



EMPLOYMENT TRIBUNALS

Claimant: Miss J Henry

Respondent: Arnfield Care Limited

Heard at: Manchester

On: 8 May 2019

Before: Employment Judge Hill
Ms C S Jammeh
Mrs C Clover

REPRESENTATION:

Claimant: Mr M Mensah - Counsel

Respondent: Mr S Flynn - Counsel

JUDGMENT ON REMEDY

The judgment of the Tribunal is that the respondent is ordered to pay the claimant the sum of £18,406.16. This is made up of £15,000 for injury to feelings, £500 for aggravated damages and £2,906.16 interest.

REASONS

1. It was agreed between the parties at the commencement of the hearing that whilst the Claimant had provided a schedule of loss in respect of a basic award and compensatory award/future losses that the only live issues for the Tribunal to determine were compensation for injury to feelings; personal injury and aggravated damages.

2. The Claimant produced a witness statement and gave oral evidence. The Claimant also produced a copy of her medical records from her GP and a letter from her GP dated 2 May 2019. The Respondent produced a witness statement from Mr Paul Knowles and provided a copy of their 2011 OFSTED report along with an updated report dated November 2018.

3. The GP records show that she visited her GP on 20 December approximately two weeks after she had attended the Christmas party displaying signs of being anxious and she was prescribed Propranolol.
4. The Claimant revisited her GP on 5 June 2017 where she described the two incidents of harassment and explained that she was having difficulty sleeping; struggling to leave the house and was having panic attacks. She also described feeling embarrassment and that she was the victim and it was not her fault.
5. The Claimant gave evidence that as a result of the discrimination she has experienced anxiety and panic attacks. She explained that it had affected her confidence; her self-esteem; emotional and mental wellbeing; relationships; friendships and physical health. The Claimant has now developed IBS as a result of the anxiety and stress.
6. The Claimant also has feelings of guilt as a result of not raising her concerns formally or sooner and that she had asked her sister and friend to attend the hearing to give evidence of the harassment she had experienced from Dawn Harvey.
7. The consequences of the discrimination and her feelings of anxiety has affected her university course and her grades. She also gave evidence that as a result of the actions of Dawn Harvey and others that she is fearful about entering the profession of Social Workers and encountering issues.
8. The Tribunal accepted the Claimant's evidence that as a direct result of the harassment, she suffers from anxiety and the symptoms and effects referred to above.
9. The Tribunal considered that the impact of the discrimination became worse after her employment ended and particularly as a result of the Respondent's actions at or around the time she resigned and afterwards. However, the Tribunal finds that this does not diminish the anxiety and stress the Claimant experienced as a direct result of the harassment.
10. The Tribunal finds that the Claimant's anxiety is a result of the acts of discrimination and continues and that whilst they have been compounded by the events surrounding the termination of her employment and thereafter, that the anxiety caused by the harassment remains.
11. Mr Knowles' statement says that there has been a change of management and that the company has been 'proactive in implementing measures' as a result of the Tribunal's decision.
12. The Respondent set out an apology in the statement but as at the date of the hearing had not directly proffered an apology to the Claimant.
13. The Respondent has employed a full-time training officer and has updated their induction training to all staff including revised equality and diversity training. Dawn Harvey has had updated training.
14. The Respondent has carried out an investigation into the events leading to the claims upheld. The Respondent states that it will use the findings to improve practice and implement remedial measures.

15. The Respondent has not taken any disciplinary action in respect of the findings of the tribunal.

The Law

16. An Employment Tribunal may order a respondent to pay compensation to a claimant if it finds that there has been a contravention of a relevant provision in the Equality Act 2010. When considering compensation a Tribunal is required to make an award that it considers just and equitable. Section 124 of the Equality Act makes provision for an award of compensation:

- a. 1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).
 - b. (2) The tribunal may—
 - i. (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
 - ii. (b) order the respondent to pay compensation to the complainant;
- (6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court or the sheriff under section 119.

17. When considering compensation in respect of discrimination the Tribunal is assisted by the Presidential Guidance in relation to injury to feelings and psychiatric injury. In ***Vento v Chief Constable of West Yorkshire Police (No 2) [2002] EWCA Civ 1871***, the Court of Appeal identified three “bands” of potential awards for discrimination claims:

- a. £500 - £5,000 - The lower band applies to “less serious cases, such as where the act of discrimination is an isolated or one off occurrence”.
- b. £5,000 - £15,000 - The middle band “should be used for serious cases, which do not merit an award in the highest band”.
- c. £15,000 - £25,000 - The top band is appropriate for “the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment...”.

18. The court also went on to determine that it would only be in “*the most exceptional cases*” that an award would exceed this top band.

19. The “bands” have been updated by ***Da’Bell v NSPCC 92009) EKEAT/0227/09 IRLR 19*** and taking account of ***Simons v Castle and De Souza v Vinci Construction (UK) Ltd***, are currently set at: lower band, £800 to £8,400; middle band £8,400 to £25,200 and upper band £25,200 to £42,00.

20. An Employment Tribunal may award compensation for personal injury/damages relating to psychological injury caused by unlawful discrimination as a

separate head of loss. This was confirmed in *Sherriff v Klyne Tugs (Lowerstoft) Ltd 1999 ICR 1170 CA*.

Injury to Feelings

21. We consider in this case that an appropriate award falls squarely within the middle band of Vento.

22. The Tribunal found that there was a culture of racist language and behaviour within Arnfield Care Limited. Specific examples are set out at paragraph 36 of the Judgment, where the respondent's employees set out examples of such behaviour. No action was taken against any staff member at the time and indeed even as a result of the Tribunal's findings no disciplinary action has been taken against any member of staff.

23. We therefore accept the claimant's submission that the claimant had worked within an atmosphere where racial comments were prevalent and unchallenged and there was no realistic redress to management as they were complicit in the same.

24. The respondent suggested that the claimant had not raised a grievance at the time of either incident and that the effect of the racial abuse was not so severe. We find that it is entirely reasonable, based on our findings in respect of the culture of the organisation, that the claimant would have found it extremely difficult to raise her concerns at the time. However, while Dawn Harvey was absent from work the Claimant did raise concerns with Elaine French as set out at paragraph 17 of the Judgment when she knew that Dawn Harvey was due to return from sick leave, and she also raised a grievance on 1 June 2017.

25. At the meeting with Elaine French the Tribunal stated at paragraph 16 of its Judgment that she had heard comments that she considered potentially discriminatory and that had made her feel uncomfortable. The Claimant's evidence was that this reflected the way she was trying to deal with the situation, the best way that she could and not evidence on how the racial abuse had affected her. The Tribunal accepts this evidence.

26. The Tribunal finds that the racial stereotyping and comments made by Dawn Harvey either directly to or in front of the Claimant to be of a serious nature. Dawn Harvey was in a senior position and the Claimant worked under her. The Claimant gave evidence at this hearing and in the liability hearing that she had never experienced this type of behaviour before. She felt unable to challenge the behaviour at the time and this had left her with feelings of shame and guilt.

27. The Claimant was not provided with regular supervision where there was a safe space for her to raise concerns and it was clear to the Claimant that racial comments of this type were not dealt with by the management of the Respondent and the Tribunal found that the Respondent and its senior staff were complicit in it.

28. The Claimant gave evidence in a compelling and considered manner regarding the effect the harassment has had on her at the time and subsequent to her employment ending. The claimant's evidence of how the harassment affected her is set out within her witness statement.

29. Whilst the Tribunal accepts that some of the impact upon the claimant is as a result of the events that occurred on or after 1 June 2017, we had sufficient evidence within the witness statement, the medical records and reports to demonstrate that the claimant had suffered stress and anxiety and had visited her GP within two weeks of the second serious incident, and was so distressed that she was prescribed propranolol. The claimant told us that she was stressed, experienced anxiety, panic attacks and was embarrassed. We accepted this evidence.

30. The Respondent argued that when raising her concerns with Elaine French the Claimant considered the discriminatory behaviour to be 'potentially discriminatory' and made her feel 'uncomfortable'. The Respondent's case was that as she had continued to work for the Respondent and able to continue working under the management of the perpetrator that this does not accord with the harassment being serious. We do not agree.

31. The Claimant's language in raising her concerns does not provide evidence of the effect the harassment had on her. In addition, it is not unusual for employees to continue working in an environment that is hostile or where they have been subjected to racial harassment. The Claimant should not be criticised for trying to raise her concerns in a calm conciliatory manner and nor should she be criticised for continuing to work for the Respondent.

32. Turning to the amounts of the award:

(1) Injury to feelings –

- (a) We considered that the harassment was of a serious nature and it was not a one-off incident or an isolated event. There was a culture of racist language and behaviour.
- (b) The harassment was carried out by a senior staff member towards a junior employee.
- (c) These were two very serious incidents of racist stereotyping and language said in front of or directly to the claimant. Looking at the totality of the harassment and the effect it had on the claimant we considered that this falls squarely within the middle band.
- (d) The impact on the claimant was serious and she was prescribed medication, and the effects have been long-lasting, and therefore we make an award of £15,000.

(2) Personal injury –

- (a) We accept that the claimant has suffered mental and physical symptoms as a result of the psychological effect of the harassment, but find that we have insufficient medical evidence to show that the acts of harassment resulted in the psychiatric harm and that there was a further intervening act of victimisation in or around June 2017 that formed much of the effect of this psychological harm. Therefore, we consider that we cannot make a separate award for personal injury.



(3) Aggravated damage:

- (a) We accept the respondent's arguments that some of the claimant's claims in respect of aggravated damages is in relation to the victimisation or the potential victimisation claim which was not pursued. However, we consider allegations (f) and (g) to be grounds upon which we can make an award. The allegation of accusing the claimant of being a conspirator theorist and manner in which the respondent's witnesses conducted themselves at the substantive hearing in particular laughing while the claimant gave evidence we find to be an aggravating feature in this case. We therefore make an award of £500.

33. The Tribunal awards interest at the rate of 8%.

34. The Tribunal considers that it is just and equitable in the circumstances to make a total award of compensation for injury to feelings in the amount of £18,406.16.

Employment Judge Hill

Date 03 June 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

7 June 2019

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2404062/2017**

Name of **Miss J Henry** v **Arnfield Care Limited**
case(s):

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **07 June 2019**

"the calculation day" is: **08 June 2019**

"the stipulated rate of interest" is: **8%**

MISS K MCDONAGH
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.