



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Mulla

Respondents: (R1) Enigma Fashiions UK Limited
(R2) Raj Rajshakha

Heard at: Leicester

On: 13 April 2017

Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: Ms E Tegerdine, Solicitor

Respondents: Mr R Khunti

JUDGMENT ON REMEDY

The unanimous judgment of the Tribunal is that:

1. The First Respondent is ordered to pay to the Claimant compensation for unfair dismissal of £55,963.58 in accordance with the schedule below;
2. The First Respondent is ordered to pay to the Claimant damages for breach of contract of £4,055.00 (net);
3. The First Respondent is ordered to pay to the Claimant £3,244.00 (net) for failure to provide particulars of employment pursuant to section 1 Employment Rights Act 1996 and section 38 Employment Act 2002;
4. The First and Second Respondents are jointly and severally ordered to pay to the Claimant a total of £15,000.00 (net) as damages for injury to feelings and aggravated damages plus interest on that sum of £1,391.67 (net).
5. The Recoupment Regulations do not apply.
6. The application for costs by the Claimant against the first and second Respondent is adjourned for hearing on Wednesday 9 August 2017 at 10 am at the Leicester Hearing Centre. Case management orders in respect of the costs hearing are given separately.

SCHEDULE

Basic award	-	£3,087.50
Compensatory award		
(i) Loss of earnings from date of dismissal to date of hearing	-	£35,110.00
(ii) Future loss of earnings (12 months x £1,451.34)	-	£17,416.08
(iii) Loss of statutory rights	-	£350.00
Total compensatory award	-	£52,876.08
TOTAL AWARD	-	£55,963.58

REASONS

1. This was a hearing on the issue of remedy, the Tribunal having made determinations on liability at the earlier hearing in January 2017.

2. Prior to this remedy hearing the Respondent's solicitors removed themselves from the Tribunal record. Neither of the two Respondents chose initially to attend this hearing having unsuccessfully applied for it to be postponed. We decided to proceed notwithstanding their absence. We understand that someone on behalf of the First Respondent then telephoned the Tribunal to ascertain what was happening. When they were informed that the hearing was proceeding, Mr Ranjit Khunti, who is referred to at some length in the earlier liability judgment, attended the hearing and represented both Respondents. The Claimant gave oral evidence. Mr Khunti did not call any evidence. References in this judgment to the 'Respondent' are to the First Respondent only unless otherwise indicated.

3. Mrs Mulla was employed by the First Respondent from 17 December 2009 to 3 March 2016, the 'effective date of termination'. In 2015 when the Claimant became pregnant with her first child she was naturally excited at the prospect of becoming a mother for the first time. As a result of complications during pregnancy, which we have referred to in the previous decision, the Claimant began to suffer from exceptionally high blood pressure. She also developed pre-eclampsia. Her baby was born 6 weeks prior to the expected date.

4. Both mother and baby were unwell after birth and the Claimant was kept in hospital for 2 weeks thereafter. During this difficult time, both Mr Rajshakha and Mr Khunti were undoubtedly planning to remove the Claimant from her employment and directorship so that they could have complete control over the business. The text messages which were crucial to our findings were sent some 4-5 weeks after the Claimant had given birth in the circumstances we have described. The contrived closure of the business must have exacerbated the

injury to feelings of the Claimant. The Claimant had to hurriedly return to work from maternity leave on 4 January 2016 cutting short her maternity leave. Some three weeks after her return, she was excluded from the business premises.

5. We accept the Claimant's evidence that she was tearful and emotional as a result of the actions of Rajshakha and Mr Khunti. Her stress and anxiety was exacerbated by allegations of financial irregularities which were completely without foundation. Mr Rajshakha informed the employees of the business not to speak to her or contact her. Mrs Mulla found this very hurtful as she had known many of the staff for a long time and considered them to be friends. Clearly, some of the staff had divided loyalties as was apparent at the previous hearing. The Claimant was required to attend a disciplinary hearing on artificial allegations. As a consequence of the repudiatory breach by the Respondent we found the Claimant had been constructively and unfairly dismissed as well as discriminated against by reason of pregnancy and maternity.

6. To compound matters, the Claimant received threats of legal proceedings on company law issues from a highly respected law firm which the Claimant would undoubtedly have taken very seriously. Those threats were entirely without substance because despite a year having elapsed since those threats were made, no legal proceedings have ever been issued. The intention was clearly to frighten the Claimant rather than to genuinely pursue legal rights. As a lay person receiving such correspondence the Claimant would clearly have felt deeply anxious. The amount of damages claimed and threatened by way of proceedings was approximately £300,000 as well as costs.

7. Mrs Mulla's evidence was that the last 18 months of her life should have been the best, spending time with her son. Instead she says it has been the worst year of her life. We have no reason to doubt that she has had to endure a most stressful and emotionally draining time. The financial cost has put a huge strain on her family. It has got into debt to finance the legal action. The Claimant is no longer employed. Her only source of income comes from her newly created business, Fusion Design UK Limited. The business is currently operating at a loss.

8. The Claimant is entitled to a basic award of £3,087.50. Mr Khunti does not dispute that nor does he challenge the past loss of earnings of 10 months at £3,511.00 per month. Mr Khunti does challenge £39,324.29 claimed in respect of setting up a new business. Whilst there is long-standing authority that the costs of setting up a business can be ordered as part of a compensatory award we consider that this is to a large extent an investment on the part of the Claimant and her husband for the future. It is not just and equitable that the Respondent should be liable to fund its early developmental stages. To that extent we agree with Mr Khunti and we therefore make no order in respect of the cost of setting up the claimant's new business venture. We do however consider that the Claimant should be entitled to loss of future earnings for 12 months at £1,451.34 (being the net loss after income from the new business) of £17,416.08. We also award £350 for the usual loss of statutory rights.

9. In terms of the claim for breach of contract this is not disputed at £4,055.00.

10. There has been a failure to provide particulars of employment in accordance with the obligations on an employer under section 1 of the Employment Rights Act 1996. We award the 'higher' figure of 4 weeks pay amounting to £3,244.00. The award is made pursuant to section 38 of the

Employment Act 2002.

11. Turning to the award for injury to feelings, we preface our remarks by making it clear that, unlike the awards for unfair dismissal, breach of contract and the failure to provide particulars of employment (which can only be made against the employer) both the first and second Respondents are jointly and severally liable for this. Thus, Mr Rajshakha will remain personally liable even if the First Respondent goes into liquidation or is unable to pay.

12. The general principles as to assessment of damages for injury to feelings were set out in **Prison Service v Johnson** [1997] IRLR 162. In that case the Employment Appeal Tribunal said that injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award. Awards should not be too low as that would diminish the policy of anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained as excessive awards could be seen as a way to untaxed riches. Awards should bear some broad general similarity to the range of awards in personal injury cases. We should take into account the value of things in everyday life by reference to purchasing power or by reference to earnings. We should bear in mind the need for public respect of the level of awards made.

13. In **Vento v Chief Constable of West Yorkshire Police** [2003] IRLR 102, the Court of Appeal identified 3 broad bands of compensation for injury to feelings – the higher, middle and lower bands. The top band is for the most serious cases such as where there has been a lengthy campaign of discriminatory treatment. The middle band should be used for serious cases which do not merit an award in the highest band. The lower band is for less serious cases such as where the act of discrimination may be a one-off occurrence.

14. Following further guidance in **Da'Bell v NSPCC** [2010] IRLR 19, the EAT updated the three bands in line with inflation so that they were then as follows:-

14.1 The upper band between £18,000 - £30,000.

14.2 The middle band between £6,000 - 18,000.

14.3 The lower band between £600 - £6,000.

15. Following **Simmons v Castle** [2012] EWCA Civ 1288, the Court of Appeal made it clear that general damages in tort cases (and damages for injury to feelings falls in that category) should be increased by 10% on existing levels. As a consequence, the Vento bands would now be as follows:-

15.1 Upper band - £19,800 - £33,000.

15.2 Middle band - £6,000 - £19,800.

15.3 Lower band - £600 - £6,000.00

16. In our judgment this case falls in the middle band for the following reasons:-

16.1 It cannot be described as a "less serious case" and thus it is not

appropriate to categorise it in the lower band. The acts of discrimination were more than a one-off occurrence resulting in clear injury to feelings.

16.2 This was not a case of a lengthy campaign of discriminatory harassment, nor was it a case of a career threatening discriminatory act or series of acts which would place it in the highest band.

17. On balance, and within the middle band (after allowing for the increase as a result of **Da’Bell** and **Simmons v Castle**), we consider that an award of £10,000.00 for injury to feelings is appropriate.

17. We also consider that there should be an award for aggravated damages. We are satisfied that the first and second Respondents acted in a manner which was ‘high handed, insulting and oppressive’. The text messages and letters were sent at a time when the Claimant was undoubtedly in a vulnerable state. There was no consideration of the Claimant’s pregnancy. There was an expectation that the Claimant would return to work almost immediately after the birth of her baby and the failure to respond to her telephone calls and messages was at the very least insulting. We make an award of £5,000 for aggravated damages. The Claimant is of course entitled to interest on both injury to feelings and aggravated damages.

18. The Claimant makes an application against the Respondents for legal costs and fees. Unfortunately, in view of the fact that the costs application was made late in the day it could not be accommodated for this hearing, it has had to be adjourned to another date. The costs application is now listed for hearing on Wednesday 9 August 2017 before the same tribunal. Case management orders for the costs hearing are issued separately.

Employment Judge Ahmed

Date: 20 June 2017

JUDGMENT SENT TO THE PARTIES ON

21 June 2017

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FOR THE TRIBUNAL OFFICE