EMPLOYMENT TRIBUNALS

Claimant: Mr J W Johnson

Respondent: Key Care Support Limited

Heard at: Manchester **On:** 15 and 16 January 2019

Before: Employment Judge Ross
Ms E Cadbury
Mr J Flynn

REPRESENTATION:

Claimant: In person
Respondent: Mr T Wood, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim that he was discriminated against pursuant to section 13 of the Equality Act 2010 when the respondent failed to investigate his complaint of race discrimination is well-founded and succeeds.

2. We make the following award:

(i)	Injury to feelings (inclusive of interest)	£6,000.00
(ii)	Loss of earnings	£4,050.00
	Interest on the mid point of the loss to January 2019 at 8%	£243.00
	Total	**£10,293.00**

3. The total award payable by the respondent to the claimant within 14 days of the date of this Judgment is £10,293.00.

WRITTEN REASONS

1. This was a hearing to decide remedy. An oral judgment was given on the day of the hearing but written reasons having been requested by the respondent, the following is provided.

2. We turned to consider the award for the claimant.

Injury to Feelings

3. The Tribunal reminds itself of the long-established guidance in **Prison Service v Johnson [1997] ICR 275**, that the general principles underlying awards for injury to feelings are as follows:

- Awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party.
- An award should not be inflated by feelings of indignation at the guilty party's conduct.
- Awards should not be so low as to diminish respect for the policy of discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches.
- Awards should be broadly similar to the range of awards in personal injury cases.
- Tribunals should bear in mind the value in everyday life of the sum they are contemplating.
- Tribunals should bear in mind the need for public respect for the level of awards made.

4. The Tribunal also reminds itself of the present Vento guidelines as set out in the joint Presidential Guidance on uprated Vento bands from the Presidents of the Employment Tribunal in England and Wales and Scotland for claims presented after 6 April 2018. The bands are:

Lower band	£900 – £8,600 (for less serious cases)
Middle band	£8,600 - £25,700 (for cases that do not merit an award in the upper band)
Upper band	£25,700 - £42,900 (for the most serious cases, with the most exceptional cases capable of exceeding £42,900.

5. Firstly we considered the nature of the complaint. We find that the nature of this complaint was the failure of the respondent to action the claimant's

complaints of racial abuse,which they acknowledged to be serious complaints, and their failure to deal with the matter over a period of 3½ months .

6. Having identified the nature of the discriminatory treatment we turned to look at the effect that it had on the claimant. We entirely accept the evidence that he gave to us in terms of how he felt following what happened with the respondent and find that he was having problems with sleeping, that he was very anxious, that he went to see his GP and that he was unable to work for a period of six months.

7. We award compensation for loss and injury to feelings which flows from the discriminatory treatment we have found. This is because compensation is awarded on tortious principles. Sometimes that is hard to assess.

8. The only allegation that was before us was the failure of the respondent to investigate and deal with the complaint of racial abuse. We do not have any power to make any finding in relation to the unfounded allegation made against the claimant about a safeguarding incident. We rely on the claimant's evidence that he was distressed about the respondent's failure to deal properly with the safeguarding allegation as well as by the failure to investigate the racial abuse. So far as the claimant's injury to feelings about the racial abuse itself is concerned we entirely accept the claimant's account. We find how he felt about that is inextricably linked with his injured feelings caused by the respondent's failure to investigate those allegations of racial abuse.

9. There was no medical evidence to help us with how to apportion the claimant's injured feelings about the failure to deal with his complaint of racial abuse and his injured feelings about the failure of the respondent to properly investigate and deal with the safeguarding incident, which he was later told was unfounded. Given these were 2 different matters which together caused injury and distress to the claimant, we adopt a broad brush pragmatic approach and apportion 50% to each.

10. We must turn to the level of the award. The lower band of Vento is £900 to £8,600 and the middle band is £8,600 to £25,000. We find the appropriate award for the claimant is in the middle band because of the seriousness of the effect of the respondent's behaviour on him causing him to be distressed and upset, unable to sleep, having to visit his GP and being unable to work for 6 months. We have taken into account the serious nature of the racial abuse which the respondent did not investigate and the length of time, 3 and half months, where the respondent failed to investigate.

11. We find an appropriate award is towards the lower end of the middle band Vento at £12,000. However as we have explained above we find 50% of the claim's injured feelings is attributable to the failure of the respondent to investigate his allegation of racial abuse and that is why we have awarded £6,000 for injury to feelings.

12. We turn to loss of earnings. The claimant in his evidence about loss of earnings informed us that he was under the care of his doctor and so he was

not well enough to work, but he also said that he was looking for work. We find that these two statements are not wholly inconsistent. An employee may be signed not fit for work but still look for opportunities to work. We do not have any documentary evidence from the claimant's GP such as fit notes but we find the claimant's account to be honest.

13. We accept the claimant's evidence that he was under the care of his GP who diagnosed anxiety and find he was not well enough to work for 6 months. We have relied on the figure that is in his original schedule which seemed consistent with his evidence that before these issues arose he worked 40 hours a week for the respondent. We find that the figure that he has relied upon of £1,350 net a month to be an accurate figure and we have multiplied that for a period of six months to June 2018 to reach a figure of £8,100 for loss of earnings. But we must undertake the same exercise as we did in relation to injury to feelings: we find 50% of the reason that the claimant was unable to work was because of how the respondent had handled his complaint of racial abuse and 50% was due to the way they handled the unfounded safeguarding allegation against him. Therefore we award £4,050. (50% of £8,100)

14. So far as interest is concerned we are obliged to consider it.In relation to injury to feelings we have included it . So far as loss of earnings is concerned, the Tribunal is still obliged to calculate interest from the mid point, and we find the mid point of the loss is March. We find that the period of time therefore is from March up to today, effectively nine months, and the court's interest rate perhaps surprisingly in these times is still at 8% and so the figure for interest is £243.

15. So if we add those together, the £6,000 for the injury to feelings, the £4,050 for loss of earnings and the £243 interest, the sum payable by the respondent to the claimant within 14 days of today is £10,293.

16. We should say finally why we have not awarded any uplift under the ACAS Code of Practice. If we read the ACAS Code of Practice it is clear that that Code of Practice for grievance and disciplinary procedures is applicable to employees within either the meaning of the Equality Act or the Employment Rights Act. The claimant was a zero hours contract worker supplied via an agency, not an employee, and in those circumstances we are not satisfied that the ACAS Code of Practice applies.

Employment Judge Ross

Date 1 March 2019

JUDGMENT AND RESAONS SENT TO THE PARTIES ON

04 March 2019

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