



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Miss V Charalambous**

**v**

**Haringey Citizens Advice Bureau**

**Heard at:** Watford

**On:** 3 April 2018

**Before:** Employment Judge Manley  
Mr A Scott  
Ms I Sood

**Appearances:**

**For the Claimant:** In person with the assistance of Mr Misciali, friend  
**For the Respondent:** Mr Peter Maratos, consultant

**JUDGMENT** having been sent to the parties on 5 April 2018 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

***Introduction and issues***

- 1 This hearing was the second remedy hearing, the first having taken place on 19 January 2018 with several awards made then by agreement. The claimant's complaints of disability discrimination and unfair dismissal had been upheld in part after a liability hearing in November 2017.
- 2 The main issues for this hearing were what amount to award for damages for loss of earnings and whether the ACAS Code of Practice on Disciplinary and Grievance Procedures 2013 applied to these circumstances and, if so, whether to award any increase for an unreasonable failure to follow the Code.
- 3 The amount for pension loss had been agreed. It is the employer's contribution of 1% up to 1 April 2018 and then 2%. The claimant was not prepared to agree that the sums paid to her through Employment Support Allowance were deductible on the grounds that they are contribution based.

***Facts***

- 4 The claimant was working for 28.5 hours per week before her long period of sick leave in January 2016. In the OH report quoted in the liability judgment at paragraph 33, the suggestion was made that there would be a phased return increasing to four days a week which is 24 hours. As there was no certainty that the claimant would work more than that, the tribunal finds that is what she would have been working if she had returned to work with the adjustments.
- 5 The claimant has not found work since her dismissal. She said, and there was medical evidence to confirm, that the dismissal had had a detrimental effect on her physical and mental health. She is due to attend various medical appointments for treatment, including a "COPE" programme which she hopes, with other treatments, will assist her in finding work from around May or June 2018. Because of her health she is not able to travel far and some aspects of public transport can be difficult for her. She is in receipt of Employment Support Allowance (ESA) and in the support group where she hopes to get help to find work.
- 6 There was evidence that the claimant had been actively looking for work opportunities by looking at job websites, in retail and office work as well as in the advice sector. She has spoken to Access to Work who have told her she will get necessary assistance from them if she finds work. The tribunal finds that she will be able to secure employment by 29 May 2018, that is 8 weeks after this hearing.

### ***The law and submissions***

- 7 Section 124 Equality Act 2010 (EQA) gives power to the employment tribunal upon a finding of a contravention of EQA to pay compensation which corresponds to the amount which could be awarded by the County Court. In essence, for these remaining matters, that is likely to be an award for damages for loss of earnings attributable to the discrimination as found by the tribunal.
- 8 Section 207A trade Union and Labour Relations(Consolidation) Act 1992 provides for an adjustment to awards by up to 25% if there has been an unreasonable failure to follow a relevant Code of Practice. In this case the relevant Code is said to be ACAS Code of Practice on Discipline and Grievance Procedures 2015.
- 9 The respondent submitted that not all the claimant's loss of earnings flowed from the discrimination. Its case was that there should be a percentage reduction to the sum awarded for loss of earnings because the claimant had a pre-existing condition and had had a fall in January 2016. It was also submitted that she could only have returned to work for 22 hours per week because of her health. Its case is that the ACAS Code of Practice does not apply to capability dismissals. The tribunal was referred to Holmes v Qinetiq Ltd [2016] IRLR 664 which is authority for the proposition that the ACAS Code on Disciplinary Procedures does not apply to ill health

capability dismissals. The respondent submitted that future losses should be limited to 12 months from dismissal that is to December 2017.

- 10 The claimant submitted that she could have worked for 28.5 hours if she had returned to work, that she had the health conditions before and had worked at that level in 2015 before the fall. She did not accept that there should be a percentage reduction connected to any pre-existing conditions or the fall. She submitted that, if the ACAS Code of Practice on Disciplinary Procedures did not apply, ACAS Code on Grievance Procedures might apply. The claimant seeks losses to November 2018, almost two years from dismissal.

### Conclusions

- 11 The tribunal is satisfied that ACAS Code of Practice on Disciplinary Procedures does not apply to the circumstances of this dismissal which was on ill health grounds. Nor does the ACAS Grievance Procedure apply where there has been a dismissal. Even if it did, no unreasonable failure to follow the Code has been identified and we therefore apply no uplift.
- 12 The sums paid to the claimant by way of ESA will be deducted from the award because the claimant is to be awarded damages for loss of earnings she is not entitled to double recovery as ESA would not have been paid to if she had been at work.
- 13 We make no deduction for any pre-existing condition or the fall. This was a disability discrimination complaint and the tribunal found that there was discrimination. It would be quite wrong to deduct money from any award because of the consequences of the disability.
- 14 We have assessed future loss of earnings at 8 weeks from today as set out in our findings of fact above. We have also based our calculations below on a working week of 24 hours as stated above.

### Schedule

Loss of earnings from 12 December 2016 to 29 May 2018 @ 24 hours per week

Net weekly pay (£320 (383 for 28.8 hours) x 77 weeks £24,640.00

Less ESA received (18 weeks @ £88.58 = £1599.30  
42 weeks @ £125.55 = £5273.10  
9 weeks @ £109.65 = £986.85  
8 weeks @ £110.75 = £886)

Total ESA = £8745.25

Net loss before pension £15,894.75

Plus pension loss

1% of £417 gross per week (£4.17 x 69) £287.73  
2% of £417 gross per week (£8.34 x 8) £66.72

Total pension £354.45

Total loss £16,249.92

Plus interest at a weekly rate of £25  
(16,429.20 x 8% = £1299.93 pa divided by 52 = £24.98 rounded up to £25)

x 40.5 weeks (mid-point of 81 weeks from dismissal to assessment date)

£1012.50

**Total payable £17,261.70**

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Employment Judge Manley

Date: 4 May 2018

Judgment sent to the parties on

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For the Tribunal office