



EMPLOYMENT TRIBUNALS

Claimant: Mr G Lyon

Respondent: Merseyside NHS Trust

HELD AT: Liverpool

ON: 24 February 2017
(In Chambers)

BEFORE: Employment Judge T V Ryan
Mr G Pennie
Mrs J C Ormshaw

REPRESENTATION:

Claimant: Written submissions received and considered

Respondent: Written submissions received and considered

JUDGMENT ON REMEDY

The unanimous judgment of the Tribunal is that the respondent shall pay to the claimant damages for injury to his feelings of £6,600.

REASONS

1. The Issues

- 1.1 This remedy judgment is pursuant to the judgment on liability signed on 12 July 2016 and sent to the parties on 18 July 2016. The parties were invited to and did make written submissions on remedy and each party sent written replies to the other party's initial submissions on remedy.
- 1.2 All submissions have been read and considered by the Tribunal in chambers, along with their notes of evidence and the liability judgment.

2. The Facts

- 2.1 The Tribunal noted that in its liability judgment its findings included the following:

- 2.1.1 At all material times the claimant acted consistently with his duties and responsibilities as a POA Branch Chair.
 - 2.1.2 The respondent's Director of Workforce wrote to the claimant on 8 June 2015 (pages 37-39) criticising the claimant's handling of a Branch meeting, saying in no uncertain terms what she felt he ought to have done.
 - 2.1.3 That in her criticisms the director also raised historical issues and matters personal to the claimant's performance.
 - 2.1.4 That the director made it clear to the claimant in the light of the above that there would be consequences, including personal ones for him such that his performance review was to be put on hold and there was to be discussion as to his job description.
 - 2.1.5 The director communicated to the claimant that he ought to "toe the line", wanting him to be aware of her dissatisfaction, the need for him to heed it and to act differently in the future.
 - 2.1.6 The respondent cancelled facilities that created lines of communication between the workforce and management with the intention of disappointing and inconveniencing the claimant by making his job more difficult.
 - 2.1.7 As was intended, the claimant was put into an awkward position with regard to the conduct of his duties and in respect of his obligations to his members, and the claimant was put in fear of the threat of what might happen if he failed to satisfy the director in future. The claimant was not only put under pressure to be compliant or to act in a way perceived to be satisfactory to the respondent's management, but he was also put in fear of potential consequences to him personally if he was seen to fail.
- 2.2 The Tribunal noted the claimant's evidence given at the liability hearing as to the physical effects upon him of the concern and distress felt, which included stress-like symptoms. It was noted that this was challenged in cross examination and that the respondent has made the point that the claimant on occasions expresses himself robustly. The symptoms such as those described by the claimant credibly during his evidence are consistent with the Tribunal's finding that he was put in fear, that he was concerned as to personal consequences and that the performance of his union duties was made difficult for him, including in the eyes of his members. The claimant's evidence that he was affected by the criticism, instruction, and the implicit level of future scrutiny threatened had the effect of making the claimant fearful, and as such his feelings were significantly injured.

3. The Law

- 3.1 The Tribunal reminded itself of the general principles with regard to awards of damages for injury to feelings. Injury to feelings awards are

intended to compensate for non-economic loss; being compensatory they must be just to both parties and must not be seen as a means of punishing the paying party. Even if the Tribunal had feelings of indignation at the respondent's conduct, which has not been stated, those feelings should not be allowed to inflate any award which is to be aimed at compensation for injury only. Awards should neither be too low or too high as to diminish respect for the policy of anti-discrimination legislation and legislation of that type such as is applicable in these circumstances. Awards should have some proportionate correlation with personal injury awards taking into account the value in everyday life of the sums in question by reference to purchasing power or earnings. The matters compensated for by an injury to feelings award encompass subjective feelings such as upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation and happiness, stress and depression. An award for damages for injury to feelings is not inevitable in circumstances such as in this case, but it is necessary for the claimant to prove the nature of the injury to feelings and its extent.

- 3.2 The guideline ranges for compensation further to **Da'Bell v NSPCC [2010] IRLR 19** up-rate the earlier guidance such that the upper band is now set at £18,000-£30,000, the middle band between £6,000-£18,000 and the lower band between £600-£6,000. Those figures may be enhanced to reflect the effect of inflation and the principles in the case of **Simmons v Castle [2012] EWCA Civ 1288** by increasing them by 10%.
- 3.3 Both parties accept that it is open to the Tribunal to make an award of injury to feelings in this case even though the award is not in respect of discrimination in respect of the protected characteristics provided for in the Equality Act 2010. It is not contended by the parties that the claimant is entitled to interest as an award for injury to feelings in the current context.

4. Application of Law to Facts

- 4.1 Applying the law and principles outlined above to the Tribunal's findings of fact and the circumstances of the case, the Tribunal concluded that the award ought to reflect the fear felt by the claimant in the light of the personal and professional criticisms levelled at him which resulted not only in difficulty in him performing his duties but also some physical stress-like symptoms. More particularly, and despite his generally robust manner in dealing with management over some union issues, the claimant was deliberately put in fear of the future consequences of him failing to satisfy senior management. This had a significant impact upon him.
- 4.2 It cannot be said that there was a lengthy campaign of conduct akin to discriminatory harassment justifying an award in the top band, yet it is a serious case. The claimant was the Union Branch Chair and that was his sole activity whilst at work as he had no other operational duties at the time. He therefore had to perform his work in fear of the consequences of falling foul of senior management's wishes, which the Tribunal

considered was a major consideration which almost inevitably impacted upon him in the way in which he described in his witness statement and under cross examination. Although the written instruction could be seen in one sense as a one off occurrence, the Tribunal did not consider that its nature, which was the threat of ongoing scrutiny, ought properly to be a lower band consideration.

- 4.3 All matters considered, the Tribunal assessed the damages for injury to feelings according to the principles stated above at the top of the lower band and bottom of the middle band. In consequence the Tribunal awards the claimant £6,600 damages for injury to feelings.

Employment Judge T V Ryan

1st March 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

06 March 2017

FOR THE TRIBUNAL OFFICE

**NOTICE****THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990**

Tribunal case number(s): 2408139/2015

Name of case(s): Mr G Lyon v Mersey Care NHS Trust

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 06 March 2017

"the calculation day" is: **07 March 2017**

"the stipulated rate of interest" is: 8%

MISS L HUNTER
For the Employment Tribunal Office