

IN THE COURT OF APPEAL (CIVIL DIVISION)

Lorraine v Fly TV

Biff was a well-known football commentator for Fly TV. Biff had a particular reputation at Fly TV for having a somewhat outspoken and lewd sense of humour, but these comments were often considered by his superiors to be good-humoured banter.

As part of an ongoing investigation into the culture at Fly TV in 2009, a clip was anonymously leaked onto the internet of some off-air comments recorded during the rehearsals of Football Future, some three weeks previously. These comments, by Biff, were directed at a fellow commentator, Marty, regarding a female presenter at Fly TV, Lorraine. Biff had, in referring to Marty's relationship with Lorraine, asked Marty "Did you tan it? You definitely tanned it. I bet I could go round any night and find Marty around the back of it". The footage was not aired on TV, and the pair had appeared to be warming up before Football Future went out live.

At the culmination of the investigation, Biff was dismissed for his behaviour in bringing Fly TV into disrepute and Fly TV made an unreserved apology to Lorraine for any distress she may have experienced as a result of the leak.

Lorraine had joined Fly TV eighteen months earlier having worked as a glamour model for a number of magazines. Lorraine had been horrified to see the clip being made public on the internet in that way. She suffered from stress and subsequently resigned, considering her broadcasting career to have been ruined.

Lorraine brought a claim in the Employment Tribunal against Fly TV for constructive dismissal and under the Sex Discrimination Act 1975.

At first instance, the Tribunal found the following facts:

1. Biff was well-known to be bankrupt and as such, Lorraine had brought her claim against Fly TV alone.
2. Lorraine had frequently engaged in vaguely suggestive remarks with Biff, both in rehearsals and on live television.
3. Two weeks before the incident in question Lorraine had told Biff to "cool off" when his remarks became increasingly vulgar. She had said this at a rehearsal at which both the Director and Executive Producer were present and the Director had asked her afterwards if she was feeling okay.
4. Following Lorraine's resignation, Biff had apologised privately to her for his remarks.

The Tribunal found for Lorraine in relation to the constructive dismissal claim and awarded the maximum damages permissible for that claim (which only amounted to the amount Lorraine would have been paid for six programmes). It rejected her claim under the Sex Discrimination Act 1975 on the following grounds:

1. Biff had not intended his conduct to have the effect of violating Lorraine's dignity.
2. Fly TV had acted immediately to discipline Biff once the remarks had become public and so it would not be appropriate to hold Fly TV to account for the actions of one of its presenters.

Lorraine's appeal to the Employment Appeal Tribunal was rejected. She appealed to the Court of Appeal on the following grounds:

1. It was not necessary to show that Biff's conduct did not have the purpose of violating Lorraine's dignity but rather that its purpose or effect was such.
2. Although Fly TV had dismissed Biff when the clip in question had come to light and the investigation had completed this was not sufficient to show that it had taken such steps as were reasonably practicable to prevent this from having occurred. As a result this decision was one that no reasonable tribunal could have come to if properly directed.

No appeal or cross appeal was received in relation to the constructive dismissal claim.