Case No: 2302813/2015

EMPLOYMENT TRIBUNALS

Claimant: Mr. P Mefful

Respondent: Citizens Advice – Merton and Lambeth

Heard at: **London South, Croydon**
On: **22 and the 23 January 2018 in chambers**

Before: **Employment Judge Sage**
Members: **Ms B Brown**
Ms. B. Leverton

Representation

Claimant: In person

Respondent: Mr. P Collyer Consultant

RESERVED JUDGMENT

The Tribunal orders the Respondent to pay to the Claimant the following sums:

1. A payment for injury to feelings of £24,411.18
2. A sum for aggravated damages of £11,676.43
3. A total sum for loss of earnings of £125,271.05

The total award sum the Respondent is ordered to pay to the Claimant the sum of **£161,358.66**.

This sum is not subject to recoupment.

REASONS

1. This is a remedy hearing following the unanimous decision of the Tribunal delivered in a reserved judgment promulgated on the 3 May 2017 concluding that the Claimant's claims for discrimination arising from disability and victimization were well founded.

2. The Claimant produced a written statement for the hearing and written submissions. The Respondent was represented at the hearing but called no witnesses. The Respondent produced a written submission. Both parties made oral submissions.

Preliminary Issues

3. There was a preliminary matter to decide whether the Claimant should produce to the Tribunal the terms of settlement in case number 2302440/2015 against with One Housing Group, the recipient of the Respondent's reference. The Respondent in correspondence asked for disclosure of this document stating that it was relevant to the issue of remedy and failure to disclose could result in the Claimant receiving double recovery for losses. The Claimant agreed to produce the settlement terms to the Tribunal for us to decide whether the document was relevant to the issues and if it should be disclosed.

4. The Tribunal reminded itself that settlement terms via ACAS would normally be privileged and therefore not disclosable. Having seen the terms of settlement, the Tribunal were satisfied that the terms of agreement to settle the claim with One Housing Group "OHG", would not assist the Tribunal in the calculation of losses (future or past) against the Respondent. The settlement terms did not include a sum for past or future financial losses therefore the document was not relevant to the issues before this Tribunal. We were satisfied that there was no risk of double recovery for future or past losses against the Respondent. We concluded therefore that this document should not be disclosed.

Findings of Fact and Submissions

5. The Tribunal found in the Claimant's favour in respect of his claim for victimisation. We concluded that the Respondent had overstated the Claimant's sickness absences and had completed the reference request form sent to the Respondent by OHG to convey a negative impression of the Claimant because of a protected act. The protected act was the Claimant's previous Tribunal claim against the Respondent for unfair dismissal and disability discrimination. The Tribunal also found in the Claimant's favour for discrimination for something arising from his disability in respect of the overstated sickness absence. We also found as a fact that the reference was not honest fair or accurate (see paragraph 62 of our decision).

6. The Tribunal concluded in the merits hearing that the date of the reference was the 30 June 2015 and the withdrawal of the job offer was the 6 July 2015.

7. The Claimant in this remedy hearing claims injury to feelings, aggravated damages, personal injury and losses up to the date of the hearing and for career long or in the alternative four years future losses. Each head of claim will be considered separately.

The Claim for Personal Injury

8. The Claimant told the Tribunal that he had suffered from depression in 2014 (September) and was prescribed 20mg of Fluoxetine. Following the withdrawal of the job offer by OHG, his dosage was increased to 40mg per day (page 114 of the bundle) in August 2015. The Claimant also suffers from high blood pressure and takes medication to control the condition. The Tribunal noted that high blood pressure and depression were pre-existing medical conditions that had been diagnosed before the discriminatory acts. There was no consistent evidence to suggest a causal connection between the discriminatory acts and the onset of his depression and high blood pressure.

9. The Claimant had been on Job Seekers Allowance but his benefit was transferred to ESA on the 1 October 2014. The Tribunal saw the Medical report form produced in connection with his ESA application at page 110-119 dated the 9 September 2015, which was only two months after the discriminatory act; this was therefore a reasonably contemporaneous medical report. The report identified that the Claimant suffered from a number of medical conditions, the first being depression but it also referred to cardiovascular problems, vertigo, hearing problems, tendonitis, back problems and sleep apnoea. The report stated that the Claimant's depression was "triggered by physical health problems" and started "about 1 year ago" and "it has been getting worse over the last 1 year" (page 114). This report appeared to suggest that there were a number of factors responsible for the Claimant's depression and it was caused by his physical health issues; however this report did not link the worsening of his depression to the discriminatory acts of the Respondent. The Tribunal find as a fact that the medical report produced contemporaneously with the discriminatory act reflected that the depression worsened, but there was no indication that his health deteriorated as a result of the discriminatory acts. In the absence of any other medical reports we conclude that this accurately reflected the medical condition at the time.

Decision

The unanimous decision of the Tribunal is as follows:

10. Although in closing submissions, the Claimant took the Tribunal to his GP's letter at page 124 (dated the 4 January 2018) where it stated that the "withdrawal of the job offer after your previous employer's reference [and] this caused you further emotional distress", there was insufficient evidence to show a causal link between the Claimant's worsening depression and the discriminatory acts. We therefore conclude that the Claimant's claim for damages for personal injury is not well founded on the facts before us and is dismissed.

The Claim for Injury to feelings.

11. The evidence in relation to the Claimant's claim for an award for injury to feelings was in his statement at paragraph 6-7. He stated that he felt anguished following the withdrawal of the job offer and was upset and angry and lost confidence and suffered low self-esteem. He stated that he

felt violated. The Claimant told the Tribunal that he was "*riddled with worry and a feeling of despair. I lost sleep and my concentration suffered*".

12. The Claimant stated that he felt "*even more depressed and suffered low mood and motivation*" to the extent that he became distant to family and friends. The Claimant described being of low mood, excessively irritable, suffered loss of appetite and "*was pestered with thoughts of self harm and overdose*". He stated that his memory suffered and he was constantly tearful. The Tribunal noted that the Claimant appeared in the hearing to be of low mood and he became visibly distressed and broke down in tears during his closing submissions.

13. The Claimant told the Tribunal in answers to cross examination that he had not slept the night before the remedy hearing and although he has what he described as good and bad days, he was reliant upon medication and was attending regular 6 weekly appointments with his GP. The Claimant had attended training in CBT after being referred by his GP and had attended a short course taking group therapy and relaxation classes. There was evidence to show that he had taken all reasonable steps to improve his health and well being.

14. The ESA report dated the 9 September 2015 (referred to above at paragraph 9) corroborated the Claimant's evidence that he had thoughts of overdose regularly (once a week) and had previously over dosed the year before. The report confirmed that the Claimant was in low mood and his brother prompted him to get dressed in the morning and encouraged him to take his medication and to attend appointments. This report stated that at the interview the Claimant appeared "*unkempt and wearing his pyjamas*".

15. Mr Collyer in closing submissions suggested to the Tribunal that the Claimant's health was clearly improving because he did not attend the remedy hearing in his pyjamas; in reply the Claimant referred to this as a "very sad comment". The Claimant clarified that he did not want to attend the ESA appointment but was dragged to it by his family.

16. The Tribunal found the Claimant's oral and written evidence was consistent and confirmed that he continued to suffer low mood and depression at the date of the hearing and as a result his ESA benefit continues to be paid. The Claimant has been unable to work due to ill health and this is partly the reason why he suffers depression. He is to a certain extent stuck in a vicious circle, as he feels unable to apply for jobs as he is concerned that the reference provided may contain inaccurate information, he is therefore unable to move forwards which then adds to his feelings of depression.

17. The Respondent's criticism of the Claimant's evidence to the Tribunal was that it was "woefully inadequate"; the Respondent accused the Claimant of being selective in the documents he disclosed to the Tribunal. The Tribunal note however that it was the Claimant's evidence that he was presently unfit for work, which was corroborated by all the evidence before the Tribunal. The Respondent drew the Tribunal's attention to the advice in the ESA report in 2015 which expressed the opinion that the Claimant "could" consider work "within 12 months". The Respondent made no other

criticism of the ESA report or of the letter at page 123 (see above). It was noted that the Respondent did not seek to obtain an agreed medical report and did not request that the Claimant provide GP records.

Decision on injury to feelings

The unanimous decision of the Tribunal is as follows:

18. The Tribunal must consider whether an award for injury to feeling should be made and if so at which level. We conclude that there was clear evidence that the Claimant suffered, and continues to suffer injury to feelings. The discriminatory acts in this case were serious; our findings of fact and conclusions show that the Respondent gave a dishonest and inaccurate reference because he had pursued a claim against them in Tribunal; they did this knowing that the job offer was likely to be withdrawn as a result of their actions. We also found in the Claimant's favour in his in his claim for discrimination arising from disability. The Tribunal also concluded that the discriminatory acts were serious and were not innocent, they were committed with discriminatory motivation. In the light of this we conclude that it would be fair and reasonable to make an award for injury to feelings within the upper bracket of the adjusted Vento bands (in place at the time the claim was presented in 2015).

19. The Tribunal concluded that this was a serious act of discrimination that had a severe and long term adverse impact on the Claimant's health and well-being. He was caused significant distress by the acts of discrimination and his feelings of distress exacerbated his depressive illness. We also conclude that the act of victimisation was extremely serious, the effects of which have been long term and severely damaging to the Claimant's self-esteem and to his future career prospects. The Claimant referred the Tribunal to the cases of London Borough of Hackney v Sivanandan UKEAT/0075/10 and the case of Voith Ltd v Stowe, stating the withdrawal of a job offer has a long term and serious consequences so cannot be said to be a one off act; the Tribunal accept this argument. The consistent evidence before the Tribunal was that the Claimant still suffered from feelings of worry and despair and has been unable to recover sufficiently to re-enter the job market. The Respondent has not sought to ameliorate this situation in the period from the promulgation of the liability decision on the 5 May 2017 to the date of this hearing to correct their significantly overstated sickness absence records held on the Claimant's file.

20. In the light of the consistent evidence before us, we conclude that the should receive a sum for injury to feelings of £18,500 together with a 10% uplift resulting in a total award of £20,250. We add on to this interest of 8% resulting in the sum of £4161.18. The total sum is therefore **£24,411.18**.

The Claim for Aggravated Damages

(a) The Respondent acting with discriminatory motivation

21. The Claimant seeks aggravated damages relying on the Tribunal's findings and conclusion that the reference provided by the Respondent was deliberately written to suggest that there were "unproven allegations

of dishonesty and poor performance levelled against [him]" and he referred to paragraphs 29 of findings of fact and paragraph 52 of our decision where we concluded as follows:

> "29. The Tribunal put to Ms James that there was no evidence of the Claimant's dishonesty and the affair as being part of the evidence considered by her in paragraph 29 and she stated **"it may well have been an error on my part but I refer to it in paragraph 29, I accept it wasn't detailed in any way that would be useful**". The Tribunal find as a fact that there was no evidence of the Claimant's dishonesty during his employment. There was also no evidence provided why an affair was relevant. The Tribunal conclude that the sickness absence had been significantly overstated by the Respondent because the Claimant had presented a claim in Tribunal and as a result the Claimant was subjected to a detriment. The Tribunal find as a fact that Ms James answers in cross examination reflected that she had formed the view of the Claimant's alleged dishonesty from the discussions with those involved in the Tribunal proceedings".

> "52. The Tribunal then must consider whether the Claimant was subjected to a detriment because of the protected act. We have found as a fact that Ms James accepted that she felt animosity towards the Claimant and she felt he was dishonest; we have found as a fact that these opinions were formed out of her communications with Ms Harris. Ms James admitted that the Claimant's Tribunal claim was a consideration when deciding how she would complete the form; the Tribunal therefore concludes from this evidence that she was significantly influenced by this fact and the comments by Ms Harris. The Tribunal therefore conclude that the burden of proof moves to the Respondent to show that the less favourable treatment had nothing whatsoever to do with the Tribunal proceedings".

22. The Claimant also referred to a finding made in our decision at paragraph 44 were we stated that the reference was written in such a way that was "intended to reflect the Claimant in a bad light". Our conclusions were as follows:

> "44. The Tribunal would like to make some observations about the credibility of the witness evidence before us. Ms James' evidence was found to be inconsistent in that she "alluded to" considering matters that were not referred to in her statement when deciding not to answer the question in Section 1 of the reference document. She referred in cross examination to an affair that had ended eight years earlier but could provide no explanation as to why she did not refer to this in her statement and why it was a relevant consideration when providing the Claimant with a reference. The Tribunal conclude that this was intended to reflect the Claimant in a bad light. Ms James also intended to convey the impression that the Claimant's inaccurate and significantly overstated sickness absence was the reason for failing to provide a reason of answering in the negative".

23. These were the conclusions reached by the Tribunal in respect of the discriminatory conduct. We found the Respondent acted with a discriminatory motive and intended to reflect the Claimant in a bad light to a prospective employer, thus causing considerable damage to his future career and employability. We also found the Respondent's witness evidence lacked credibility, as referred to above. There was clear evidence before the Tribunal that their conduct was based on animosity towards the Claimant and the act of discrimination was committed in what can only be described in a malicious or insulting manner. We conclude that the manner in which the act was committed is sufficiently serious to justify an additional award for aggravated damages.

(b) Failing to apologise

24. The Tribunal also considered the conduct of the Respondent after receiving our decision on the merits of this case in May 2017; they failed to provide an apology to the Claimant or to seek to correct the Claimant's sickness absence records, which had been found as a fact to be inaccurate. The sickness absence records had been found to be inaccurate in a separate judgement promulgated by Judge Hall Smith in the Claimant's previous claim number 2358072/2012 promulgated on the 11 June 2015; before the date the discriminatory act was committed in this case. Despite the Respondent receiving two separate judgments commenting adversely on the accuracy of their sickness records, no steps have been taken to date to address this.

25. The Tribunal found in our merits decision that the Claimant's sickness absence had been significant inflated by 64.5 days see our decision at paragraph 27 of the merits hearing where we found as follows:

> "It was conceded by both the Respondent's witnesses that their sickness absence records were inaccurate. The disparity between the Respondent's records on the reference as compared to their evidence before Tribunal showed that his absences had been overstated by the Respondent by approximately 64.5 days. It was put to Ms James in cross examination that the Claimant's absence due to stress/grief reaction was a one off in 2009/10 which she accepted but in her view, she felt the Claimant had "**significantly high levels of absence in 2009/10 and 2012**".

26. The Claimant remains concerned about the sickness records that may be produced should he require a reference in future. The Respondent undertook to provide the Claimant a statement of his corrected sickness absence records within 14 days. The Respondent told the Hearing in closing submissions that they were "now wiser" and would not make the same mistake again and they were also "happy to agree with the Claimant the form and content of a reference". Although the Tribunal felt this was a positive step, the conciliatory gesture had not been advanced prior to the date of the remedy hearing. The Claimant in his statement at paragraph 10-11 stated that he had approached the Respondent on the 27 May 2016, asking them to clarify his sickness records but received no response and was asked by the Respondent's legal representative not to contact the Respondent directly. The legal representative did not seek to clarify this matter on behalf of the Claimant with his client further. This evidence was not challenged in cross examination.

27. Despite the Claimant taking all reasonable steps to correct his inaccurate sickness records, they remain overstated and inaccurate and are likely to be unhelpful to the Claimant in his search for employment in the future. The Respondent gave no reason for their failure to take any remedial action to correct the errors on their files until the remedy hearing. Although the Respondent provided some reassurance in this hearing to correct their records, the considerable delay and the distress this has caused to the Claimant leads us to conclude that this is another aggravating factor which will result in an award for aggravated damages.

(c)The Respondent's conduct after the Decision was promulgated.

28. The Claimant also referred in his submissions (at paragraph 6e) to further acts relied upon to support his claim for aggravated damages. The

Claimant submitted that Ms Harris "who the Tribunal found to be the main person that influenced the Respondent's actions against the Claimant, stepped up a campaign to exonerate herself of any wrongdoing by making dubious applications to the Tribunal". The Tribunal have already referred to our findings in the substantive decision at paragraph 52 (referred to above in paragraph 21).

29. The Tribunal noted from the files that a written communication was received direct from the Respondent, signed by the Chair of Trustees, Jac Nunns (not from their legal representatives who were on the record) dated the 15 November 2017 asking for what they described as "rectification of the judgment" to admit evidence from Ms Harris, even though Ms Harris did not attend to give evidence on behalf of the Respondent nor did she provide a statement for consideration at the Liability Hearing.

30. Ms Harris then followed up Jac Nunns' letter with two further pieces of written communication to the Tribunal (again not copied to the Claimant or the Respondent's legal representatives), dated the 28 November 2017 and 2 December 2017 asking for the liability decision be 'reconsidered' in the light of a witness statement now provided by her which (for the first time) put her side of the story. The actions of the Respondent and Ms Harris were extraordinary taking into account the nature of the work carried out by this organisation i.e. that of the provision of legal advice and assistance. It was all the more surprising in the light of the criticisms made of the organisation in our decision. The Tribunal concluded from this conduct that no lessons appeared to have been learnt by Ms Harris or by the present Chair of Trustees. Although the Respondent told this hearing that lessons had been learned, this did not appear to be the case as late as November and December 2017 where the Respondent and Ms Harris were still seeking to challenge adverse findings of fact made against them. These communications were further evidence that entitled the Tribunal to consider the Claimant's application for a further sum for aggravated damages to be awarded; this conduct was considered by the Tribunal to be somewhat underhanded, spiteful and vindictive.

31. The Claimant was entitled to feel that this was a further aggravating factor in his case; it was evidence of high handed and oppressive conduct based on animosity towards him. The Claimant's evidence to the Tribunal was that he was angry and upset that "*the Respondent can continue to subject me to discrimination and victimization after 3 years of being dismissed by them*". We also conclude that this was conduct designed to undermine the conclusions of the Tribunal in an underhanded manner and to cause further distress to the Claimant. The Claimant described feeling like the Respondent was "adding insult on to injury" and we can accept that he was entitled to feel this way, as Ms Harris' communication to the Tribunal had been supported by the new head of the organisation. It was noted that the communications with the Tribunal came from the new Chair of Trustees and from Ms Harris (former Chair of Trustees), therefore the communications emanated from the highest level of the organisation and the Tribunal can only conclude from this that the conduct of Ms Harris was endorsed and had the blessing of the present Chair of Trustees, despite the conclusions reached by the Tribunal. We consider this conduct to be retaliatory and the Claimant was justified in finding this communication to

be a significant aggravating factor. We conclude therefore that this is a case where a separate sum for aggravated damages should be awarded.

Decision on Aggravated Damages

The unanimous decision of the Tribunal of the Tribunal is as follows:

32. The Tribunal stood back and considered whether it would be appropriate on the facts to award a separate sum for aggravated damages as well as injury to feelings. However, we have concluded that in this case it is fair and proportionate to order both. We have been careful to set down the conduct that led the Tribunal to make a separate and distinct award for injury to feelings and the specific conduct that led to us making the additional award for aggravated damages. We conclude that in this case it is appropriate to award a separate sum for aggravated damaged to reflect the Respondent's high handed conduct in relation to the three matters referred to above.

33. The Claimant in closing submissions asks for a minimum of £6,000 for aggravated damages and asks for the highest possible award, he referred to the award made in the case of Sivanandan (referred to above) of £25,000. We considered that the above conduct was so serious in the manner in which the Respondents present and past officers have conducted themselves and the damaging effects that this has had on the Claimant and his future career prospects. The Tribunal conclude that an award of £10,000 is appropriate plus a 10% uplift resulting in a total award of £11,000. We felt that this sum taken together with the sum already awarded for injury to feelings, represented a fair and appropriate sum to compensate the Claimant for his non pecuniary losses. We also award interest in the sum of 8% of £676.43 which results in the total sum of **£11,676.43**.

Loss of Earnings from the date of discrimination to the date of the Hearing.

34. Turning to the Claimant's claim for losses from the date of discrimination to the date of this hearing. The Claimant confirmed in evidence that he is still unwell and unable, at present, to apply for positions. The Claimant seeks loss of earnings up the date of this hearing (see his schedule of loss at pages 125-8). The Claimant told the Tribunal that he had applied for around 80 jobs when he was in receipt of JSA (before October 2014). The Claimant confirmed in answers given in cross examination that when the Tribunal proceedings were over he hoped that things would get better and confirmed that he was getting better but still suffered anxiety on a regular basis which had not been helped by the more recent conduct of the Respondent.

35. The Respondent in closing submissions stated that the Claimant could have secured employment within 12 months of the ESA report referred to above (which would have been September 2016) however the Tribunal have concluded on the evidence before us that the Claimant was still in poor health and was to date, unable to seek employment. The Respondent's written submission stated that there is no evidence that the Claimant is unable to seek work and referred to the lack of medical evidence. In oral submissions the Respondent stated that the evidence

showed that there was no evidence of a "huge effort by the agencies to progress the Claimant towards employment". He went on to add that "the only slight comfort was when the Tribunal proceedings ended the Claimant will put this behind him and move forwards".

Decision

The unanimous decision of the Tribunal is as follows:

36. The Tribunal were satisfied that the Claimant's oral evidence was consistent with the medical evidence which showed that he was unfit to return to work. We also conclude from the evidence that the Claimant has taken all reasonable steps to mitigate his loss by attending CBT and relaxation classes and by following his GP's advice.

37. On the evidence before us we have concluded that it is appropriate to award the Claimant losses from the date of discrimination to the date of this hearing. The evidence before us was consistent that the Claimant was unable to seek work during this period due to his state of health and his poor health had been significantly exacerbated by the discriminatory acts of the Respondent. The Claimant's schedule of loss reflected that he was claiming 933 days losses, this figure was not challenged by the Respondent and appeared to be correct. The Claimant's submission reflected that his gross annual salary would have been £32,700 and the net salary was £25,515.68 (weekly net salary of £490.69). His total net losses were therefore £65,404.07 together with interest calculated from the mid point at 8% of £6,684.95. This results in a total sum of £72,089.02.

38. The Respondent calls for credit to be given for the ESA that the Claimant has received during this period. This benefit is made up of a contribution based payment together with an income related sum. The Claimant submits that no deductions should be made as he was in receipt of ESA 9 months before the date of the discriminatory act and the benefit continued to be paid afterwards.

39. Taking both submissions into account and having considered the case law referred to us by the Claimant of the case of Morgans v Alpha Plus Security Ltd 2005 ICR 525 and the general principal that the payment of benefits ought to be deducted when assessing compensation; we have concluded that it would not be appropriate to allow the Claimant the possibility of double recovery in respect of income related benefits received during this period of time. Although the Claimant was in receipt of these benefits before the act of discrimination, the continued payment of the benefit after the act of discrimination was due to his continued inability to work and that inability continued due to the act of discrimination. We have decided therefore that credit should be given for ESA. Having considered the Job Centre Plus calculation of benefits received we noted that the Claimant received a total of £257.60 per week. Of this figure we deducted the contribution based element, the payments made direct to the mortgage company in respect of interest and the service charges; thus leaving a weekly sum representing income related element of £78.35 for which credit should be given. The Claimant received no other income or earnings during this time. The Tribunal had before it no accurate figures for previous years' payments of ESA however we are satisfied that there had been no significant increases to the level of benefits paid over the

past few years which would disproportionately overstate the figures used. The total credit to be given is therefore 133.3 weeks at £78.35 which is **£10,442.27**.

Total sum awarded for loss of earnings

40. Taking the total net figure of losses to the date of this hearing of £72,089.02 less £10,442.27 equals a net figure of **£61,646.75.**

Future Loss of Earnings

41. The last issue is in relation to future loss of earnings, the Claimant is claiming either lifetime losses or in the alternative four years future loss. The Tribunal considered the submissions of both parties. It was noted that the Claimant indicated that his health was improving and was likely to further improve once these proceedings had come to an end. The medical evidence (such as it was) appeared to support the Claimant's evidence, that he was not presently fit to return to any form of work but there was no evidence to suggest that he would remain unfit after a further period of 12 months. The Claimant emphasised that he was keen to return to work and recognised that doing so would assist his recovery.

42. The Claimant has referred to the case of Hampshire County Council v Whyatt UKEAT/0013/16 which stated that Tribunals do not need medical evidence in order to make an award for future loss of earnings. The Tribunal accept that to be the case, however there was no evidence before the Tribunal (medical or otherwise) to suggest that the Claimant would be unable to work for the rest of his life. This was not suggested by the ESA medical records and the evidence given by the Claimant was that he was keen to return to work. We therefore conclude that on the evidence it is not appropriate to award career long losses.

43. Turning to the Claimant's alternative submission that he be awarded four years future losses, the Claimant reminded the Tribunal that he had been "exempted from work since 2015" but as we have found as a fact, the original ESA report indicated that he had been placed on those benefits in 2015 for matters unrelated to the acts of discrimination. There was no evidence to suggest that the Claimant would be unable to secure employment for a further period of four years.

Decision of the Tribunal

The unanimous decision of the Tribunal is as follows:

44. Having considered all the evidence the Tribunal conclude that award of 12 months future losses would be appropriate in this case. We accepted the Respondent's submission that they have learned lessons and they have now agreed to correct their sickness absence records and are prepared to take steps to agree a suitable and accurate reference for the Claimant. If this is done there should be no reason why the Claimant could not secure employment within the next 12 months. The finalisation of these proceedings are also likely to assist the Claimant's recovery and hopefully to an early return to full time employment.

45. The Tribunal awards to the Claimant the sum £490.69 x 52 weeks which totals **£25,515.88**. We make no deduction for accelerated receipt as

we considered that this was a relatively short period of time and it would be inappropriate to deduct anything from this part of the award.

Grossing Up

46. We considered that the total compensation for loss of earnings should be grossed up. The total award of compensation for loss of earnings is £87,162.63. Deduct from this the tax-free element of £30,000 resulting in a sum of £57,162.63 to be grossed up. Taking the sum of 57,162.63/60 x 100 = £95,271.05. The grossed up taxable figure is **£95, 271.05** plus the £30,000 tax free element which amounts to **£125,271.05**

47. Although the Claimant referred to a claim for loss of pension, he confirmed to the Tribunal that the Respondent did not offer a pension during his employment, no compensation will be awarded for this head of claim.

Employment Judge **Sage**

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Date: 14 February 2018