



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Mrs J Shergill

v

**1. Mr Gurmail Singh Malhi
(on his own behalf as President
for the time being of Sri Guru
Singh Sabha, Southall, an
unincorporated association) and
Others**

Heard at: Watford

On: 11th February 2019

Before: Employment Judge R Lewis
Mrs S Boot
Ms I Sood

Appearances

For the Claimant: Mr J Singh
For the Respondent: Mr S Healy, counsel

REMEDY JUDGMENT

1. The first respondent is ordered to pay to the claimant, the total sum of £18,411.28, calculated as follows:-
 - 1.1 As the basic award for unfair dismissal, the agreed sum of £897.00;
 - 1.2 As the compensatory award for unfair dismissal the sum of £5,566.70;
 - 1.3 For injury to feelings for public interest disclosure detriment £12,000.00.
 - 1.4 The monetary award is £18,463.70. The prescribed element is £5,566.70.

REASONS

1. The claimant requested these reasons after the tribunal gave judgment.
2. This was the remedy hearing listed by the Tribunal on conclusion of the public hearing on liability on 24 September 2018.

Corrections

3. Before dealing with remedy, the Tribunal determined the claimant's application for reconsideration and by separate corrected judgement revoked paragraph 102 of the liability judgment and took the decision again (leading to the opposite conclusion, namely that PID 3 was a protected disclosure).
4. By consent, and under the Tribunal's powers under rule 69, paragraphs 58 and 99 of the liability judgment were corrected. All three of these matters are reflected in the corrected liability judgment which has been directed to be promulgated with this judgment.
5. For the purposes of this hearing, the claimant had prepared a short witness statement and an extra bundle of documents. She briefly gave evidence and was cross examined. The respondents called no evidence.

Agreed figures

6. The parties had co-operated to a great degree in relation to the calculations arising from the dismissal. The basic award was agreed. The net weekly pay figure was agreed at £299.43. The loss of statutory rights figure was agreed at £350.00, and pension contributions at £6.58 per month.

Compensatory award

7. On compensatory award, the dispute before us was as to the length of period of loss for which the claimant should be compensated. The claimant's case was that apart from one short term contract of about 4 months, she has made over 100 job applications since leaving the first respondent, but with no success. She put to us that because of her record as a whistle-blower who has challenged the authority of the Gurdwara, she faces stigma in the job market. Mr Singh therefore put to us that this was a case for compensation at the statutory cap of 12 months loss of income.
8. Relying on the Tribunal's findings about the state of employment relationships between March and June 2017, Mr Healy put to the claimant that her working relationship with the respondents could not have survived beyond the date of the end of her employment, and that even without the malicious text, things were so bad by late June that she would have left her employment within, at the very most, 2-3 months.
9. The claimant plainly struggled with these hypothetical points. She agreed that the malicious text was the end of the relationship for her, although as she pointed out, she did go back to work after it was sent, but found that she faced questions about it, and felt a constant embarrassment about it.

10. Our task is to scroll back to the time when the malicious text was sent, and then explore the hypothetical possibilities of the claimant remaining in employment. The difficulty we have is that that exercise requires us not just to hypothesise about what would have happened if the claimant had not resigned; but to add a hypothesis about what would have happened if matters had gone altogether differently.
11. Whilst we accept that within a few days the claimant was told that the respondents disavowed and condemned the malicious text, her reaction at the time was that their response was too little too late. We hypothesised therefore that had the claimant not resigned, and had matters been managed differently, there was some prospect of a joint resolution of issues (including the text) between the parties, which might have enabled the claimant to remain in her employment.
12. We estimate that that might have taken 6 months, bearing in mind the other variables in the calendar. They included the school year, the end of the calendar year and the start of 2018, and the fact that the claimant was economically vulnerable. We cannot place the prospect of that having been successful at higher than two thirds. It seems to us therefore that the correct calculation of the compensatory award is an award of 66% of loss of income for six months. We do not think it right to reduce the figure for loss of statutory rights. We make no separate award in this case for stigma damage.
13. The calculation is therefore the following, and the judge apologises that this is slightly out of kilter with the calculations done at this hearing:

$$\begin{array}{rcl} (299.43 \times 26) = 7785.18 \times 66.67\% = & & 5190.38; \\ (6.58 \times 6) = 39.48 \times 66.67\% = & & 26.32; \\ & & 350.00. \end{array}$$

Recoupment

14. The Judge records that recoupment is a matter for the DWP; but that the suggestion which he made, which was that the entire amount of the claimant's Universal Credit would be recouped, appears to have been a misreading of the amended Regulations.

Injury to feelings

15. The claimant is entitled to an award for injury to feelings for the successful detriment claims. We accept Mr Singh's submission that this is a case for middle band Vento injury to feelings damages (which do not attract interest under SI 1996/ 2803).
16. We approached the matter as compensatory, not punitive. We remind ourselves that the first successful detriment, item 8, involved an element of public humiliation of the claimant in her downgrading. We remind ourselves that detriment 13 involved an element of rebuke for having exercised legitimate law rights. We remind ourselves of the findings set out at

paragraph 211 of the liability judgment about the misuse of authority on the part of Mr Gill. Joining the three detriments together, we note that they all in some way involved the claimant in drawing to the attention of the respondents matters which could legitimately be said to fall within her HR duties; and/or in different ways involved some misuse of authority on the part of the respondents. We accept that there were specifically hurtful elements to each event, which were the visible downgrading; the personal rebuke; and the religious pressure. It seems to us that the proper figure is £12,000.00.

17. After we had given judgment, Mr Singh raised the question of the identity of the respondent against whom the judgment would be made. Mr Healy agreed with the Tribunal's view, which was that it be given against the named senior officer holder of the unincorporated association.

Employment Judge R Lewis

Date: ...18 March 2019.....

Sent to the parties on:

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For the Tribunal Office