



EMPLOYMENT TRIBUNALS

Claimant

Mr J Bulloss

Respondent

v **Shelter, The National Campaign for
Homeless People Ltd**

Heard at: Sheffield

On: 4 March 2019

Before: Employment Judge Little

**Members: Mr M Firkin
Mr A Senior**

Appearance:

For the Claimant: In person

For the Respondent: Mr N Thornsby, Solicitor Advocate (DWF Advocacy Limited)

RESERVED JUDGMENT (Remedy – Loss of Earnings)

The unanimous Judgment of the Tribunal is that: -

1. The award in respect of loss of earnings and pension loss is £26,949.76 calculated as per the schedule to this Judgment.
2. Interest thereon (also as per the calculation in the schedule) is £1,374.70.
3. Accordingly, the respondent is ordered to pay to the claimant forthwith the sum of £28,324.46.

REASONS

1. **The Evidence**

At the Remedy hearing the Tribunal heard evidence from the claimant, who had prepared a witness statement. We also heard evidence from the claimant's partner, Ms C Tyerman.

2. **Documents**

The Tribunal had before them a bundle of documents for the Remedy hearing which ran to 170 pages.

3. **Relevant findings of fact**

3.1. Whilst still employed by the respondent the claimant had, in October 2017, made an application to the BPP Law School to undertake a Graduate Diploma in Law (GDL).

3.2. The effective date of termination of the claimant's employment was 23 November 2017 and in our Judgment on liability we found that that constructive dismissal was both unfair and discriminatory.

3.3. Although the claimant had applied to undertake the course full time we are satisfied that the claimant took this step because he believed that it would be easier to change from full time to part time rather than vice versa.

3.4. We also accept the claimant's evidence that, hoping that the respondent would make the necessary reasonable adjustments, he would, on the balance of probabilities, have not commenced the GDL course until September 2018. We note that the claimant had applied for and purchased an annual bus and tram ticket from South Yorkshire Passenger Transport Executive at the end of March 2017 and at a cost of £560. Having incurred that expenditure on a ticket which could only be used in the Sheffield area we find that it would be unlikely that the claimant would in October 2017 make a life choice which would deprive him of the benefit of that ticket – the GDL course being in Leeds. We also find it credible that the claimant would have wished to continue in employment with the respondent for sufficient time to permit him to save for the cost of the course and the associated living expenses.

3.5. We also accept the claimant's evidence that his intention, on commencing the GDL course in September 2018, would have been to remain in employment with the respondent but to reduce his hours to 2 days per week, so as to continue earning something whilst undertaking the course part time.

3.6. In the event, having resigned (constructively dismissed) in November 2017 the claimant brought forward the intended start date for the course which he actually began in January 2018. As at that stage he had no employment he was a full-time student. However, by March 2018 the claimant's health necessitated him requesting that the course be converted to part time attendance. This was granted.

3.7. On 11 June 2018 the claimant obtained part time employment at the Sheffield Credit Union. However, he only worked on average 10 hours per week. He had worked for the Credit Union previously and prior to working for the respondent.

- 3.8. Within the Remedy bundle are copies of the claimant's GP records for the period from 15 September 2018 to 31 January 2019 (pages 138 to 141). There are also two letters from the claimant's GP Surgery. One is dated 14 August 2018 by Dr Meakin (page 142) and the other, dated 29 January 2019, by Dr Moody (page 143). It appears that these letters may have been prepared primarily for submission to the course provider, BPP Law School, with a view to reasonable adjustments being made in relation to the way in which the claimant attended the course and specifically with regard to examinations. However, the medical evidence overall shows that in the period since the claimant was dismissed his mental health has not improved and indeed it is likely that it has deteriorated. In addition to the conditions which were ultimately conceded by the respondent to be disabilities in relation to these proceedings, there are now references in the GP's letters to possible Attention Deficit Hyperactivity Disorder (ADHD).
- 3.9. On the basis of this evidence and what we have heard from the claimant himself, we are satisfied that he has sufficiently mitigated his loss. Undertaking the GDL course we find to be a reasonable step by the claimant in order that he can develop his career and interest in Housing Law by ultimately qualifying as a Solicitor. The claimant has been able to return to a former employer and he explained to us that that employer took a relatively relaxed approach to the number of hours the claimant worked as long as the required average hours were clocked up. We are satisfied that the claimant's ongoing vulnerability and delicate mental health excuses his failure to obtain more hours of better paid employment elsewhere.

4. The respondent's counter schedule and submissions

The thrust of the respondent's case is that the claimant should not be compensated beyond January 2018 when he started full time study for the GDL qualification. In his oral submissions Mr Thornsby suggested that the claimant could legitimately have sought the cost of borrowing money to fund the course fee and living expenses in circumstances where he had begun the course earlier than he had intended and before he could save up those monies – but he was not putting his case that way. We were invited to be sceptical that the claimant had planned to do the GDL course part time bearing in mind that he had applied for full time.

In terms of mitigation, Mr Thornsby reminded us that in paragraph 56 of the claimant's remedy witness statement he had said that he knew he should be searching for other work. Insofar as the claimant's health had prevented him applying for other work, this was something which was not foreseeable by the respondent and had been caused by unrelated illness. Mr Thornsby was critical of the medical evidence which the claimant had adduced which appeared to be related to the effect of the claimant's health on his ability to undertake academic examinations.

5. **The relevant law**

The Equality Act 2010 section 124(6) provides that the compensation to be awarded in the case of discrimination should correspond to the amount which the County Court could award in proceedings in tort.

In the case of Ministry of Defence v Cannock 1994 ICR 918, Morison J sitting in the EAT confirmed that the principle which applied was that the employee was entitled to be put into the position he would have been in had there not been unlawful discrimination. The compensation should be for the loss caused by the wrongdoing of the respondent providing that such loss was not too remote a consequence.

However, we are also mindful of the view expressed by the Court of Appeal in Essa v Laing Limited 2004 ICR 746. There it was held that the victim of unlawful discrimination was to be compensated for the damage or loss which was caused by and arose naturally and directly from the wrongful act and it was unnecessary to superimpose a requirement of reasonable foreseeability.

6. **The Tribunal's approach to the calculation of loss of earnings**

For the reasons set out above, we are satisfied that if the claimant had not been subjected to unlawful discrimination culminating in a discriminatory constructive dismissal, the scenario he sets out would have been, on the balance of probability, what would have happened. In short, he would have delayed entry on to the GDL course to September 2018. We therefore agree that he should be compensated in full up to that time, whilst giving credit for the earnings from the Credit Union job. He would then have sought and we find on the balance of probability obtained, a reduction in hours with the respondent to two days per week in order to enable him to begin the GDL course, also part time and that that state of affairs would have prevailed until the claimant completed his GDL course.

He claims no loss beyond that date on the basis that his intention would be to obtain better paid employment on the back of his new qualification or alternatively to undertake further legal studies.

It follows that we have adopted broadly the scheme of the projected loss of earnings within the relevant part of the claimant's schedule of loss.

We do not consider that any of this loss is too remote, insofar as that principle applies in this type of case. The respondent was during the course of the employment aware of the claimant's mental health difficulties. That those difficulties should continue, or be aggravated, if the respondent failed in its duties to make reasonable adjustments, leading to the claimant's resignation/dismissal was reasonably foreseeable. The loss which flows from that dismissal, including limitations on ability to mitigate that loss, comes within the category of loss caused by and arising naturally and directly from the unlawful discrimination.

SCHEDULEPast Loss

1.	23.11.2017 (effective date of termination) to 10.9.2018 (the date when, but for the discriminatory dismissal the claimant would have started the GDL course 41 weeks x £391.98 (full net pay)	£16,071.18
2.	10.9.2018 to 04.3.2019 (date of hearing) assuming claimant now only working 2 days to accommodate his studies 25 weeks x £200.15 (part time net pay)	<u>£5,003.75</u> £21,074.93
	Less earnings from Sheffield Credit Union job 11.6.2018 to 04.3.2019 38 weeks x £79.50 net	<u>£3,021.00</u> £18,053.93

Pension Loss

1.	23.11.2017 to intended start date for GDL, 10.09.2018 41 weeks x £51.34	£2,104.94
2.	10.09.2018 to 04.3.2019 at part time rate 25 weeks x £20.54	<u>£513.50</u> £2,618.44

Future Loss

1.	04.3.2019 to .6.1.2020 (completion date for GLD course) 45 weeks x £200.15	£9006.75
	Less earnings from new job (Sheffield Credit Union) 45 weeks x £79.50	<u>£3577.50</u> £5429.25

Future Pension loss

1.	45 weeks x £20.54	£924.30
	Less pension contributions from new job from December 2018 to 06.1.2020	

56 weeks x £1.36

£76.16

£848.14

Summary and Grand Total (before interest)

Past lost earnings

£18,053.93

Past lost pension

£2,618.44

Future lost earnings

£5,429.25

Future lost pension

£848.14

£26,949.76

Interest

Calculated from the mid-point, interest period is
233 days.

Interest rate 8% per annum

Daily rate £5.90

233 days x £5.90

£1,374.70

Grand Total including interest

£28,324.46

Employment Judge Little

22nd March 2019