EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr V Edwards	**v**	**Hertfordshire County Council**

Heard at: Watford **On**: 5 February 2018

Before: Employment Judge R Lewis
Mrs C Baggs
Ms S Johnstone

Appearances

For the Claimant: Ms B Maistry, Solicitor
For the Respondent: Ms A Rao, Counsel

JUDGMENT

1. The respondent is ordered to pay to the claimant as compensation for racial discrimination the total sum of £11,505.32, made up of a principal sum of £8,500.00 and interest of £3,005.32.

2. In accordance with rule 66, this sum is payable on or before 16 March 2018.

3. In accordance with rule 66, the date by which the claimant is to pay costs to the respondent is restated to be the same date as the above.

REASONS

1. The claimant asked for these reasons.

2. This was the hearing on remedy directed by the tribunal in its reserved judgment sent to the parties early in November 2017.

3. The tribunal had before it a short witness statement from the claimant. The claimant gave brief evidence and was briefly cross-examined.

4. On behalf of the respondent Counsel had prepared a note on remedy, and the tribunal was referred to two further documents, a bundle of the claimant's medical records, and an open letter of offer from the respondent's solicitor to the claimant's solicitor dated 25 January 2018.

5. The tribunal paid strict regard to maintaining the discipline of its findings of fact in its earlier judgment.

6. The issues of clarity and specificity, highlighted in our first judgment, remained a live concern at this hearing. Repeatedly in his statement, the claimant referred to matters which were not before the tribunal, because they were not within the parameters of the claim which had succeeded.

7. The poor analysis of the claimant's case which had troubled us before remained a concern. It was troubling to note that at paragraph 5 of today's short statement, the claimant wrote " [my accent] was mocked for several months after I joined and also by Dave Durrant……" and at paragraph 8 "I had been working for HCC for several months when Dave Durrant returned to work from sick leave in 2012 and the regular and constant mocking of my accent began."

8. The tribunal proceeded on the following basis. At paragraph 176 of our earlier judgment we had set out the claim which had succeeded. It was that there had been repeated imitation (the word which we used rather than mockery) of the claimant's accent. The first question for us to decide was the date of discrimination.

9. The claimant confirmed that Mr Durrant was off sick when he began working for the respondent in February 2012. He added, as a new piece of evidence, that Mr Durrant lived close to the workplace and occasionally he came into visit during his sick leave, but we attach no weight to that.

10. The respondent's records indicated that Mr Durrant was off sick from January to 5 November 2012. The claimant did not challenge that. We therefore find that the claimant and Mr Durrant first worked together on 5 November 2012.

11. We take the date of contravention to be 5 December 2012. The claimant gave no evidence on the point other than the quoted extracts above, which were inconsistent. We find that Mr Durrant returned to work after a lengthy absence to find a largely new team in place, and on the basis of general experience we find that he imitated the claimant's accent after a period of settling down, which we estimate as one month.

12. Ms Rao ingeniously reminded us of page 601 of the bundle, the interview in April 2013 in which the claimant had asserted that things were going well, and asked us to find that the date of contravention cannot have been before that date. In light of our general observation of the claimant's reliability, we are unable to make that finding.

13. The claimant gave evidence of a large number of medical matters which he said followed during his period of employment. These included diabetes, a liver complaint, irritable bowel syndrome and other matters.

14. The GP records showed that the claimant seemed to us to be in relatively frequent contact with the GP practice. We do not intend by that to suggest any criticism of him, or that any attendance was not medically justified. We noted simply by way of example that in the period January to June 2014 he had seven attendances at the practice. The only inference which we draw is that the claimant had a good working relationship with the practice, and was able to communicate with it well. He had many opportunities to speak to doctors and nurses about his issues.

15. We noted that on 12 December 2013 there was a record of a "lengthy discussion" at which he was reported as looking well, and no mention was made of any work related problem.

16. It was common ground that the first reference in the medical notes to work related stress was on 28 January 2015, which was after the respondent had triggered a disciplinary action about the claimant's lateness, and after the claimant had begun his period of absence, during which he was dismissed.

17. There was from then on a lengthy period of Med 3s relating to stress, which at times became diagnosed as depression.

18. Ms Maistry submitted that it stood to reason from experience that these matters were triggered by the experience of racial discrimination and mockery. Ms Rao submitted that all the stress related absences occurred after the claimant had left the workplace never to return, and at times when the claimant was undergoing other events which were inherently stressful, including the grievance process, the disciplinary process, and tribunal proceedings (reference to some of these were found in the notes as stress factors). There was no expert medical evidence to assist us.

19. We ask ourselves, has it been shown on evidence to us on balance of probabilities that any medical condition to which the claimant referred was materially caused by imitation of his accent. We find that the burden of proof of so showing rests on the claimant, and that it has not been shown. Although Ms Maistry in closing stressed that the claimant did not make a personal injury claim, we find that it has not been shown that any medical condition falls to be compensated in these proceedings.

20. We were grateful to both Counsel for Vento submissions in accordance with the Presidential Guidance. In exercising our discretion, we find that the claim falls close to the bottom of the middle Vento band, and we set the award at £8,500.00, a figure which we find properly marks the gravity and logic of our findings. Factors in the exercise of our discretion included the following, which are not set out in order of priority:-

    20.1 That the imitation was a recurrent event;

20.2 That it spread over a period of years;

20.3 That it was an open event, in the sense that others witnessed it and it was not concealed from others, and that any distress which the claimant experienced as a result was a public event;

20.4 That we heard of no other worker in the workshop whose non-British accent was the subject of comment or banter, and find that the claimant felt singled out;

20.5 We note and find that the claimant's attempt to seek redress through the grievance procedure (albeit not brought against Mr Durrant) was ineffective, because decision makers answered questions wrongly or which they were not asked;

20.6 We have approached the matter on the basis that we have found that there was imitation. Ms Rao elegantly summarised the distinction between imitation and mockery, and we accept that we have not found mockery, which in our judgment would have required some consideration of an imitator's state of mind, of which we have no evidence.

21. Factors in the exercise of our discretion which might have tended to a lesser award have included that we accept that the relationship between the claimant and Mr Durrant was not a binary one and was sometimes a good relationship (e.g. page 601, and the claimant's request to Mr Durrant to accompany him to a disciplinary). We attach weight to the fact that as Ms Rao pointed out, there was a delay of some 38 months between the onset of the imitation and the claimant making a written complaint of it; we note that despite everything that had gone before, the claimant was in September 2015 prepared to contemplate returning to his role (457) but in the event did not pursue the option; and we accept Ms Rao's submission that Ms Evans did in fact take management steps in response to the recommendations and findings of Ms Brinkley.

22. There was discussion about interest in accordance with the Interest on Awards in Discrimination Cases Regulations 1996.

23. We reject Ms Rao's submission under regulation 2 that we should make no award of interest whatsoever. That seemed to us an exceptional course, without justification in this case.

24. We found that the actual period between date of contravention and date of calculation was 5 years and 62 days. We have deducted nine months from the period of interest in accordance with regulation (3) because it seems to us that a serious injustice may be caused if we were not to do so. We do so on two bases. The first is that six months were lost by the tribunal administration's error in striking out the claim for non-payment of fee. We deduct three months' interest, as we consider that that unfortunate error should fall equally on both parties. The second is that we deduct six

months' interest to allow for the fact that we were unable to conclude our adjudication in the five allocated days in circumstances set out in our earlier judgment.

25. Our calculation therefore of interest for a period of 4.25 years and 62 days is as follows:

62 days @ £1.86 per days = £115.32
£8,500 x 4.25 x 8 ÷ 100 = £2,890.00.

_____
Employment Judge R Lewis

Date: .27.02.18……

Sent to the parties on:

.....