No: 2300493/2017

EMPLOYMENT TRIBUNALS

Claimant: Mr Victor Efetie

Respondent: Compass Group UK & Ireland Limited

Heard at: **London South** **On: 23 to 25 January 2019**

Before: **Employment Judge Fowell**

Ms N Christofi

Mr S Goodden

Representation:

Claimant: In person

Respondent: Mr A Joicey, Employee Relations Partner

RESERVED JUDGMENT

1. The complaint of unlawful deduction from wages is dismissed.

2. The complaint of detriment under section 47B Employment Rights Act 1996 for making a protected disclosure is upheld.

3. The claimant is awarded compensation of £10,737.60

REASONS

Introduction

1. By a claim form brought on 27 January 2017, Mr Efetie brought complaints of unlawful deduction from wages and for being subject to a detriment on grounds of having made a public interest disclosure, commonly known as whistleblowing.

2. He has been working for the respondent (Compass) at the HSBC Sports and Social

Club in Beckenham since 2010, and since 2014 has been a duty manager. Initially he was on a casual contract but the increase in responsibilities in 2014 marked a change in his position and he became a zero hours employee. No contract to that effect was ever issued however.

3. The wages complaint arose from various causes. There was a dispute over his rate of pay, his entitlement to holiday pay and whether there was a guaranteed minimum of 25 hours per week. The whistleblowing complaint related to allegations he raised in October 2016 about timesheet irregularities among staff at the club, where he is still working. He claims that as a result he has been subjected to what amounts to bullying and harassment by a colleague, whom he accused of involvement in the timesheet fraud.

4. The situation is therefore ongoing. An application was made and approved at the preliminary hearing to amend the claim to includes a series of further allegations of bullying behaviour up to May 2017 and the relevant issues were set out in that order, which appears at pages 43 and 44 of the main bundle.

5. We heard evidence over three days, both from the claimant, and on behalf of the respondent from the club manager, Mr Aiyenuro; the senior duty manager – and the person accused of the bullying - Mr McFall; the club's financial controller, Mr Stephen Ledger; and a more senior manager, Mr Calum MacDonald. We were also assisted by a bundle of about 600 pages, which was divided into a main and a separate data bundle including many of the timesheets in question. Having considered this evidence we make the following findings.

Findings

6. Compass holds the contract to provide catering and support services to HSBC at their sports and social club in Beckenham. They acquired this contract in April 2014 and the staff there transferred to Compass employment. The site is a large one. It includes many sports fields, a general bar area, large function room and other large meeting rooms for events. Mr Aiyenuro is the general manager and for most of the period in question reported it to the regional manager, Vicky Taylor. Unless there is a large function or event on, there are generally only three or four employees on site. One of them is Mr Ledger who has been there since 1969. The core staff have contracted hours and are supported by others on zero hours contracts. This allows the club to cope with evening and weekend events, outside normal office hours.

7. There were generally three duty managers who would be in charge at such events: Mr McFall – who was contracted for 40 hours a week i.e. who was a permanent employee – Mr Efetie and a Mr Rakaj, also a zero hours employee. He and Mr Efetie were paid £9 per hour for this work.

8. Mr Efetie has maintained throughout that he had a discussion with Mr Aiyenuro at the

time of his appointment which guaranteed him 25 hours a week. Further, although he was still be working on the bar or as a waiter from time to time, he would be paid £9 for all his shifts, not just when he was duty manager.

9. There was also a long-running complaint about his holiday pay. This began when Compass took over the contract and dragged on for the next two or three years. Eventually, he was compelled raise a grievance, which he did on 11 July 2016. It was in two parts. The first part concerned his holiday pay, for which he claimed £1269.58. The second part concerned his rate of pay and hours. It was not resolved until he contacted ACAS to commence early conciliation, and that led to a COT3 agreement on 6 September 2016.

10. The terms of that agreement provided that he be paid £1574.08 - slightly more than the claim for holiday pay alone - "in full and final settlement of all existing claims in relation to wages that the claimant could bring against the respondent preceding the date of this agreement."

11. We considered the effect of this agreement as a preliminary point. It seemed to us that the wording of the agreement precluded any further claims in relation to wages. The respondent made no reference to this agreement in the response form, nor was it raised at the preliminary hearing, and so the potential effect of this agreement was not considered by the Tribunal at any stage.

12. The wording is not altogether clear, since the reference to existing claims does not sit easily with the exclusion of claims that the claimant "could bring". Nevertheless it is clear from his written grievance at page 87 that he had bought two specific complaints; one relating to holiday pay and the other relating to his claim to a guaranteed 25 hours per week paid at £9 per hour regardless of the type of work.

13. The wording includes the phrase "in relation to wages". We considered whether this included any offer of a guaranteed 25 hour week and concluded that it did. It would be artificial to separate the two. The same applies to the claim to be paid regardless of the type of work.

14. In any event, and having now heard further evidence about the working relationship, we note that no such agreement as claimed was ever documented and it is inconsistent with the nature of a zero hours contract to have such a guarantee. There is no suggestion that Mr Rakaj or other zero hours employees had any such guarantee, nor that Mr Aiyenuro had the authority to make any such commitment. The same applies to the suggestion that the same rate of pay applied regardless of the duties performed. There is a distinction between the two types of work and no obvious reason why the claimant should be paid more than other bar staff when carrying out the same work.

15. Regardless of the evidential position however, we conclude that as a matter of law any such complaint had already been compromised by this agreement.

16. The actual pay arrangements were difficult to determine given the extraordinary lack (for such a large company) of a clear contract or pay statements. Those pay statements did not give any demarcation between the two types of work. Over a period of years all Mr Efetie's hours were paid at £8.10 per hour. For reasons which never became clear they were unable to increase his hourly rate to £9 on the payslips. Instead, he was paid at £8.10 his work as a duty manager and his hours of work were artificially altered so that the appropriate total was shown. The potential for error and confusion is obvious.

17. The reasons given by the company for this state of affairs were that Mr Aiyenuro needed to make a business case to his manager Vicky Taylor, and that it needed to be "put onto the portal". The portal appears to be an internal website. No evidence was provided about why such a business case was needed - since this was the correct hourly rate for the job - or why it took so long. It was eventually resolved in April 2017. That coincided with a general increase for all Compass employees in the minimum rate of pay from £8.10 to £8.20. From then on, Mr Efetie's payslips recorded £8.20 for his bar work and £9 for his duty manager work. Apparently no difficulty was experienced in making this broader change to £8.20.

18. Mr McDonald, who joined the company in 2015 on their graduate development programme, was at that time the area manager and was appointed in April 2016 to investigate Mr Efetie's grievance. He was clearly disquieted about this state of affairs. This was the first grievance investigation he had conducted and it did not progress very far since in July he was promoted to another job in Edinburgh. The investigation of the grievance therefore lapsed. When Mr Efetie chased him in November that year he said that he had been advised that following the COT3 agreement in September there was no need for him to continue with the grievance investigation. We accept his account.

19. But despite this settlement agreement and the languishing of the grievance process, the reins were taken up again in early 2017 by a Mr Tony Plumer, Quality Assurance Director. Mr Plumer interviewed not only Mr Aiyenuro about this long-running saga but also Mr McDonald. He invited Mr Efetie to attend a grievance hearing too, although by then (February 2017) the claimant had started early conciliation in connection with his whistleblowing claim and declined to take part in the company's internal processes, thinking he would not get a fair hearing.

20. That investigation by Mr Plumer is not central to our enquiry, since it related to the wages issue rather than the whistleblowing, but we note:

    a. It is not clear why it focused on the wages issue and ignored the allegation of fraud made by the claimant the previous October, in the same unit.

    b. When Mr McDonald was interviewed he said that he had recommended disciplinary action against Mr Aiyenuro over the lengthy failure to account properly to Mr Efetie for his underpaid holiday pay.

21. That recommendation does not appear to have been acted on. The outcome letter of this grievance investigation was thorough and detailed. It went into the issue of the claimed 25 hour week and the claim for £9 per hour across the board, and found against Mr Efetie on this points. This level of attention formed a striking contrast with that given to the protected disclosure.

22. There was a further surprising area of confusion over who exactly was Mr Efetie's line manager. He said it was Mr Aiyenuro. Mr Aiyenuro and Mr McFall both said it was Mr McFall. That is at odds with the organisational chart produced by the company showing the three duty managers all reporting in to Mr Aiyenuro, one of whom is Mr McFall. The respondent says that the chart it produced is out of date.

23. We find that it makes little sense to regard or describe Mr McFall as Mr Efetie's line manager. It is only a small unit, with Mr Aiyenuro in charge, so there is no obvious need for the claimant to report in to anyone else. He clearly went to Mr Aiyenuro for all issues concerning his pay and hours. Mr Aiyenuro was office based whereas Mr McFall, like Mr Efetie, worked in a shift pattern. They overlapped but had little contact other than handing over shifts. Mr McFall was clearly more senior and was a permanent employee, but we find that the attempt to describe him as the claimant's line manager was simply an attempt to justify his behaviour towards Mr Efetie.

The whistleblowing allegation

24. On 12 October 2016 Mr Efetie sent an email to Mr Aiyenuro and also copied it to Vicky Taylor and to HR. It stated that he believed that an illegal, improper and unethical activity was taking place, and went on to describe that on Saturday, 8 October 2016 a member of staff, the main receptionist, LR, had been working extra hours in the evening on the bar. He asked her if she had signed out and she said yes. When he checked the timesheet he saw that she had signed out in the name of another staff member, BG. LR and BG were best friends. In fact, BG had not worked for Compass since July. He was concerned that LR was being allowed to sign in and out under a false name to avoid her pay affecting her entitlement to benefits. Essentially, the money she earned for her work on the bar would be paid to BG who would pass it onto LR. He alleged that she had been doing this by arrangement with the top management at HSBC Beckenham. In our view this can only mean Mr Aiyenuro.

25. He went on to explain at this hearing that the duty manager over that weekend had been Mr McFall and that he had checked and approved these timesheets.

26. Mr Aiyenuro responded to this email by calling Mr Efetie into his office. The claimant said he could not leave then and there as there would be nobody left to supervise, so Mr Aiyenuro sent down Mr McFall to replace him. On arrival, Mr McFall told him to get on up to the office. It is clear from this that Mr McFall was already aware of the allegation, although his evidence was that he did not find out about it for several months. We cannot accept that. The outcome was that LR and BG were both telephoned by Mr

Aiyenuro and told that they would not be offered any further hours. BG had already left, or at least not worked there since July, but LR was the main receptionist so her disappearance at least was obvious to all at the Club. We find it incredible that Mr McFall would not have known of her absence and the reasons for it from the outset. In any event, Mr Aiyenuro's evidence was that he personally did not inform the remaining staff about the incident but left it to Mr McFall to do so.

27. Mr Aiyenuro's account was that the action he took in telephoning these zero hours staff was done on advice. He accepted that if they had been employees, a disciplinary investigation would have been appropriate, and that if any manager involved had been implicated it would have been gross misconduct. There was however no such investigation.

28. Given that Mr McFall specifically approved the timesheets in question and was working with LR over that weekend, the claimant's view that he was involved appears to us a reasonable inference and one which at least merited investigation. Clearly the HR Department had been advised from the outset of the allegation but it is not clear what involvement they had in what followed.

29. On 25 October 2016 Mr Efetie was interviewed about it by Mr Jamie Southgate, the Regional Account manager. Handwritten notes of that meeting record that he thanked Mr Efetie for "speaking up" - the company's whistleblowing policy is called the "Speak Up" policy - and explained that he would reflect on what he had told him and take the appropriate action. Mr Efetie, however, never heard from him again.

30. In a separate initiative, an audit was then carried out by a Mr Andre Murrell on 8 November 2016. This was described as a "Profit Protection Review." Mr Efetie was not interviewed about this, and despite Mr Morrel going into the club, neither was Mr Ledger the financial controller. Mr Ledger dealt with and usually signed off all of the timesheets as correct. He had no contact with Mr Morrell at all. The only person spoken to who was Mr Aiyenuro.

31. Even that investigation did not appear to look at the matter from the point of view of a potential fraud. It appears to have been regarded as a discrepancy in the timesheets. His relatively brief report does not make reference to this incident at all, save by implication in the brief statement of key findings. According to these, team members were not always signing the timesheets and there were some inconsistencies in staff handwriting. He gave two examples from February 2016 relating to BG.

32. There was therefore no specific mention of this incident in October 2016, and the fact that other "inconsistencies" had occurred in February supports Mr Efetie's view that this practice had been going on for many months.

33. No further steps were taken however, and that was the end of any investigation into the matter. It follows that Mr Efetie had accused Mr McFall of conspiring in dishonest

conduct, accused Mr Aiyenuro of complicity, and the matter was simply left for local resolution by Mr Aiyenuro himself, a man who had previously been recommended for disciplinary action in relation to the failure to pay Mr Efetie's holiday pay correctly over a period of years. That seems to us to have placed Mr Efetie in an extremely exposed and difficult position.

34. The other staff were clearly aware that LR and BG had left. There was no written communication the staff about it and it is not clear what, if anything, was said formally. Mr Aiyenuro said that he left it to Mr McFall to cascade the news to the staff. As already noted, Mr McFall said at first that he did not know about the incident for months, then that Mr Aiyenuro told him something of it, then that he would have just told staff to be careful with timesheets.

35. Mr Efetie say that he came to be regarded as a 'grass' by his colleague and referred to as such, which we accept was the case. The claimant's tenuous position was revealed in several passages of evidence. The respondent's case was that if he was spoken to abruptly at any stage it was because of various shortcomings on his part. Mr Aiyenuro was asked in the course of his evidence why in that case Mr Efetie, as a zero hours employee, was given any further work. He responded that he was a good worker and that they did not want him to think that it was to do with the employment tribunal. They would "deal with it" afterwards. Mr McFall also said they had been told to tread carefully. Mr Efetie's position was clearly in question as early as the grievance process. When Mr Aiyenuro was interviewed by Mr Plumer in February 2017, he asked at the end "Where do I go from here – he is still working?" to which he was told to carry on as normal.

36. It may be that those continuing investigations into the grievance ensured that no action was taken and Mr Efetie's contract until that stage, and by then he had begun the early conciliation over his whistleblowing claim.

37. So, the situation at that time was that there were three duty managers - Mr Rakaj, Mr McFall and Mr Efetie. We heard that Mr Rakaj said before Xmas that he was leaving. Mr Aiyenuro then set about recruiting a new duty manager, Kate Crozier. The training pipeline was about two weeks though, and Mr Rakaj did not leave until mid-April 2017, which begs the question why she was recruited so soon. We conclude that they were already planning to replace Mr Efetie, a view supported by subsequent events.

38. Mr Efetie's work difficulties became more acute over the Christmas period. On the evening of 28 December 2016, Mr Aiyenuro came in to do the duty manager role instead of him, and the following day Ms Crozier was given her first independent shift. Mr Efetie was instead given some hours as bar staff. When he returned to work for his first shift as duty manager in the New Year, on 3 January, the atmosphere had changed for the worse. Mr McFall ignored him when he greeted him and again when he asked him about the day's business. Mr Efetie persisted and Mr McFall responded in a hostile manner that he (Mr McFall) was there to make sure he did his job and did not finish at

midnight. This was calculated to offend. Then, during the course of that evening shift, Mr McFall took over his duties without any explanation. Whilst Mr Efetie was in the middle of locking up the sports hall, which involves making several checks including that the fire doors are shut, Mr McFall came in behind him, went over to the alarm system, turned the alarm on (which means that it will go off if they remain their very long) and told him to leave the building. He was also then prevented from doing the end of shift cash reconciliation and safe check. The relevant records show that it was Mr McFall who did so. Mr Efetie found all this offensive and humiliating.

39. We preferred the claimant's version of events over this matter for a number of reasons. His account, as it has been throughout, was detailed and consistent. Mr McFall on the other hand said he could not really remember the incident and though perhaps he had not noticed Mr Efetie in the sports hall. But as Mr Efetie pointed out, that would mean that he had set the alarm without carrying out any checks. In any event, Mr Efetie painted a clear picture of Mr McFall observing him and setting the alarm in order to order him out.

40. It is clear that Mr Efetie is a stickler for the rules. That appears from the protected disclosure itself and from number of other issues which he referred to in the course of evidence which it is not necessary to rehearse since they do not relate to the agreed issues. Of the issues set out at the preliminary hearing, one involved an issue he raised about staff helping themselves to drinks, which was an informal practice which the claimant was concerned about. It is not disputed that he raised a concern about this and this no doubt led some resentment from other members of staff. He also raised concerns from time to time about health and safety matters. We conclude that he was regarded as something of an irritant.

41. Following the hostile reception he received in the New Year, and having heard nothing further about his whistleblowing allegation against Mr McFall and Mr Aiyenuro, Mr Efetie then contacted ACAS. This was done next day, 4 January 2017. It may well have helped to safeguard his job. The intention to replace him was not put into effect. He remained as duty manager and Kate was only given very occasional shifts over the next few months. According to the respondent's records these amounted to only 64 hours between New Year and Easter. We conclude that following early conciliation, instructions were given to ensure that the claimant was not dismissed, frustrating the plans for his removal.

42. From then on there was less overt hostility but things flared up from time to time into noteworthy incidents every month or so until 6 May, which is the last date we are able to consider. In relation to each incident we accept the claimant's version of events as more consistent, detailed and reliable. The first of these was on 4 February 2017 when he came in to start his shift to find three A4 pieces of paper with messages on him from Mr McFall. Each had a few words scrawled on them in large capitals and some underlining, for example:

VICTOR <u>ONLY ONE TILL</u> PLEASE

43. This was left on the till. Another stated:

DO NOT DO ANY PIES

44. This was left at the hot counter. Mr McFall's evidence was that he was probably in a hurry and had just scrawled a note. That does not however seem to us likely. It takes longer to write in very large capitals, and these notes contrast with earlier examples – all of which were retained by the claimant - showing more detailed notes quickly handwritten. Another suggestion by Mr McFall was that a different duty manager had had to have things explained very firmly to them and so he had followed the same practice. This rather underlines the impression of shouting and talking down to the claimant. They are, at least, abrupt and unnecessary. He was upset by them, and hence retained them for future use.

45. On 25 March 2017 Mr Efetie returned to work after six days' absence and found that there was to be a bowls club dinner that evening. For events of that sort a form is filled in setting out the details of the event but this one did not show the table arrangements. Mr Efetie called Mr Aiyenuro, who was at home, to find out. It was a Saturday. Nevertheless, Mr Aiyenuro came in to help. He told Mr Efetie what to do and was still there when Mr McFall came in to take over for the evening shift. There was then a row. Mr McFall summoned him to the function room where he was talking to Mr Aiyenuro and started shouting at him in an intimidating and hostile manner, saying that he was not fit to be a duty manager and he was going to put in a written complaint to head office. This was in front of other members of staff. Mr McFall denied any such outburst and pointed to the fact that the table details were on the form, and it was the same form used in previous years which had simply been re-dated. Mr Efetie says that the table plans do change depending on the numbers attending, and these brief details were added later. Mr Aiyenuro supported Mr McFall's account, saying that he checked the form when he came in on the Monday. At first he could not accept that he had been in on the Saturday but later did so since it is mentioned in his own statement. Then he said that he checked the form on the Saturday and the Monday. Again, we prefer Mr Efetie's account as the more consistent. But regardless of the state of the form, at worst he had simply overlooked the information provided. Mr Aiyenuro made no complaint, then or now, about being telephoned at home or coming in, and the aspect which appeared to annoy Mr McFall in particular was that Mr Efetie had, as he saw it, gone over his head to Mr Aiyenuro.

46. On 1 April 2017 Mr Efetie was the duty manager of the morning shift and Mr McFall was again coming in to relieve him in the evening. When he arrived, Mr Efetie told him that the pies and pastries in the hot display should not be sold after 5 o'clock in accordance with food hygiene regulations. They are only allowed to be kept for four hours on the hot food display. Mr McFall simply told staff to ignore him and keep selling the pies. Mr McFall denied this and was clearly aware of the health and safety regulations. His

normal practice, he said, at the end of the four hours, was to give them out free to the rugby players in the bar so that they would stay and have more beers. Again we prefer the claimant's account as more consistent with the background situation, the fact that it is the sort of careful instruction he would give, and that Mr McFall was likely, given the view that we have formed, to react badly to being told to do anything by the claimant.

47. On 22 April 2017 Mr Efetie was again the duty manager on the morning shift, and this time there was to be a wine reception in the evening. Again, he called Mr Aiyenuro on the phone to discuss the request because again he was lacking information about who was going to come in and man the event. When Mr McFall came in, he explained that he had called Mr Aiyenuro about it, and again he became angry, taking him to task for calling Mr Aiyenuro and saying again in front of staff and customers that he was not fit to be a manager. In his evidence Mr McFall denied shouting but repeated the point that it was Mr Aiyenuro's day off and the claimant should not have been calling him. Again, we prefer the claimant's account for the same reasons as before. As an aside, since the evening shift often continues into the early hours of the morning and the night duty manager will need to get some rest, it seems to us understandable that Mr Efetie would contact Mr Aiyenuro during the day for information. In any event we are satisfied that there was a further angry outburst from Mr McFall.

48. The final incident was on 6 May 2017. This time a birthday party was to be held in the evening when Mr McFall would be the duty manager as usual. There was more than the usual information to impart so he went over to Mr McFall to brief him on what was required. Mr McFall appeared irritated, and simply ignored him whilst he carried on looking at a football match on the TV. After a while, during which Mr Efetie persisted in explaining things, he broke off from the TV and shouted at Mr Efetie, in front of staff and customers, that he should sign out and he would look after the till and the function.

49. That was the last incident we are able to take into account, although we accept that not long afterwards, on 2 July 2017, Mr Efetie was signed off work on account of the stress he was suffering, which included palpitations, forgetfulness, insomnia, fatigue and dizziness. His GP diagnosed stress from "situational crisis". He returned to work but was then signed off for a further two weeks on grounds of stress a little later.

50. It is clear that this was a connected series of events. On each occasion it was not disputed that some such event had occurred or may have occurred but the seriousness was downplayed or excused by the respondent. We find on the contrary that they combine to form a coherent picture of a fractured working relationship.

Conclusions

51. The application of the law to these facts is relatively straightforward. The first point is that the wages claim cannot succeed, since given our findings it follows that Mr Efetie was correctly paid for the shifts that he worked.

52. As the whistleblowing claim, it is equally clear from the above that Mr Efetie suffered detrimental treatment over a period of about eight months following his disclosure and the only remaining question is whether they are connected. It seems to us that no other conclusion is possible. It may be that there were other personal factors at play. Mr Efetie and Mr McFall may be different personalities. Mr McFall may also have seen himself as Mr Efetie's line manager, or at least entitled to give him instructions, and resented him contacting Mr Aiyenuro. But the main cause of all this, it appears to us, is the allegation made in October 2016. Prior to that, the claimant had worked with Mr McFall without any incident or disagreement for over six years. He had had difficulties over his pay, for which his complaints were fully justified, but these had all been resolved with Mr Aiyenuro. It also has to be remembered that the allegation was essentially one directed at Mr McFall, and was particularly serious. It would be highly surprising in the circumstances if there was not friction between the two of them after this was raised and we can only express our surprise that no action was taken to address this working relationship from the time of the disclosure.

53. Section 47B of the Employment Rights Act 1996 provides that where a worker is subjected to a detriment by another worker, that thing is treated as also done by the worker's employer and it is immaterial whether it was done with the employer's knowledge or approval.

54. Detriment is not defined in the Act but it is well established that it covers general unfavourable treatment, and certainly the sort of bullying behaviour found have occurred above. For example, In *Kember v Boots Management Services Ltd ET Case No.1601210/14*, an unreported case cited in the IDS Employment Law Handbook on Whistleblowing, the claimant was a pharmacist who was short-staffed and decided to close the pharmacy for an hour. She informed her managers by email and was then criticised in front of her colleagues. It was accepted that this was a detriment on grounds of a protected disclosure - in that case the lack of staff.

Compensation

55. As to the level of compensation, the main element here is clearly injury to feelings. These incidents took place over a period of more than six months and they were far from trivial, either individually or collectively. It is no surprise that Mr Efetie went off work sick shortly afterwards.

56. We remind ourselves that the purpose of such an award is compensation rather than to punish the employer. Further, we are not able to take into account that his employment has continued for a further 18 months, on his account, the position has not improved.

57. In *Virgo Fidelis Senior School v Boyle 2004 ICR 1210, EAT*, the employment appeal Tribunal held that it was appropriate to adopt the same approach to compensation in whistleblowing detriment claims as has been taken in discrimination cases. This means that employment tribunals may award damages for injury to feelings, and in doing so

should adopt the general guidelines that apply to discrimination claims, which were set out by the Court of Appeal in *Vento v Chief Constable of West Yorkshire Police 2003 ICR 318, CA*. These guidelines provide for three broad bands: a top band applicable to the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment; a middle band applicable to serious cases that do not merit an award in the higher band; and a lower band applicable to less serious cases, such as where the act of discrimination is an isolated incident or one-off occurrence.

58. The repetition of these incidents and the resulting medical absence all, in our view, combine to place this within the middle band. We have had regard to the recent guidance from the President of the Employment Tribunals which updated the Vento bands for claims submitted after 11 September 2017 - which is shortly this claim form was lodged. Nevertheless, allowing for interest, which may be awarded, and for which we make no separate allowance, this new guidance is an appropriate starting point for what is inevitably a somewhat subjective exercise. It places the top of the lower band at £8400. Our view, after considering all the evidence, was that an award of £10,000 was appropriate.

59. We were invited to reflect in this amount some deduction for the claimant's failure to engage with the grievance process but we did not conclude that that was appropriate. The grievance related entirely to pay issues. Mr Efetie co-operated fully with the very limited investigation into his whistleblowing complaint, and his concern that he would not get a fair hearing appears to us entirely understandable in the circumstances, given that he heard nothing further from Mr Southgate.

60. Some modest financial losses also appeared to us to flow from the premature appointment of Ms Crozier, when it was intended that she replace Mr Efetie. As noted above, she completed 64 hours during the period in question. If he had received half of those hours, at £9 an hour, the total would have amounted to £288. The respondent's figures show that in practice he worked a little over half of the total hours available to the two supporting duty managers and so we round this up to £300.

61. Finally, we address the failure to provide a contract of employment. By section 38 Employment Act 2002 the Tribunal may award between two and four weeks' pay for such a failure. Given the extensive period in question and the pay difficulties this has given rise to, we award four weeks' pay. This has been agreed on the basis of recent earnings as an average of £109.40 and so amounts to an additional £437.60.

62. It follows that the total compensation is:

    a. injury to feelings - £10,000

    b. financial loss - £300

    c. award under section 38 employment act 2002 - £437.60

Total - £10,737.60

63. To that extent the whistleblowing complaint is allowed. We have no power to make a recommendation in such a case, as in cases of discrimination, but Mr Joicey assured us that the situation would now be addressed and we express the hope that active steps will now be taken to address these working relationships.

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Employment Judge Fowell

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Date 1 February 2019