



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Shield

**Respondent:** BPDTS Limited

**Heard at:** North Shields Hearing Centre

**On:** Friday 27 July 2018

**Before:** Employment Judge Hargrove

**Members:** Ms E Menton

Mrs P Wright

## Representation

**Claimant:** Mrs C Shield (Mother)

**Respondent:** Mr Bryen of Counsel

# JUDGMENT

1) It is the unanimous judgment of the Employment Tribunal is as follows:-

- (i) The respondent is ordered to pay compensation for injury to feelings to the claimant amounting to £7,000.00 plus
- (ii) Interest thereon pursuant to the Employment Tribunals (Interest on Awards and Discrimination Cases) Regulations of £1,820.00.

# REASONS

- 1) The sole issue for the Tribunal in this remedies hearing was the appropriate award for injury to feelings in respect of the single act of discrimination found by the Tribunal in its original judgment sent out to the parties on 3 April 2018, namely a failure to make a reasonable adjustment in respect of denial of access to a disabled parking space at HPE's business premises at Colbalt Park up to 2017. It will be recollected that the claimants employment transferred to the present respondent on 27 March 2017, and responsibility of the present respondent arises under the provisions in the Transfer of Undertakings Protection of Employment Regulations. In all other respects the claimants claims of disability discrimination, failure to make reasonable

adjustments, harassment and victimisation were found not to be well-founded. The Tribunal considered only acts of discrimination arising in the claimants employment up to the date of the ET1 namely 28 June 2017. The claimants employment is continuing and it is a matter of record that the claimant has presented a further claim of discrimination to the Tribunal on 2 July 2018 which is however, not a matter to be considered by this Tribunal.

- 2) Section 124 of the Equality Act 2010 materially provides that at a remedies hearing a Tribunal may (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; (b) order the respondent to pay compensation to the claimant. Sub paragraph 6 provides “that the amount of compensation which may be awarded under sub section 2 (b) corresponds to the amount which could be awarded by the County Court under Section 119. Under Section 119 (4) an award of damages may include compensation for injury to feelings...”
- 3) In assessing the appropriate award for compensation for injury to feelings the Tribunal considers the Presidential Guidance issued on 5 September 2017. Under paragraph 10 of the Guidance it is recorded that the Vento bands in respect claims presented on or after 11 September 2017, taking into account inflation are as follows:-

Lower Band	£800.00 to £8,400.00 (less serious cases);
Middle Band	£8,400.00 to £25,200.00 (cases that do not merit an award in the upper band);
Upper band	£25,200.00 to £42,000.00 (the most serious cases)

This claim was presented to the Tribunal on 26 June 2017 and accordingly the bands are very slightly lower. The claimant asserted that the appropriate award was in the lower part of the middle band; the respondent argued that the appropriate award was in lower band. The factors which the Tribunal considered relevant were as follows. First as to the period over which the denial or restriction of access to the parking space was concerned was between May 2015 to 27 March 2017 when the claimant was employed at premises at Cobalt Park. We set out the material facts at paragraphs 6.1 of our reasons however we made no specific finding as to how frequently the claimant had restricted access to his disabled parking bay. The claimant submitted a witness statement to the Tribunal in support of remedies dated 15 June 2018. That statement does not specifically deal with the frequency with which he was denied or had restricted access to that parking bay. The claimant has asserted, but not in sworn evidence that he was denied access 90 to 90 percent of the time. However, he declined to permit cross examination on the basis of his fragile mental state and referred to an occupational health report dated 13 July 2018 which we considered. Mr Bryen for the respondent wished to cross examine. In the circumstances, we adjourned and having deliberated decided that the claimant could rely upon the witness statement but could not add no further information. We had in the meantime considered parts of the reasons and in particular an e-mail referred to at paragraph 6.1 to a Phillip McAndrew from the claimant dated 12 January 2017 at page 234 of the bundle. In that e-mail the claimant specifically raised on 12 January 2017 a complaint about the lack

of access to disabled parking in the following terms:

“Due to correct policy not being followed and enforced, it means that the three blue badge holders are having to squeeze into two of the designated spaces, as a result, this often leaves little to no space for full opening of the drivers door or parking partially on the pavement blocking the emergency exit routes. This is a result of colleagues not permitted to park in the clearly marked bays...”

We are satisfied that the claimant had restricted access on a regular basis but no nearly as often as 90 to 95 per cent of the time. The next issue which arose is the extent to which the respondent was aware at the time of the claimants condition of Aspergers Syndrome. The relevance of this is that the claimant asserts that at all material times his line manger ES was aware at least from 2015 that he had Aspergers because he claims he told ES. The claimant further asserts that the denial or restriction of access to his parking space caused him particular anxiety and injury to feelings because of his condition of Aspergers the specific adverse effects of which were set out in paragraph 2 of the reasons. However, we did not accept that ES was aware of the claimants condition of Aspergers until March 2017. See in particular paragraph 8 of our reasons. Not withstanding this finding however, we accept that the discrimination we have found in this case did have particular adverse effects upon the claimants feelings because of the condition whether or not the respondent was aware of it. We consider it an aggravating factor that an employer such as this employer for whom the respondent is liable, a relatively large employer should not enforce over a significant period of time, from May 2015 to March 2017 proper access to a disabled parking space to someone whose physical disability were obvious, he being wheelchair bound.

- 4) In these circumstances we consider an appropriate award towards the upper end of the lower band and we reached a figure of £7,000.00 appropriate. We have applied to that figure interest the judgment rate of 8 per cent per annum over 3.25 years from May 2015 to the end of July 2018.

---

Employment Judge Hargrove

---

Date 14 August 2018

**Public access to employment tribunal decisions**

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