EMPLOYMENT TRIBUNALS

Claimant: **Miss J Robson**

Respondent: **Brit-Sec Security Management Limited (In Liquidation)**

Heard at: **Nottingham**

On: **Wednesday 16 May 2018**

Before: **Employment Judge Clark**

Members: **Mrs Tidd**
Mr Bhogaita

Representation

Claimant: **In Person**
Respondent: **Did not attend and was not represented**

JUDGMENT having been sent to the parties on 8 June 2018 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

Background and Issues

1. At a Preliminary hearing on 3 April 2018, I considered 3 preliminary issues, the result of which was that judgment was entered for the claimant against this remaining respondent only. The matter was therefore listed for this remedy hearing before a full tribunal.

2. The claimant had suffered harassment in the workplace beginning in or around March 2017. The background to that episode is briefly this. The Claimant was originally employed under a contract of employment. The contract entitled her to a salary of £13,650 per annum to be paid in equal monthly instalments. That employment commenced on 21 April 2016. I found in the previous judgment that the Claimant was disabled at the material time and that, from the events that followed, the employer had knowledge of that disability. At the beginning of 2017, the Claimant was required by her GP to change her medication prescribed in respect of her disability. That change was likely to have a physical effect on her

and her health and the GP advised that she took time off work. She didn't take time off work through fear of the reaction from her employer. She initially tried to work during the change but found, exactly as the GP had anticipated, that she became unwell and eventually she had to disclose a medical fit note to her employer and take time off from work. It seems her initial fear was prophetic in that, in due course she did in fact suffer an adverse response from her employer and other staff. The response from her colleagues, and in particular those in senior positions, was to turn this episode into a hurtful joke. From the moment of her return to work she was referred to not by her name but as "sicknote", including in texts, she was the butt of jokes and jibes in the office and derogatory comments about her "deigning to return to work". All of that environment was aggravated substantially by the fact that it was perpetrated not just at the hands of her colleagues for whom the respondent was responsible, but at the hands of those in control of the company, thus legitimising the culture of harassment that had then took hold. It reduced the Claimant to tears, undermined her fragile self-confidence and eventually led to a further period of time off work sick.

3. Her situation was then aggravated further by an attempt by the Claimant's line manager to impose a reduction in the number of hours per week that she worked after her return from the first episode of sick leave, a move that was related to the fact of that absence. He explored a number of scenarios with her in respect of which the claimant would work different levels of part time hours, instead of full time. The exchange between him and the Claimant was one of testing the level of hours at which it would no longer be financially viable for the Claimant to continue working in this organisation and it was only when that level was found that the threat was made to reduce her hours of work to that. It seems the inference, which we find, is that there was an intention for the Claimant to be levered out of the organisation.

4. The further time off on sick then saw the claimant suffer further failures by the respondent to pay the correct amount of sick pay or SSP. We say further as there was a long history of underpayment throughout the employment against that which the contract provided for. Eventually the Claimant conjured up the courage to contact the owner of the company and, as a result of that, the discussion between them progressed towards what became an agreement, in principle at least, to part company on certain financial terms. The detailed circumstances of that are set out in the previous judgment as a result of the previous Preliminary Hearing.

5. It seems to us that the basis of that agreement did end the relationship with this respondent and that must have been the case because part of the terms agreed was for the Claimant to receive a certain form of reference should she seek alternative employment elsewhere. She accepted her employment would have ended. For that reason, we limit the financial losses in this case to those claimed as deductions and don't stray into areas that may have arisen from a finding of an express, or indeed a constructive, dismissal.

6. In terms of the claim for the unauthorised deduction from wages, throughout her employment she has received less than the gross pay that her annual salary would dictate she should have been paid. There are some issues with the payslips and the deductions that are shown on them which appear to us to be dubious. They relate to repayment of loans and advances and including charges imposed for loans and advances. However, we have taken the lead from the claimant's claim and those other deductions seem to us to be outside the scope of

our enquiry today. We reach the conclusion that the deductions from pay properly due can be identified simply by our finding that the amount properly payable under the terms of the employment contract was £1,137.50 per month gross. If we simply deduct from that the amount which was in fact paid gross by way of basic wage, (including if necessary contractual sick pay or holiday pay but excluding any additional benefits such as commission), that arithmetic exercise will produce the deduction that the Claimant suffered each month. The claimant sets out this claim in this way in a helpful summary table of earnings. The period we are concerned with is that of one year only so we are not capped by the recent restrictions on the extent of the period of time which we can look back and we accept the Claimant's calculation set out in her table in her evidence with one exception. That exception is that in June 2016 the wage paid is said to be £516.20 when, in fact, that is the net figure, the gross pay paid was actually £576.00. If we were to continue on the basis of the net pay credited we would effectively be penalising the employer for deducting what was at that time proper deductions due for tax and National Insurance. The effect of that analysis on 3 June 2016 according to her final pay slip of May 2017 is that the Claimant has been underpaid in total by a sum of £4,421.31.

7. The erratic pay history suffered by the claimant caused her difficulties in her personal finances and certainly put her into arrears in respect of her rent with potentially significant consequences. We were told the tenancy is now potentially subject to possession proceedings in some form or another. She has borrowed from friends and family. She has taken out payday loans and she is overdrawn with the bank to the extent that she has now entered into an agreement with the bank to curtail any further charges. Despite this history which we accept as a fact, she is not able to articulate its financial consequences in any detail to show the cumulative cost of all of those consequential financial losses save in respect of one payday loan for £150.00 which we accept carried a charge of an additional £25. It seems to us that whilst she may be entitled to claim further compensation for what are clearly additional costs arising from the deductions from her wages, the only matter on which we have any firm evidential basis to make an award is in respect of the pay day loan. We are satisfied that was incurred because of the shortfall in wages due to her and we award that sum of £25.

8. In terms of the compensation for the discrimination, this is a concerning episode at the hands of an employer that, in many other respects, has given us cause for concern across a number of its employment practices. It is an episode that leads to the end of her employment. The claimant is entitled to compensation for injury to feelings. We are satisfied she has made out her injury which is not at all minor or trivial. The harassment in itself is something that we are not satisfied can be described as a less serious episode. We take the view that the matters we have identified direct us to the middle of the Vento bands as the appropriate band of compensation. If further authority is needed, we would rely in part on **Voith Turbo v Stowe** [2005] IRLR 8228 for the proposition that in cases of loss of employment, albeit that termination is a one-off event, it cannot be equated with a "less serious" event to warrant compensation in the lower band. That is all the more the case where dismissal follows an earlier series of discriminatory events. There is an element to which the facts of this case continue to aggravate the injury to feelings after the date of the end of employment in June 2017.

9. The claimant has for some time been on high doses of her medication. Despite this, we were struck by the claimant's desire to get on with her life as normally as possible. But for this episode with this employer, she has always had

an ability to maintain some form of gainful employment and we are pleased and encouraged to learn that she has now found new employment in an environment and circumstances which seems to us to be supportive and one which takes account of her disability. Nevertheless, as far as injury to feelings is concerned the fact that the Claimant was unable to engage in employment until quite recently is itself indicative of the measure of the injury suffered. The Claimant seeks the middle band. We have already set out why we agree the middle band is appropriate. We have considered where to pitch the award within that middle band and we have arrived at a figure towards the bottom of the bracket of £10,000.

10. That type of award carries with it a claim for interest. We see no reason not to award that. This was an event which is now some 14 or 15 months old. She has been kept out of compensation by the process of the events in this case which are set out in the previous judgment and there is a statutory formula which we adopt. We take the starting point for the discriminatory events to be 1 March 2017. Today is the day of remedy judgment, that is 16 May 2018, which provides a period of 442 days. The statutory rate of interest is 8% and on a simple interest basis that equates to £968.77. That is awarded in addition to the capital awarded £10,000.

11. We have given consideration in view of the history of this employer and this employer's employment practices as to whether we should exercise any further powers that we have in respect of either the costs by way of preparation time costs or, indeed, as I indicated in the last Preliminary Hearing, whether this is a case for which financial penalties are appropriate. In respect of both, we are intuitively attracted to making an award but, equally in both cases, there is an element to which ability to pay is a factor. Whilst we have no doubt that somewhere behind the corporate veil there remain new or different entities conducting the business of this respondent and which do very well out of managing it in the harsh and discriminatory manner that we have found, the fact remains that the two Respondents originally and the one Respondent now remaining are corporate entities which are in liquidation and any further consideration of penalties or preparation time orders would be bound to reach a conclusion against so that we come to the conclusion that such an award ought not be made in this case.

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Employment Judge Clark

Date 20 July 2018

REASONS SENT TO THE PARTIES ON

28 July 2018

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FOR THE TRIBUNAL OFFICE