

RESERVED JUDGMENT

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EMPLOYMENT TRIBUNALS

Claimant: Ms H Kone

Respondent: Mr F Gomis

Heard at: East London Hearing Centre **On:** 25 January 2017

Before: Employment Judge Prichard **Members:** Mr B Banks
Mr D Sutton

Representation

Claimant: In person

Respondent: Mr N Clarke (Counsel, instructed by Lamb Brooks LLP,
Basingstoke)

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that the following awards are made to the claimant:-

1. Total loss of earning £37,148.00 with interest calculated at 4% from May 2015 to January 2017 (20 months) - £2,474.00. Gross of interest it is £39,622.00.
2. For injury to feelings £9,000.00, with interest at 8% for the same period, is £1,200.00. Injury to feelings gross of interest is £10,200.00.
3. The tribunal makes no award for aggravated damages.
4. The tribunal makes no award for personal injury.
5. The claimant is entitled to receive tribunal fees paid - in total £1,200.00 by way of costs.

6. The respondent, Mr F Gomis, is ordered to pay the claimant a total of £51,022.00.

REASONS

1 This judgment needs to be read in conjunction with the previous judgment this tribunal panel gave on liability in this case. The claimant's claims were successful. The overwhelming majority of her allegations were upheld by the tribunal. It appeared in retrospect that Mr Gomis had very little to say in response to a strong case the claimant brought backed with incontrovertible documentary correspondence. Most of his defence was vague and at some points nugatory.

2 The tribunal considered whether to award aggravated damages in this case given the respondent's failure to acknowledge the guilt in the face of this overwhelming evidence. However his defence to these proceedings and to the grievance that the claimant brought in the workplace was not an all-out attack on the claimant and her credibility which might have better justified an award of aggravated damages.

3 We have considered that the most appropriate way to reflect the undoubted hurt the respondent has inflicted on the claimant by his selfish conduct is to give a high award for injury to feelings (£24,000 in total including the TR settlement) and loss of earnings for a longer period than might otherwise have been given to the claimant. She appears to be a talented young starting accountant now age 33, with her career still substantially ahead of her.

4 The total period being compensated is May 2015 to 25 January 2017 i.e. today. The latest part of this period refers to a time when the claimant was still employed by TR but not receiving any pay from them. We have disregarded a small sum of statutory sick pay which she received in order to simplify the equation.

5 The termination of the claimant's employment evidently took place on day 2 of the original liability hearing when she settled the proceedings against the first respondent TR Organisation (Thompson Reuters), as is recorded in that judgment i.e. 27 April. It was a term of that settlement that the claimant's employment should terminate at the time of making our judgment. The tribunal was not aware at that time what her employment status was. The agreement was not disclosed until after the liability judgment had been given against Mr Gomis. The judgment was sent to the parties on 25 August. The settlement clearly has a bearing on the amount of compensation we now award.

6 The claimant settled against Thompson Reuters for a total of £45,000 on termination of employment. That was structured as to £15,000 for injury to feelings i.e. we have awarded a balance up to £24,000 (the remaining £30,000 was for loss of earnings but that loss of earnings was not allocated). In her current schedule of loss the claimant has allocated that loss of earnings to post termination losses i.e. post April 2016 rather than the pre-termination losses from May 2015 to April 2016.

7 She considers and has argued well for the fact that that period of no pay resulted directly from Mr Gomis' conduct towards her - his persistent sexual harassment. One can see how she might argue that and we uphold it. The tribunal considers now with the closing of this case those traumatic events may become a spent force and she may get back to her true potential, on her chosen career path, despite what we can accept is a tricky job market at moment here, in France, and Spain.

8 We remind ourselves that the claimant is fluent in English, French and Spanish. Her first internship was in Tarragona Spain. She worked in Luxemburg for Ernst & Young. French is the main language spoken in Luxemburg. We also acknowledged that the EU referendum in the UK has had a bad effect on recruitment here. It is certainly true in the financial sector but she is finding it in the corporate sector as well (the sector she was working in with TR).

9 The claimant's evidence came back time and again to the contention that she had no staying power because of her low mood. On principle, she will not take prescribed Sertraline anti-depressant. However, in the tribunal's view could have been more resourceful in finding other therapies and complementary supplements which could help. Maybe she should now. One appreciates that counselling generally costs money but several people do qualify for it on the NHS.

10 We have concluded that from now on the claimant's health will not continue to hamper her in her search for work. There is no actual medical evidence of depression other than the fact that she has been prescribed Sertraline (by a GP) even if she will not take it. In the tribunal's view she needs to embrace her job search more enthusiastically and concentrate more than she has to date.

11 The tribunal is struck by the fact that the claimant had some voluntary work gardening in Southwark but she even gave that up she says because of low mood. That was surprising to learn. She should keep herself active because that will raise her mood.

12 She has asked this tribunal to award 6 months loss from the date of termination. In view of the tribunal's views just expressed we half that amount to 15 weeks.

13 We have followed the claimant's method of accounting and deducted the settlement £30,000 from the period after her termination and for today.

14 Because there is no medical evidence as such we have not awarded separate damages for the claimant's freestanding personal injuries head of damages, in addition to injury to feelings.

15 We have not awarded the £1,000 plus travel expenses she claimed going to Paris and having a fibroscopy from a private clinic to investigate suspected (but not actual, in the event) stomach cancer apprehended because of the claimant's apparent symptoms of stress and anxiety.

16 This tribunal is used to hearing from stressed and anxious ex-employees. Very few of those employees succeed in establishing a claim for personal injuries that is over and above the conventional award for injury to feelings in the Vento/Da'bell bands.

17 We should note that we have pitched the damages for injury to feelings high - in the middle of the top bracket - because of the severity and persistence of this sexual harassment from the claimant's manager and the way in which she was trapped in an invidious situation. We took a more sympathetic view than her employers did in the workplace grievance outcome. She had been psychologically imprisoned and isolated by Mr Gomis' conduct.

18 We could not accede to Mr Clarke's argument that the earlier period of loss of earnings before termination could be attributed to Thompson Reuters not to Mr Gomis. In our view this was an over-subtle analysis of causation. The respondent's conduct lay at the bottom of all of this. They did their best to deal with it through her grievance and her grievance appeal. We have stated in our judgment we thought that the outcome, particularly on appeal, was harsh towards the claimant and did not show enough sympathy or understanding of how trapped she had been as junior accountant, trapped by her manager, whose conduct was extraordinarily selfish, self-centred, and unsympathetic.

19 We have reimbursed the claimant for her tribunal fees as normally happens in a tribunal hearing. The fact that there were two respondents when this case started is no good reason to somehow apportion those fees between TR and Mr Gomis as a co-respondent. We have accepted the structure of the TR settlement (though it was patently obvious it was structured that way by lawyers for the usual tax reasons). The fees could not have been reimbursed then as the claimant had not won her case.

20 We should mention that since the original hearing Ms Kone is no longer represented and previously incurred some £15,000 in legal fees. We commend the way in which she has presented her case. She exhibited a large number of job applications to the tribunal and informed the tribunal that she had not sought these jobs until she found that it was impossible to get temping work. Temping would have been her ideal as a way to get back into employment. The long-term unemployed can lose their nerve.

21 She put together an impressive schedule of loss. The figures were reliable which you might expect for an accountant. Her claims were not extravagant or far-fetched.

22 The respondent had little to say in response. There was no counter schedule and there were not any substantially impressive arguments. It was not clear that Mr Clarke had any real instructions at all. He pronounced in a Delphic way that "there may be money problems" and that his understanding was that the respondent might have no job, but was still in Dubai nonetheless. The claimant had her doubts as to whether that would be true because you cannot be there without a work permit and you

cannot have a work permit unless you have a job.

23 He also mentioned in outline that Mr Gomis would need time to pay, a suggestion to which the claimant willingly acceded saying it was her wish only to get compensation and not to make his life difficult or more difficult than it is.

24 The interest calculation is done in a conventional way because loss of earnings accumulates over time. It is often said one should take the mid-point for a gradually accruing amount. That is a cumbersome way of calculating it. If one simply halves the rate of interest one gets to the same destination. That is why the loss of earnings is subject to 4% interest but the injury to feelings which is from the start is at the full 8%. It is more of an art than a science calculating the correct period but we consider that 20 months to the date of this hearing is adequate.

RESERVED JUDGMENT

Employment Judge Prichard

24 March 2017