



EMPLOYMENT TRIBUNALS

Claimant: Mr B Roberts

Respondent: Voodoo Doll Limited

HELD AT: Manchester

ON:

24 July 2018

BEFORE: Employment Judge Grundy
Ms A Jarvis
Mrs A Ramsden

REPRESENTATION:

Claimant: In person.

Respondent: Ms Widdett, Counsel.

JUDGMENT on REMEDY

1. This is the Judgment of the Tribunal on compensation and remedy, after the Tribunal had made rulings on three issues set out below within the reasons .

The Tribunal makes a total award in the sum of **£29,987.42**, which the Respondent shall pay the Claimant-

The sums awarded are as follows:

Basic Award in the sum of £788.40.

An award in respect of Loss of Statutory Rights in the sum of £450.00

An award in respect of compensation for loss of earning in the sum of £6,953.46

An award in respect of future loss in the sum of £4,448.08

An award in respect of pension agreed at £510.00

An award in respect of expenses to find alternative work in the sum of £40.00 The total of those matters is: £13,189.94.

The 25% uplift under the ACAS Code applied and amounts to £3,297.48

In respect of the discriminatory comments the Tribunal awards for injury to feelings the figure of £12,500.00 and in respect of interest accruing on the discriminatory award the Tribunal awards the sum of £1,000.00.

REASONS

These are the Tribunals rulings regarding the contested matters. They relate to injury to feelings, statutory rights and job seeking expenses.

Firstly, in relation to the award for injury to feelings the Tribunal awards £12,500. Our reasons for this are as follows:

1. We set out the comments that were made which were age discriminatory against the claimant in paragraphs 45 to 51 of our previous Judgement. Re-reading those comments and the impact statement are that the claimant has set out in his Schedule of Loss the Tribunal reiterates the view that this case falls within the middle band of the Vento Guidelines. It was the case that the comments were on going for 2 years although they were not made every night. It was the case that Mr Binnersley was present when those comments were made although we take into consideration as in paragraph 38 for other reasons this was the best door that the claimant had worked on. Today we accept that Mr Binnersley has attended the Tribunal and he has apologised through Counsel to the claimant. It is perhaps the case that he now realises that significantly more offence was caused to the claimant with the benefit of hindsight and in the impact statement the claimant makes clear his upset and that the consequences of the comments would have a long-term impact. Therefore, it is not a case that could fall into the lower band there is not a one-off occasion. It is also the case, however, that it is not falling into the top band of the most serious cases it did not encompass the dismissal on the Tribunal's findings. The comments were, however, offensive and were sustained so in our collective judgment doing the best we can we reached the conclusion the lower end of the middle band of Vento, as amended, is an appropriate guideline and the figure awarded is £12,500.

2. So far as the statutory rights aspect is concerned. The claimant claims that his age in his early 50s should lead to a higher figure being awarded. The respondent says the claimant was only employed in this employment for 2 years and therefore a lower figure should be awarded and the figures proposed are between £350 and £750. The Tribunal has considered those arguments and reached the conclusion there is no reason to award anything other than the general figure, which we find to be £450. In respect of statutory rights, we award £450.

3. The other aspect we have considered relates to the job seeking expenses. We accept the claimant has had to take steps to obtain new employment. The costs of travel do not seem unreasonable and would not have to have been spent but for the claimant losing his employment. The £40 claimed is a relatively modest sum and the Tribunal makes that award of £40 in respect of job seeking expenses.

4. The Tribunal went on to consider the other aspects of the Schedule of Loss in more detail with the assistance of the parties agreement on certain aspects, however an issue also arose as to future loss which as the claimant was in person the Tribunal considered it fair to deal with.

5. The Tribunal considered the issue of future loss having established that the claimant's net weekly pay at dismissal was £262.82 and the claimant's new employment for 20 hours a week is £177.26. There is a deficit the Tribunal calculated of £85.54 per week. The claimant indicates that he works on Mondays, Tuesday, Wednesdays and Saturdays. Saturday on the door we anticipate is probably the busiest night. The respondent submitted that it would be reasonable for the claimant to find alternative static security work potentially working 40 hours a week at a lesser rate of pay but for longer. The Tribunal accepts that is not the claimant's experience or his working history. The claimant has attempted to continue to do more hours of the work than he does being a security guard on the door of various night venues. We accept that the claimant has asked around. We also consider with our employment knowledge it is likely this is a word of mouth industry. The claimant is on variable hours and his payslip shows that he does work variable hours. The claimant says this is not likely to improve until he is 60. The respondent submits he has not mitigated his loss. In our view he has mitigated his loss but it will be unreasonable to make an award until the claimant was 60. We consider that a period of 12 months would be reasonable in which the claimant can attempt to get himself back on his feet at the same level as his previous employment. So, doing the best we can, 12 months at a weekly partial continuing loss of £85.54 give a figure of £4,448.08 in respect of future loss. The calculations on all the figures were made with the assistance of the parties agreed schedule. These involved the following figures and calculations --

1. The parties were able to agree the net weekly pay on the basis of the claimant's last 12 months pay history at the figure of £262.80.
2. The calculation therefore of the basic award given that the claimant was 50 at the time of dismissal is $£262.80 \times 1.5 \times 2$ years' service giving a total of £788.40. The Tribunal gave its reasons above for the loss of statutory rights award at £450.00.
3. So far as the loss of earnings calculation is concerned the claimant asserted 73 weeks have elapsed since the claimant's dismissal to the date of the hearing today. The claimant's previously earned income of £19,184.40 has to have deducted from it the new employment figure of £177.26 over the course of 69 weeks totalling some £12,230.94. Therefore, the claimant is out of pocket for those 73 weeks for the sum of £6,953.46 which the Tribunal has awarded.
4. So far as future losses are concerned the claimant has demonstrated in accordance with the Tribunal's findings of future loss of £85.54 per week which the Tribunal considered appropriate to award on a continuing basis for one year leading to an award of £4,448.08.

5. As indicated the loss of pension at £510.00 and the expenses by ruling are also included in the total figures.
6. The injury to feelings and the reasons for the award of £12,500.00 have been set out.
7. The Tribunal awarded the ACAS uplift on those figures relating to the basic award, loss of statutory rights, the compensatory award, the pension and the job expenses aspect.
8. The injury to feelings also bears the interest awarded at 8% for one year. Doing the best, the Tribunal can in relation to the fact that the claimant has waited until July 2018 for these sums to be calculated.
9. The total award is therefore the figure of £29,987.42.

Employment Judge Grundy

Date: 7 August 2018

JUDGMENT SENT TO THE PARTIES ON

9 August 2018

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employmenttribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2403330/2017**

Name of **Mr B Roberts** v **Voodoo Doll Limited** case(s):

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **9 August 2018**

"the calculation day" is: **10 August 2018**

"the stipulated rate of interest" is: **8%**

MRS L WHITE
For the Employment Tribunal Office