



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr H Alcam

**Respondent:** Warren James (Jewellers) Limited

**HELD AT:** Manchester

**ON:** 20 November 2017

**BEFORE:** Employment Judge Ross  
Ms J K Williamson  
Mrs S Ensell

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr M Howson, Consultant

**JUDGMENT** having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The relevant law is section 124 of the Equality Act 2010. The Tribunal had regard to the Presidential Guidance on Employment Tribunal on awards to Injury to Feelings and Psychiatric Injury dated 5 September 2017; **Chagger v Abbey National & Hopkins [2009] EWCA Civ 1202**; **Prison Service & others v Johnson [1997] ICR 275**; and **HM Prison Service v Salmon [2001] IRLR 425**.
2. The Tribunal had the benefit of a witness statement from the claimant and heard from him. There was also a bundle of documents for the remedy hearing.
3. The Tribunal turned to consider each head of loss. In the bundle the claimant's schedule is at p.12-15. The respondent did not supply a counter schedule.

Injury to feelings and personal injury.

4. Tribunal relies on its judgment on liability where we found the claimant suffered from an underlying mental illness, namely anxiety and depression, which was triggered by a road traffic accident (see paragraph 33). We find there are medical letters in the remedy bundle which confirm this.
5. The claimant, who we found to be a genuine and honest witness, says that his condition further deteriorated particularly after his dismissal when he relapsed. Although he had returned to driving in June 2016 it was confirmed by his GP at page 56 of the bundle that following his relapse as a result of the discriminatory treatment, namely the dismissal, he was unable to drive again and had to rely on his mother to drive him to therapy appointments.
6. We note from the evidence from his GP that the claimant's prescription for citalopram, a medication for depression, was increased to 40mg when he was dismissed and was only reduced very slowly following his dismissal. We find that this is evidence consistent with a finding that his underlying serious illness of depression and anxiety was significantly aggravated by his dismissal in particular.
7. We rely on the claimant's evidence to find that he was very upset and distressed and that his psychological condition was aggravated by the discriminatory treatment during the course of his employment.
8. We rely on the claimant's evidence that he suffered a significant distress and injury to his feelings as a result of the refusal of Ms Toor to allow him to wash his hands in the workplace. We find given he suffered from OCD this was particularly upsetting and stressful for the claimant.
9. We find the way the respondent dealt with him, particularly in relation to his dismissal which including ignoring his email to Occupational Health and failing to provide his extensive medical evidence which showed the seriousness of his condition to the appeal officer was very distressing to the claimant who was already very vulnerable because of his underlying mental illness. The evidence the appeal officer did not see included evidence from the claimant's psychiatrist which indicated the life-threatening nature of his illness. The claimant had taken the decision to share that sensitive information with the respondent and the failure of Ms Grimes to provide it to the appeal officer was extremely distressing to him.
10. We also accept the claimant's evidence that he found it distressing when Ms Toor refused to allow him to use a notebook to make notes to assist him to carry out the window run task because she thought he should be able to manage without it. One of the reasons the claimant struggled with concentration was a side effect of the medication he was taking for his anxiety and depression. Ms Toor was aware of that and the fact she continued to refuse to allow him to use a notebook we find was extremely distressing for the claimant as it made him feel worthless.
11. The Tribunal reminded itself of the guidelines in *Prison Service & others v Johnson* [1997] ICR 725 where the EAT summarised the general principles that underlie awards for injury to feelings:

- Awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party.
- An award should not be inflated by feelings of indignation at the guilty party's conduct.
- Awards should not be so low as to diminish respect for the policy of the discrimination legislation. On the other hand awards should not be so excessive that they might be regarded as untaxed riches.
- Awards should be broadly similar to the range of awards in personal injury cases.
- Tribunals should bear in mind the value in everyday life of the sum they are contemplating.
- Tribunals should bear in mind the need for public respect for the level of the awards made.

12. We find that the appropriate band is the middle band in the **Vento guidelines** because this case involved a discriminatory dismissal and the effects on the claimant were significant

13. The parties also agreed that the middle Vento band was appropriate on the facts of this case

14. Although the claimant only worked one day a week we find his work was important to him and to his self esteem, especially after he became ill following the road traffic accident. There is no dispute that prior to the accident his attendance was good and we found there were no issues of performance.

15. At this point we turn to consider the claimant's personal injury. There is no doubt that the claimant has the conditions of anxiety and depression as well as OCD and back pain. These are primarily due to the road traffic accident which occurred in the autumn of 2015. We find that based on the information from the claimant and the letter from his GP in the back of the bundle the claimant's psychological illness was significantly aggravated by the discriminatory conduct of the respondent, particularly his dismissal.

16. However, there is no evidence from a medical expert suggesting how far the discriminatory conduct aggravated the underlying personal injury. Neither is there any evidence to suggest we apportion compensation and if so, how. The claimant, a litigant in person, disclosed his GP report to the respondent 7 days before the hearing. Neither party called the GP, the respondent did not suggest obtaining their own expert or a joint expert, neither did the respondent put any questions to the claimant's GP. Perhaps understandably given the likely cost implications, neither party called the GP to give evidence.

17. The Tribunal has therefore relied on the claimant's own evidence and the letter from his GP at the back of the bundle. The Tribunal is satisfied that his GP is part of a team responsible for treating the claimant.

18. We find the most appropriate way to deal with the undoubted aggravation of the claimant's psychiatric illness is to award a higher amount for injury to feelings rather than separate award personal injury in addition to an award for injury to feelings. We have a discretion which was confirmed in **HM Prison Service v Salmon** to make an award for personal injury within the award for injury to feelings, and this is what we have done.

19. The President's new guidelines confirm the middle band of **Vento** is £8,400 to £25,200. We find that given the claimant's evidence of injury to his feelings, the increase in dosage of citalopram, his inability to drive, his dependence as a grown man on his mother for care, the monitoring of his behaviour by his mother once again given the serious deterioration in his condition and the need for her to drive him to medical appointments, which are all consistent with the aggravation and deterioration of his psychiatric condition, that an appropriate award for both injury to feelings during his employment due to the discriminatory conduct and following dismissal together with aggravation of psychiatric illness, inclusive of interest, is £15,250.

20. We have taken into account that after the claimant was dismissed his dosage of citalopram was increased to 40mg daily which is the maximum dosage. We have taken into account his GP describes difficulty in sleeping following his dismissal. This is reflective of how the discriminatory conduct in particular the dismissal triggered a serious relapse of the underlying psychological condition suffered by the claimant at that time. The claimant described it as a nervous breakdown and we rely on that evidence. There is no clear prognosis from the claimant's GP although given the prescription for citalopram has been reduced we find there has been some improvement but we accept the claimants evidence that he continues to be unwell and is not yet well enough to work. We find that prior to the discriminatory conduct the claimant was well enough to work although his attendance was not good.

21. Although strictly speaking the Presidential Guidance for injury to feelings applies to cases presented after September 2017, we did not have the RPI rates presented to us to allow us to conduct the calculation suggested at paragraph 11 of the Presidential Guidance and therefore we have used the guidance in paragraph 10.

#### Aggravated Damages

22. The Tribunal declines to make an award for aggravated damages. The Tribunal reminded itself an award for aggravated damages is exceptional. It occurs where the respondent behaved in a highhanded, malicious, insulting or oppressive manner. The Tribunal is not satisfied this test is fulfilled. We are not satisfied Mr Toor acted maliciously. We find she lacked awareness of mental illness, had no previous experience in managing someone with such a condition and lacked sensitivity to the claimant's psychiatric condition.

23. We found other issues of competence. Ms Grimes failed to pass on crucial medical documents to the appeal officer and there was a failure by the respondent to acknowledge a sensible request from the claimant to refer him to Occupational Health, but we find these are issues reflecting a lack of competence which is completely different to an employer behaving in a highhanded, malicious, insulting or oppressive manner.

24. We appreciate the claimant has felt distressed by the actions of the respondent but that has been compensated for in the award for injury to feelings.

#### Stigma Damages

25. The claimant sought an award for stigma damages. The Tribunal has, within the injury to feelings award, taken into account any stigma the claimant may feel in relation to his dismissal although the Tribunal finds that this is ameliorated to some extent by the fact that the claimant has a judgment from the Tribunal explaining the true reasons for the termination of his employment. In addition, the Tribunal has taken into account that we find that the claimant would have eventually been dismissed in any event (see below).

#### Loss of Earnings

26. It is not disputed that the claimant had extensive absence from work due to his underlying conditions following the road traffic accident (see the list of absences at page 151-3 of the original bundle and the dates in our liability judgment). Any employer, once an employee is unable to attend work regularly because of illness, even if the employee is a disabled employee, can eventually dismiss an employee for capability if they follow a fair procedure, consulting with the employee and seeking appropriate medical evidence and having regard to any reasonable adjustments.

27. Given the claimant's extensive absences from work, and given the problems we find this was causing the respondent in terms of cover on a Saturday, we find it is inevitable that the claimant would eventually have been dismissed because of his underlying condition even if the discriminatory treatment had not occurred. The case of **Chagger v Abbey National & Hopkins** reminds us that we must consider what would have happened but for the discriminatory treatment. We find that but for the discriminatory treatment the claimant would have been dismissed for capability due to his absences from work after a further six months. This we find was the length of time the respondent would have taken to consult with the claimant and to refer him to occupational health and to obtain and consider any medical evidence from a practitioner treating the claimant such as his GP. We find these are steps normally taken by an employer in a capability dismissal.

28. Accordingly, we award the claimant 30 weeks' loss of earnings at an agreed net loss of £63.70 which equals £1,911. As we find the claimant would have been dismissed by 30 April 2017 we make no award for compensation after this date.

29. There was no dispute that the claimant had been in receipt of ESA both before and after the discriminatory conduct, including the dismissal, and accordingly this benefit is not deductible.

### Expenses

30. We turn to expenses. The claimant explained that he had incurred expenses as set out in his calculation of loss to attend the Employment Tribunal which was based in Manchester, which is where the respondent's Head Office is based, although the claimant himself lives in Walthamstow and worked for the respondent in Walthamstow. We find he incurred expenses in travelling to the Employment Tribunal and accommodation in the sum of £329.39 plus additional expenses of a medical report and printing costs of £73. We consider s 124 Equality Act and remind ourselves compensation is awarded on tortious principles. We find these expenses flowed from the discriminatory treatment because if the discrimination had not occurred the claimant would not have incurred these expenses. Accordingly, we award him those expenses.

### Interest

31. The Tribunal has included interest in the award for injury to feelings.

32. The Tribunal does not consider it appropriate to make an award for interest on the expenses as they have been incurred relatively recently in time and the amount would be minimal.

33. Finally the Tribunal turns to interest on the loss of earnings. The Tribunal reminds itself of s17 The Employment Tribunals (Interest on Awards in Discrimination Case) (Amendment) Regulations 2013. The Tribunal notes the applicable interest rate is specified in the Judgments Act 1838 which is 8%.

34. The Tribunal finds that the relevant date of the discriminatory act was from the date of dismissal (30 September 2016). The mid point is 16 January 2017. The period of time from the mid point (16 January 2017) to the calculation date (20 November 2017) is 44 weeks.  $\pounds 1,911 \times 8\% = \pounds 2.94$  per week multiplied by 44 weeks =  $\pounds 129.36$  and accordingly we award this sum in interest.

Employment Judge Ross

23 November 2017

REASONS SENT TO THE PARTIES ON

27 November 2017

FOR THE TRIBUNAL OFFICE

[AF]