



EMPLOYMENT TRIBUNALS

Claimant: Miss P Loughlin

Respondent: Broadgate Voice & Data Ltd

Heard at: London East employment tribunal

On: 28 January 2019

Before: Employment Judge Gilbert

Representation

Claimant: litigant in person assisted by Mr N Kellaway

Respondent: No attendance

JUDGMENT ON REMEDY

- 1. The respondent is ordered to pay to the claimant £530 in respect of 16 hours worked a week at £8 an hour for the month of July 2018.*
- 2. The respondent is further ordered to pay to the claimant £3,500 for injury to feelings for disability discrimination and sex discrimination.*

REASONS

1. By a default judgment made on 21 January 2019 and entered on the record on 22 January 2019 and sent to the parties on that date the claimant's complaints of sex discrimination, disability discrimination and for unlawful deduction from wages succeeded.

2. At the remedy hearing today I heard evidence from the claimant herself and had in front of me the tribunal file and a printout of text messages between the claimant and her manager Mr Frank Pratt.

The facts

3. The claimant worked for the respondent from 18 October 2017 until 30 July 2018. She was employed as a telephone operative. The claimant is on the autism spectrum, more specifically she has Asperger's syndrome. The respondent knew of her disability during her employment. At some point in June 2018 the claimant's

immediate line manager “Trish” left the respondents employment. After she went the claimant was the only woman employee. She says and I accept her evidence it was a male environment and she often felt uncomfortable after Trish left.

4. The work the claimant did for the respondent involved making cold calls to customers first of all to help them with energy bills and then attempting to sell them (VOIP) voice over Internet protocol.

5. During July 2018 the respondent told the employees they would not be paid wages for August but only commission on sales made. Because many of the respondent’s customers are away in August the claimant and her colleagues looked for and found work elsewhere.

6. When the claimant found alternative work she left a card for the respondent informing him she had a new job.

7. The respondent then failed to pay the claimant wages due for the month of July in the sum of £530. The usual payment date was the last day of the month.

8. The respondent also failed to pay her colleagues wages for that month The claimant and her colleagues continued to seek payment of their wages. They too had found alternative employment as they had all been told they would not be paid wages but only commission for the month of August. It soon became clear that the claimant was the only employee who had not been paid at all. While other colleagues had to push for payment they were eventually paid some part if not the full amount of their wages. The claimant was the only woman employee and the only one who received nothing. Indeed, the respondent suggested to her she ask her mother for the money due from the respondent. I accept the claimant’s evidence the respondent would not have asked the claimant’s male colleagues to ask their mothers for the money.

9. During the last few weeks of her employment the respondent also said to the claimant “Polly, have you always been so fat.” This followed on from the claimant reporting another colleague to Mr Pratt for calling the claimant “a fat ugly bitch.” Both these incidents occurred after Trish left and the claimant was the only woman working in the office. The claimant found these remarks “not very nice, extremely upsetting and hurtful.”

10. The respondent also said to the claimant when she put her hand up at a meeting “I know you are a disabled but that does not mean you can interrupt.” The claimant had not interrupted she had merely put her hand up. The claimant found this remark very upsetting and says other colleagues were not publicly humiliated like she was.

The Law

11. I reminded myself of paragraph 53 of **Vento v Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102** where it is stated:

“In *HM Prison Service v Johnson*, Smith J reviewed the authorities on compensation for non-pecuniary loss and made a valuable summary of the general principles gathered from them. We would gratefully adopt that summary. Employment tribunals should have it in mind when carrying out this challenging exercise. In her judgment on behalf of the Appeal Tribunal, Smith J said at p.165:

- (i) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.
- (ii) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could, to use the phrase of Sir Thomas Bingham MR, be seen as the way to "untaxed riches".
- (iii) Awards should bear some broad general similarity to the range of awards in personal injury cases. We do not think that this should be done by reference to any particular type of personal injury award, rather to the whole range of such awards.
- (iv) In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.
- (v) Finally, tribunals should bear in mind Sir Thomas Bingham's reference to the need for public respect for the level of awards made."

Paragraph 65 sets out guidance to Tribunals and provides:

"Employment tribunals and those who practise in them might find it helpful if this court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.

- (i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race... Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.
- (ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.
- (iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings."

At paragraph 66 the court added:

"There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just

compensation in the particular circumstances of the case.”

12. The bands are now:

- Upper band £25,700-£42,000
- Middle band £8600-£25,700
- Lower band £900-£8500

Remedy - injury to feelings

13. The claimant was upset humiliated and offended by the sexist and disablist remarks made to her in the workplace. While there was more than one instance of discriminatory conduct towards her I find the conduct by the respondent falls within the less serious Vento band and I have assessed it at around the midpoint of the lower band which is currently between £900 and £8500. I have therefore make an award to the claimant for injury to feelings of £3,500.

Remedy -unlawful deduction from wages

14. The respondent failed to pay the claimant any wages for the month of July 2018. I calculated the amount due to her is £530 in respect of 16 hours worked a week at £8 an hour.

Employment Judge **Gilbert**

29 January 2019