



EMPLOYMENT TRIBUNALS

Claimant: Miss Amanda Steele

Respondents: (1) Uniquely Chic Furniture (Cheshire) Limited
(2) Michael Bennett

HELD AT: Manchester **ON:** 4 January 2018

BEFORE: Employment Judge Holmes
Mrs P J Byrne
Ms S Khan

REPRESENTATION:

Claimant: Written representations

Respondents: No attendance or representations

RESERVED JUDGMENT ON REMEDY

It is the unanimous judgment of the tribunal that the remedy to which the claimant is entitled is as follows:

1. Compensation for discrimination by way of damages for injury to feelings:

£20,500.00

which award includes an element by way of an award of aggravated damages of £4,000.00.

2. Compensation for discrimination by way of damages for personal injury:

£6,000.00

3. The tribunal makes the said awards against both respondents, on a joint and several basis. The respondents are ordered to pay the same to the claimant, together with interest upon these awards of **£2,201.31**.

4. At the time of the matters giving rise to the claimant's claims the first respondent was in breach of its legal duty under s.1 of the Employment Rights

Act 1996 to provide the claimant with a written statement of particulars of employment, and the tribunal, pursuant to s.38 of the Employment Act 2002 , makes an additional award of two weeks pay in the sum of **£230.40**, against the first respondent only , which is ordered to pay that sum to her.

REASONS

1. Following the tribunal's reserved judgment on liability sent to the parties on 8 December 2017 , the tribunal did not proceed to make a final determination of remedy, but invited the parties to make further submissions, and adduce any further evidence, for a further hearing, if so required, to be held.

2. By e-mail sent to the tribunal , and the respondents , on 21 December 2017, the claimant made a further statement about the effects of the discrimination upon her, and her medical condition, and enclosed further medical evidence, in the form of a letter from her GP dated 14 December 2017, and an updated Schedule of Loss, in which aggravated damages were claimed. The claimant indicated too that she was content to proceed on the basis of this further written information, and did not attend the resumed hearing.

3. No further response has been received from the respondents, and they have not attended, nor have they been represented at the hearing, nor have any written representations been received from them.

4. The tribunal accordingly has resumed its deliberations as to remedy, taking into account the further written evidence and documentation received from the claimant.

Discussion and Further Findings.

5. The tribunal made preliminary findings in relation to remedy in paras.41.1 to 41.23 of its previous judgment.

6. In addition to those findings, the tribunal now makes these:

6.1 The claimant has continued to suffer with anxiety, panic attacks, sleepless nights and low depressive mood. She continues to take Propranolol, prescribed by her GP, which assists her to manage her anxiety condition.

6.2 The claimant had a consultation with Talking Therapies in August 2017, but this did not result in any treatment at that time. It remains, however, available to her in the event that she suffers any further episodes where her anxiety is not adequately managed.

6.3 No definitive prognosis is provided in the medical evidence, but the claimant has been prescribed, and remains on, Propranolol.

7. In assessing the appropriate awards for discrimination, the tribunal considers pecuniary and non – pecuniary losses. There are none of the latter, so the only

elements to be considered by the tribunal are those for non – pecuniary losses, the starting point for which must be the award for injury to feelings.

Injury to Feelings.

8. As indicated in our previous judgment, we consider that the appropriate award in this case lies in the middle band of the **Vento** guidelines. This is because, whilst this could be considered as a “one off” act of sexual harassment, it was sustained for some two hours or so, and its effects have been serious and long lasting. The claimant was harassed by her employer, and the husband of a good friend, in circumstances which resulted in her having to give up a job she enjoyed, and destroyed the friendship between her and Miss Scully, which had been very important , not only in the work context, but also in the domestic context of the claimant being the sole carer for a child with some particular needs and issues, which Miss Scully had helped the claimant with. It left the claimant, whose first employment this had been since returning to the UK, feeling vulnerable, confused and very fearful for her financial security.

9. The claimant clearly did suffer injury to her feelings, she became withdrawn, and anxious. She describes herself the effects upon her, and her evidence is supported by that of her sister , Deborah Steele, who describes the visible changes in the claimant’s personality.

10. We consider, given the length of the effect of the harassment, and its seriousness, that an award in the middle of the mid – range of **Vento**, as now updated, is appropriate.

11. The claimant’s figure for injury to feelings in her Schedule of Loss is (and always has been) £12,000. Whilst she has the assistance now of the CAB, it is appreciated that she is not legally qualified, and no rationale for that figure has been advanced. A party is not held to figure suggested in a Schedule of Loss for appropriate awards of this nature, though, of course, the tribunal will always take into account what sum has been sought. The respondent has not advanced any argument as to the appropriate figure, despite being given the opportunity to do so..

12. As indicated in para. 44 of our previous judgment, the adjusted mid – range is now £8,270 to £24,810. The mid – point is therefore, rounded slightly down, £16,500, and that is the figure we propose to award.

Aggravated Damages.

13. Next, the tribunal turns to aggravated damages. The respondents were given the opportunity to comment upon this element, which the claimant now seeks. They have not done so. The basis upon which the tribunal was considering the award of aggravated damages is set out in paras. 48 and 49 of its previous judgment. Nothing having been advanced by the respondents, the tribunal does indeed consider this one of those rare cases in which an award of aggravated damages is appropriate, by reason of , firstly, the lack of any apology, and secondly, and rather compounding this first aspect, by the conduct of the defence to these claims by the respondents, in which they have made serious and wholly unsubstantiated allegations that the claimant has invented her account, and has repeatedly lied (i.e every time she told

anyone else, such as the CAB, ACAS, her sister, the Police, her GP and so on) for nothing more than motives of greed and/or revenge. In the course of doing so the respondents have engaged in what can only really be considered “mud slinging”, in which various aspects of the claimant’s , and her family’s character have been attacked. Such conduct has clearly aggravated the claimant’s injury to feelings, and merits a further award being made.

14. The question then arises as to what award should be made. The tribunal notes that aggravated damages are not penal, and must bear some relationship to the general damages that are being awarded for, in this instance, injury to feelings. Taking a broad approach, we consider that, roughly, a further 25% or so should be awarded, based on the injury to feelings award of £16,500, and the award for aggravated damages is accordingly £4,000.00. Following the practice suggested by Underhill, P. in the judgment of the EAT in **Commissioner of Police of the Metropolis v Shaw [2012] IRLR 291** , the tribunal proposes to make a global award for injury to feelings, with that element expressed as aggravated damages.

Personal Injury.

15.. Again, as indicated in para. 46 of our previous judgment, we consider that any award in respect of personal injury is appropriate. We are satisfied that the discrimination has caused the medical condition of anxiety , which is supported by the medical evidence, and for which the claimant has been , and remains, prescribed Propranolol . Her witness statements and the medical evidence show how she suffers from panic and anxiety attacks, and has done now for over a year since the incident, along with the other symptoms that the tribunal has found in the facts set out previously. The tribunal is accordingly satisfied that it is entitled to make a separate award for the personal injury consequences of the discrimination.

16. In assessing what level of compensation is appropriate, the tribunal is required to have regard to the Judicial College Guidelines on the Assessment of Damages for Personal Injury. The tribunal has done so, and has considered the section on Psychiatric Damage Generally . The tribunal considered the Minor Injuries section, too, but is satisfied that , given that there has not yet been a complete recovery, over 12 months after the event, the claimant’s condition cannot be considered as falling within this category.

17. There are four categories of psychiatric damage identified in the Guidelines, - Severe, Moderately Severe, Moderate and Less Severe. In assessing where the particular condition falls, the Guidelines identify some six (there is a seventh, but it is not relevant) factors to be taken into account, namely:

- (i) The injured person’s ability to cope with life, education and work;
- (ii) The effect on the injured person’s relationships with family, friends and those with whom she comes into contact;
- (iii) The extent to which treatment would be successful;
- (iv) Future vulnerability;

- (v) Prognosis;
- (vi) Whether medical help has been sought.

18. Applying those in this instance, in relation to (i), the claimant was able, happily, to obtain another job, has been able to manage it, and has kept it. In relation to (ii), we know that the claimant became withdrawn, and her relationships with Tommy Slaven, for example, and others, were affected. In relation to (iii), treatments is successful, but the claimant remains on medication to manage her condition. In relation to (iv), there is no indication of any future vulnerability, but, in relation to (v) prognosis, the tribunal has little information. The implication is that the claimant will be able to manage, whilst on medication. The tribunal, however, does not expect this to be a chronic condition, and would expect some improvement, or even recovery before too long. Finally, in relation to (vi), medical help, of course, has been sought.

19. Taking those factors into account, the tribunal assesses the claimant's condition as falling just outside the very top of the Less Severe category, and into the bottom of the Moderate category. The range for the former is (as uplifted) £1,350 to £5,130, and the latter £5,130 to £16,720. The tribunal considers the appropriate award for personal injury to be £6,000.00.

Other Awards.

20. The claimant sought, and the tribunal proposed to award an additional award of two weeks pay pursuant to s.38 of the Employment Act 2002, for failure to provide the claimant with a written statement of particulars of employment, as required by s.1 of the Employment Rights Act 1996. As discussed previously, whilst this is an obligatory requirement, the tribunal must award two or four weeks pay, and in the circumstances of this case, in which nothing whatsoever turned on any reference to any employment contract or handbook, two weeks is appropriate. This will be against the first respondent only.

21. In her Schedule of Loss, the claimant has sought a 25% uplift to this figure. It is not clear upon what basis she does so. It appears to be a reference to s.207A of Trades Union and Labour Relations (Consolidation) Act 1992, which empowers tribunals to make uplifts to, or reductions, in awards, of up to 25%, if there has been a failure on the part of either party to comply with a relevant ACAS Code of Practice. The claimant appears to be seeking such an uplift in relation to the two weeks pay awarded as an additional award above. The tribunal cannot make such an uplift for two reasons. Firstly, the additional award itself is not subject to such uplifts (not being a compensatory award), and secondly, in any event, the claimant has not identified what relevant ACAS Code of Practice the respondent breached. For completeness, and as the claimant is not legally represented, the tribunal is aware that it could have applied a s.207A uplift to the awards for sex discrimination, but can see no grounds for doing so, as no breach of a relevant ACAS Code of Practice has been identified.

Interest.

23. Finally, the tribunal addresses the claim for interest. Interest is payable upon discrimination awards pursuant to the provisions of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. Reg. 6 provides as follows:

“6

(1) *Subject to the following paragraphs of this regulation—*

(a) *in the case of any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation;*

(b) *in the case of all other sums of damages or compensation (other than any sum referred to in regulation 5) and all arrears of remuneration, interest shall be for the period beginning on the mid-point date and ending on the day of calculation.*

(2) *[N/A]*

(3) *Where the tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2), it may—*

(a) *calculate interest, or as the case may be interest on the particular sum, for such different period, or*

(b) *calculate interest for such different periods in respect of various sums in the award,*

as it considers appropriate in the circumstances, having regard to the provisions of these Regulations.”

24. Accordingly, the tribunal would propose to award interest of the awards for injury to feelings (including personal injury) from the date of the incident, 22 December 2016 to the date of calculation, 4 January 2018, a total of 379 days. The rate, set by Reg.3, with reference to the Judgment Act rate, which is 8%. In her submissions at the end of the hearing on 17 November 2017, Miss Scully objected to this claim, stating that it was a long period, and the case had been dragged out. With all due respect to Miss Scully, the case was “dragged out” because the respondents fought it. The time that it took was nothing unusual in terms of tribunal timescales, the hearings were completed within a year of the original incident. The tribunal sees no reason (there is no “serious injustice”) why interest should not be payable over the whole of the period in question.

25. The calculation accordingly is:

Total of awards for discrimination : £26,500.00 @ 8% for 379 days

£2,201.31

Employment Judge Holmes

Dated: 4 January 2018

RESERVED JUDGMENT SENT TO THE
PARTIES ON

5 January 2018

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2401533/2017

Name of Miss A Steele v 1) Uniquely Chic Furniture
case(s): (Cheshire) Limited
2) Mr Michael Bennett

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: 5 January 2018

"the calculation day" is: **6 January 2018**

"the stipulated rate of interest" is: 8%

For the Employment Tribunal Office