



## **EMPLOYMENT TRIBUNALS**

**Claimant:** Mr K Traynor  
**Respondent:** British Footwear Association Limited  
**HEARD AT:** CAMBRIDGE ET  
**ON:** 21 August 2017  
**BEFORE:** Employment Judge Finlay  
**MEMBERS:** Ms D Clarke and Ms J Evans

## **REPRESENTATION**

**For the Claimant:** Mr J Crosfill, Counsel.  
**For the Respondent:** Mr A Gloag, Counsel.

## **REMEDY JUDGMENT**

The unanimous Judgment of the Tribunal is as follows:

1. It is declared that the claimant's complaint that he was subjected to a detriment in contravention of section 47B(1) of the Employment Rights Act 1996 is well founded.
2. The respondent is ordered to pay to the claimant compensation in the sum of £7,116.20.

## **REASONS**

### **The Law**

1. By section 49(1) ERA, where an employment tribunal finds a complaint under section 48(1) to be well founded it:
  - (a) shall make a declaration to that effect, and
  - (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.
2. The claimant sought an award of compensation for injury to feelings and in assessing any such award the tribunal will normally have regard to the guidance given in the case of *Vento v Chief Constable of West Yorkshire Police (No 2)* [2003] IRLR 102 CA which sets out three bands of award. Those bands have subsequently been adjusted for inflation as set out in the case of *Da'Bell v NSPCC* [2010] IRLR 844.

**Findings and conclusions**

3. The tribunal had found that the respondent had subjected the claimant to a detriment by adding to an investigatory report information relating to a company which had been owned by the claimant and which had gone into liquidation owing a significant amount of money (see paragraphs 48-49 and 108-112 of the tribunal reasons for its judgment on liability).
4. The claimant had complained of seven other detriments, ranging over a significant period. We have therefore considered whether the injury suffered by the claimant is “divisible”. Having heard the claimant’s evidence today we find that the injury to feelings sustained by him was a result of what Mr Crosfill called the three main issues, namely the reference in the report to his past business dealings, what the claimant saw as a suggestion that he had been dishonest and his dissatisfaction at the findings in the report which he saw as a “whitewash”. Only one of these was a detriment on the ground of a protected disclosure, but we do not think it is correct or even practical to separate the effect on the claimant of that detriment from the effect on him of the other two issues. It is therefore the effect on the claimant of these three matters which we have considered in assessing his injury to feelings. We have, however, separated these three issues from the other alleged detriments, most of which occurred significantly beforehand.
5. We have reminded ourselves that awards of injury to feelings are designed to compensate the injured party but not to punish the guilty party. Furthermore, the gravity of the detriment does not necessarily reflect the gravity of the effect on the injured party. In our reasons for our judgment on liability we had described the proven detriment as being at the lower end of the scale, but this does not of course mean that any award of compensation should automatically be at the bottom of the range of awards available to us. An award of injury to feelings is similar to an award of damages in tort, in that the respondent has to take its claimant as it finds him.
6. The claimant produced an updated schedule of loss and a written skeleton argument for today’s hearing. Both representatives made helpful oral submissions. The claimant also produced a witness statement dealing with the effect of the respondent’s conduct on him and he was cross examined on that witness statement by Mr Gloag.
7. Mr Gloag sought to portray the claimant as an experienced and somewhat hard-bitten businessman and finance director, robust and combative in his dealings with the respondent. Be that as it may, we accept the evidence of the claimant that the respondent’s conduct in August 2016 had detrimental effects upon him, such that he believed he could no longer work for the respondent. As set out in his witness statement, the claimant has suffered, and continues to suffer, detrimental effects on his social and working life and also on his health, such that he has sought the assistance of his GP. We acknowledge that he has suffered distress and anguish which is not insignificant.
8. We have considered the application of the three Vento bands of compensation for injury to feelings in the context of these detrimental effects and we have deliberated whether it is just and equitable to make an award at the top of the lower or at the bottom of the middle band, concluding that the appropriate award is at the top of the lower band. We were mindful of our

prior findings in relation to the detriment in question and our conclusions that the claimant had not been subjected to a lengthy campaign of retaliation and that the information appended to the report was accurate, in the public domain and had already been disclosed by the claimant to the respondent. Nevertheless, in the light of the distress and anguish suffered by the claimant, we have concluded that the just and equitable starting point is an award of £6,000.00, to which, allowing for inflation and following the case of Da'Bell v NSPCC referred to above, we have added £600.00. We have then applied interest from 30 August 2016 to 21 August 2017 at the statutory rate of 8%, which is a daily rate of £1.45 and total interest of £516.20, making an aggregate award of £7,116.20.

9. Finally, at the joint request of the parties, we have not considered and make no order in respect of the fees paid by the claimant to bring and pursue his claim. Either party has liberty to make a further application in respect of those fees.

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Employment Judge Finlay, Bedford.  
18 September 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS