



EMPLOYMENT TRIBUNALS

Claimant: Mr A Olayemi
Respondent: Aspers (Stratford City) Limited
Heard at: East London Hearing Centre
On: 12 March 2018
Before: Employment Judge Lewis
Ms M Long
Mrs P Alford

Representation

Claimant: Mr A Mortuza – non practicing Barrister
Respondent: Mr E McFarlane – Employment Consultant

REMEDY JUDGMENT having been sent to the parties on 12 March 2018 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1. We have heard evidence today from the Claimant and he was cross examined in respect of evidence in his witness statement and his schedule of loss which provided with documents in the original trial bundle and a bundle for remedy setting out attempts to mitigate his loss and payslips and also a letter from the Claimant's doctor and a cost statement in support of the Claimant's cost application. We made the following decision based on the evidence we heard and the evidence put before us.

Financial Loss

2. We find the following financial loss flowing from the discrimination. The Claimant was dismissed on 2 May 2017 and the Hearing of 12 March 2018, he has lost earnings from his employment with the Respondent of £1320 per month net, the net figure which we used, that's his loss that he is entitled to recover. We find that he made efforts to mitigate his loss in the period from his suspension through to August and we have evidence of his earnings which we will set out in our calculations and, we are satisfied that by August, the work he was able to do through Showsec was diminishing through the busy period of the summer where there are many events and concerts and festivals and so forth and we find that following that period, his evidence of efforts to find alternative work was very slim. He ought, we are satisfied, to have been looking for work seriously by the end of August and through September, October onwards. We were taken to two copies of the Claimant's CV. The Claimant couldn't remember when he had updated those although he told us he had handed the CV to prospective employers. He couldn't provide specific examples of doing so, but in the bundle there were a few examples from July and August and a couple from October. He had not sought any assistance with his CV writing or advice in respect of job searching. We note from the bundle, from the applications he had made, he had been invited for an interview for a permanent post in Canary wharf as a corporate security officer in August 2017. He did not attend those interviews and he told us in his evidence that he had missed that email, he had too many emails in his inbox and had not seen that one until it was too late. By the time he rang, he was told that the vacancy had been filled. The Claimant also told us that he was registered with an organisation called Workplace who were helping to look for suitable work and

when they found jobs they considered were suitable, they would send him details of those vacancies, but he had not had any success in finding permanent work. He had not himself registered with any of the job searching websites or any other employment recruitment placement agencies. In the witness statement prepared on his behalf by his solicitors, the Claimant stated that he had suffered from depression, stress and anxiety as a result of losing his job with the Respondent and at paragraph 6, he sets out that he went to see his GP and took some medication. We were provided with a copy of the letter from the Claimant's GP at page 47 of the bundle, dated 8 February 2018 and refers to the Claimant having felt quite stressed and feeling down and he had been having a lot of stress from work, was suspended and had appealed, not been sleeping well and waking early and his appetite had been impaired and the stress seemed to be affecting him adversely and that he had been referred to a psychologist for talking therapy and was being monitored at the surgery. We note that this was dated 8 February 2018. When asked about this, the Claimant told the Tribunal this was following the Hearing in January, he had spent 2 days in the Tribunal and after that he suffered a recurrence of headaches and an inability to sleep. When asked about the medication that he had taken, the Claimant told us he had taken paracetamol for his headaches and when pressed, he also stated that he had gone to his GP in May, but that had not stopped him from working in April, May, June or July and we are satisfied that any injury to his feelings had not impaired his ability to look for work or take up the work he had been offered at that time. We find that if the Claimant had made reasonable efforts to look for work, he would have been able to find work most likely to replace his position at Aspers within 6 months of the date of his dismissal that is by 2 November 2017. We do not consider that it would be just and equitable to award for loss of income beyond that date, for any loss beyond that was not, in our view, attributable to the actions of the

Respondent against the Claimant. The loss that we award is therefore 6 months loss which is $6 \times £1320 = £7920$ less his income through mitigation in that period, the net figure we find is £3303.95 bringing the sum to £4616.05 lost income after mitigation plus interest from the mid point, the period being 315 days, the mid point being midway through the 157th day, the calculation of $0.43 \times 0.08 \times £4616.05 =$ Interest Total of £161.56, so the total award including the interest for loss of earnings is £4777.6. We went on to consider the injury to feelings. We have considered the question of where the injury to feelings award should lie within the *vento* bands or guidance given the case of *vento* and the **XXXXXX** following *Simmonds & Castle* and we find, having heard from the Claimant, that the appropriate band is the mid *vento* band but that the figure is towards the lower end of that band. We accept that the Claimant inevitably suffered sense of injury to himself and his sense of wellbeing and that this affected his ability to sleep; he had suffered some headaches and we are satisfied however, the lower end of that band and £10,000 is an appropriate award for injury to feelings. He is also entitled to some interest on that amount at 8% over 315 days; that comes to £690.41. The total injury to feelings including interest is £10,690.41 and the grand total award including the interest is £15,468.02 and that is our Judgment. We have considered the Claimant's application for aggravated damages, we do not think that this is a case where a separate award for aggravated damages is justified and we make no separate award. The Claimant also made an application for costs and we have considered the basis on which that application was made, which included the submission that the Respondent has acted unreasonably in defending the proceedings and had in effect, knowingly discriminated or knowing it had discriminated against the Claimant, without the individuals who had been the source of the discrimination who were no longer with the Respondent and it was asserted that they were no longer with the

Respondent because it was known that they had been the cause of the discrimination. We found there is no basis for that contention on the evidence that we have heard. We do not find that the Respondent acted unreasonably in its conduct of the proceedings nor in defending the proceedings themselves and they were entitled to enter their defence and rely on their belief that there was material difference in the circumstances of the Claimant and his comparators. It is not a case where we find that the threshold set out in Rule 76 for awarding costs is reached and the application for costs is therefore dismissed.

Employment Judge Lewis

27 June 2017