application so well suited to decision by an industrial jury. The application of the phrase will be a question of fact for each industrial tribunal to resolve, in the light of the circumstances presented to it, with a mind unclouded by any parallels sought to be drawn from the law of vicarious liability in tort."

As Ms Omambala pointed out to us, this case was decided by a tribunal after 14 days of evidence. Part of that evidence was concerned with what police officers regularly did after their

turn of duty. They were in the best possible position to judge whether, despite the fact that the first incident occurred "in a pub" it was nonetheless to be regarded as part of the employment relationship. As also the question of whether her presence at the leaving party was similarly so to be described. We do not have the material before us to say whether or not we would agree with the Industrial Tribunal's conclusion. Indeed even if we were not in agreement with it, it would be going too far in our view to suggest that this decision was manifestly perverse or wrong-headed. Indeed, we do not think it could be so described. Their findings are set out at paragraphs 35 to 36, and 42 to 44 of their decision and their conclusion is expressed at paragraph 99:

> "35. On an occasion in March 1995 the applicant went to the Strugglers public house and there met the second respondent, DC Kirk and DCI Reedman. The second respondent sat next to the applicant, pulled up his stool up close to hers and flicked her hair from her shoulder with his left hand. He then rearranged her collar with his hand. The second respondent's manner was intimate. His behaviour gave the impression to Mr Reedman that there was a relationship between the applicant and the respondent. The applicant was embarrassed by his conduct. She moved away and decided to ignore it.
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> 36. The applicant gave a good description of this incident in her evidence and well conveyed to us the idea that the second respondent had invaded her space in an intimate but unwanted way. His conduct towards her based entirely upon her sex. Whilst the parties were not actually at work when this incident happened, it happened in the course of employment in the broad sense. The applicant would not have been in the presence of the second respondent had she not been working with him. Attending a public house for relaxation immediately after the end of the working day is, in our view, merely an extension of employment.
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> 42. On 5 June 1995 the applicant attended DCI Bretton's leaving party with her boyfriend at the Stones Arms, Skellingthorpe. On her way to the ladies room, she passed close to the second respondent who was standing with other colleagues. He acknowledged her and said in a loud voice "fucking hell you look worth one. May be I shouldn't say that it would be worth some money". The applicant felt humiliated and distressed.
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> 43. DC Probert agreed in his witness statement that the applicant had been upset that night. He said that DC Hoe had caused the upset by expressing his views about her ability. Although DC Hoe had been unwilling to work with the applicant, he had been prevailed upon not to share his views with her. We think it unlikely that he would have done so on this occasion. DC Probert described the applicant as tearful and we find that she was, as she told us, upset by the offensive remark made to her by the second respondent. As for DC Hoe's judging the reasonableness of his unwillingness to work with the applicant we found it difficult to reconcile that unwillingness with his willingness to admit her to his home for sandwiches and to stay overnight at his father-in-law's guest house on one occasion.
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> 44. Again, we regard this incident as having happened in the course of employment of the applicant and second respondent. Neither would have been at the party but for their connection with the RCS. The party was an extension of work and the work place. This incident, that of the Strugglers public house and other incidents are part of a whole course of conduct carried on by the second respondent in the course of his employment in the broadest sense of that phrase.
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> ...

> 99. The first respondent argued that incidents of sex discrimination at the Strugglers and Stones public houses happened outside the course of employment. Section 41(1) of the Sex Discrimination Act 1975 provides that anything done by a person in the course of his employment shall be treated for the purposes of the Act as done by his employer was well as by him, whether or not it was done with the employer's knowledge or approval. That expression has received judicial considered in Jones -v- Tower Boot Co. Ltd [1997] IRLR 168. The Court of Appeal said that the words "in the course of employment" should be interpreted in the sense in which they are employed in everyday speech and not restrictively by reference to the principles laid down by case law for establishing an employer's vicarious liability for the torts committed by an employee. The application of the phrase is a question of fact for each industrial tribunal to resolve. We have already set out our findings in this respect in connection with those incidents to which this argument is addressed. In our judgment, these incidents were connected to work and the work place. They would not have happened but for the applicant's work. Work related social functions are an extension of employment and we can see no reason to restrict the course of employment to purely what goes on in the work place."

On those facts, we believe that an industrial jury would be entitled to reach the conclusion which this Industrial Tribunal did. Accordingly, we do not consider that it would be open to us to interfere with that finding and we do not do so.

Those are the two points which have been raised. We probably have not done full justice to the full extent of the arguments presented to us, but nonetheless, we are satisfied that the appeal must be dismissed.

MR JUSTICE MORISON (PRESIDENT): We have been asked for leave to appeal in this case. We refuse it for the following reasons.

It seems to us that as to the first point, with great respect to Mr Bowers' skill, the answer is very clear, as we have attempted to set out in our judgment. If we had had any doubt about the proper interpretation of s. 17 of the 1975 Act coupled with s. 41 we might have been induced to give leave to appeal, although it has to be said that the Regional Crime Squads no longer exist, although there may yet be outstanding claims in relation to service for that organisation.

In relation to the second point, we see no conflict between the Court of Appeal's judgment in the **Waters** case and **Jones v Tower Boot Co. Ltd**. There was nothing said in the **Waters** case to indicate that the Court of Appeal was wishing to alter in any way what it had recently previously said in **Jones v Tower Boot Co. Ltd**. Indeed, in paragraph 82 of the judgment in **Waters** case it seems to us clear that the Court of Appeal are indicating a number of factors which are pertinent to the question, none of which was decisive in itself. They were simply applying, as I understand it, the test which has to be applied by the industrial jury on the facts before it. Accordingly, we do not consider that there is any point of principle involved in this case. It was the pure application by the industrial jury of their good sense to a difficult question.

MR JUSTICE MORISON (PRESIDENT): We have been asked for an Order for Costs to be paid by Mr Bowers' clients on the grounds that the appeal was pursued in circumstances where it was always clear that it was hopeless and therefore amounted to an unreasonable act on their part.

Whilst we have come to the conclusion that at the end of day, having listened to the arguments, that the appeal was in fact without substance. It does not seem to us that this falls into the category of an appeal where there has been any unreasonable conduct.

There was an appeal which came before the EAT in May 1997 where the EAT effectively said that it would be better if the tribunal of fact got on and decided all the factual issues and we left this case in the air. I do not think that affects the question at issue. I do not think that that was an unreasonable appeal, any more than this was so as to attract an Order for Costs.