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EMPLOYMENT TRIBUNALS

Claimant: Miss M Mulwanda

Respondent: Shiloz Services Limited

Heard at: East London Hearing Centre

On: 11 March 2019

Before: Employment Judge Goodrich

Members: Mr T Burrows
Mrs GA Everett

Representation

Claimant: Mr A Rozycki (Counsel)

Respondent: Mr R Claire (Counsel)

JUDGMENT/ORDER ON REMEDY HEARING

The judgment of the Tribunal is that:-

1 The Respondent is ordered to pay the Claimant compensation for unfair dismissal and protected disclosure detriments of £26,642.95, as further set out below.

2 The Recoupment Regulations do not apply.

3 The Respondent is ordered to pay the Claimant £3000 costs, as further set out below.

REASONS

Background and the Issues

1 The background to this remedy hearing is as follows.

2 In a judgment that was sent to the parties on 22 February 2019 the Tribunal determined that:

2.1 The Claimant was unfairly dismissed.

2.2 The Claimant has been subjected to detriment on the ground of making a protected disclosure, to the extent further set out below.

2.3 The Claimant's claim for wrongful dismissal (notice pay) succeeds.

3 In preparation for this remedy hearing the Claimant had prepared a schedule of loss.

4 Additionally, the Claimant made an application for costs.

5 At the outset of the hearing the Tribunal discussed with the parties what were the issues we were required to decide; and gave them an opportunity to have discussions on the schedule of loss and costs application; and for the Respondent to notify the Tribunal what their counter schedule of loss was.

6 The parties were able to reach agreement as to what the Claimant's gross and net pay were.

7 After discussion with the party's representatives the agreed issues for the Tribunal to determine were as follows:

7.1 The period for which to make a loss of earnings award. The parties disputed whether the Claimant has taken reasonable steps to mitigate her losses; and, if not, what her losses would have been had she taken reasonable steps to mitigate.

7.2 The parties disputed what sum should be awarded by way of injury to feelings. The Claimant submitted £10,000; the Respondent £5,000 (to which interest on injury to feelings should be added).

7.3 The parties disputed whether an increase of award should be made for (on the Claimant's case) that the Respondent had failed to comply with the ACAS code on grievance procedure.

7.4 The Claimant's representatives made an application for costs. Initially the

Claimant schedule of loss included what appeared to be a costs order and a preparation time order. Upon the Judge pointing out that both could not be claimed Mr Rozycki clarified that the claim was made for costs alone. The costs claimed were £6,170 for counsel's costs and £996 for solicitor's costs.

The Relevant Law

Injury to feelings

8 Section 49 Employment Rights Act 1996 ("ERA") provides:

"(1) where an employment tribunal finds a complaint under section 48(1)… well-founded, the tribunal –

(b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

Section 49(2) ERA provides: …the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to –

(a) The infringement to which the complaint relates, and

(b) Any loss which is attributable to the act, or failure to act, which infringed the complainant's right."

9 In the case of *Virgo Fidelis Senior School v Boyle [2004] IRLR 268 EAT* it was held that awards of compensation for injury to feelings in protected disclosure (whistleblowing) detriment cases should be based on the guidelines set out in *Vento v Chief Constable of West Yorkshire Police* regarding the level of awards for injury to feelings in race and sex discrimination cases.

10 It was also stated that detriments suffered by whistle-blowers should normally be regarded by Tribunals as a very serious breach of discrimination legislation.

11 In the case of *Melia v Magna Kansei Ltd [2006] IRLR 117 CA* it was held that section 47B(2) ERA excludes detriment which can be compensated under the unfair dismissal proceedings. If an employee suffers a detriment due to making a protected disclosure and is then dismissed by the employer, the employee will be entitled to compensation for the detriment under section 49 right up until the date of dismissal, or after the dismissal, but not for the dismissal itself. The position is no different in the case of constructive dismissal.

12 In the case of *Vento v Chief Constable of West Yorkshire Police [2003] IRLR 102 CA* it was held that there should be three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury. The top band identified should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment. The middle band should be

awarded for serious cases, which do not merit an award in the highest band. The lowest band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence.

13 In the case of *Da'Bell v NSPCC [2010] IRLR 19 EAT* it was held that the guidelines for awarding compensation for injury to feelings set out by the Court of Appeal in *Vento v Chief Constable of West Yorkshire Police [2003] IRLR 102 CA* should be updated in line with inflation.

14 The Presidential guidance in injury to feelings awarded dated 5 September 2017 provided that the lower band for injury to feelings would be £1,000 - £8,000; the middle band from £8,000 - £25,000; and the upper band from £25,000 - £42,000.

15 The Employment Tribunals (Interest on Awards in Discrimination cases) Regulations 1996 provide for interest to be awarded for injury to feelings in claims falling within Regulation 1 (protected disclosure detriment claims do not fall within these Regulations).

Compensatory awards for unfair dismissal

16 Section 123 ERA provides that the amount of a compensatory award for unfair dismissal shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

17 123(4) ERA provides that in ascertaining the loss referred to under subsection (1) the Tribunal to action taken by the employer.

18 Section 123(4) ERA provides that in ascertaining the loss referred to under subsection (1) the Tribunal shall apply the same rule concerning the duty to mitigate his loss as applies to damages recoverable under the common law of England and Wales.

19 The duty to mitigate is for a Claimant to take reasonable steps to mitigate their loss. This is an issue of fact for a Tribunal to determine, with the focus being on the individual's particular circumstances. The onus of showing a failure to mitigate lies on the employer as the party who is alleging that the employee has failed to mitigate his/her losses.

20 If a Tribunal finds that an employee has failed to take reasonable steps to mitigate their losses it needs to consider what the likely outcome would have been if the Claimant had taken reasonable steps to mitigate their losses.

21 A loss of earning claim will be based on the net earnings of an employee.

22 In addition, under the auto enrolment provisions of the new state pension, up to April 2018 the employer must make a mandatory minimum contribution of 1 percent of pensionable pay by way of contribution to the employee's pension; and from April 2018 2 percent.

Adjustment of awards

23 Section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULCRA") provides that in any proceedings before an Employment Tribunal any code or practice issued by ACAS shall be admissible in evidence, and any provision of the code which appears to the Tribunal to be relevant to any question in the proceedings shall be taken into account in determining that question.

24 Section 207A(2) TULCRA provides that:

> "(2) if, in the case of proceedings to which this section applies, it appears to the Employment tribunal that –
>
> (a) The claim to which the proceedings relate concern a matter to which a relevant Code of Practice applies,
>
> (b) The employer has failed to comply with the Code in relation to that matter, and
>
> (c) The failure was unreasonable,
>
> The Employment Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by not more than 25 percent."

Costs

25 Rule 76 of the Employment Tribunal Rules of Procedure 2013 provides that:

> "(1) the tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that –
>
> (a) A party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted".

26 The Tribunal has, therefore, a two-stage process in deciding whether to make such an order. The first stage is to decide whether the threshold has been reached to require consideration as to whether to make an order.

27 The second stage, if the threshold has been reached, is to consider whether to exercise that discretion to make a costs order.

28 In the case of *Barnsley Metropolitan Borough Council v Yerrakalva [2011] EWCA CIV 1255* it was held that the vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there was unreasonable conduct (in that case by the Claimant) in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects

it had.

29 Rule 84 provides that in deciding whether to make a costs order, and if so in what amount, the Tribunal may have regard to the paying party's ability to pay.

The Evidence

30 On behalf of the Claimant, the Claimant gave evidence herself.

31 In addition, the Claimant's representative showed the Respondent's representative documents relating to her schedule of loss (although copies were not provided to the Tribunal) (although copies were not provided to the Tribunal, the accuracy of the documents was not disputed and the Claimant not cross-examined on any of them).

Findings of Fact

32 The Tribunal sets out the findings of fact it considers relevant and necessary to the issues we are required to decide. We do not seek to set out each detail provided to us, although the Tribunal has in mind all the evidence provided to us.

33 Additionally, this remedy judgment needs to be read in conjunction with the judgment at the liability hearing and both the Tribunal and the parties are bound by the findings of fact we made.

Mitigation of Loss

34 The Claimant gave evidence as to the steps she took to mitigate her losses. The Tribunal found the Claimant to be straightforward in giving evidence and her answers to be plausible and convincing.

35 The Claimant did not apply for any similar jobs in the care industry as the one she had been working for with the Respondent. Her explanation for not doing so was because of having been told by Mrs Akpan that she would ensure that she (the Claimant) would not secure another job in the care industry (see paragraphs 98 and 102 of the Tribunal's judgment at the liability hearing). Neither, in the light of Mrs Akpan's remark, did she believe that Mrs Akpan would give her a favourable reference.

36 Instead, the Claimant looked for work in administration and childcare, which were types of work for which she had previous experience.

37 The Claimant registered with agencies for work, particularly Reed and Total Jobs.

38 The Claimant applied for suitable jobs that was sent to her by the agencies and looked online for suitable work.

39 Additionally, the Claimant went to visit different companies in Chelmsford and around Chelmsford to given them her CV.

40 The Claimant did not apply for benefits as the conditions of her immigration status do not permit this.

41 The Claimant obtained a temporary job, obtained through Reed for six weeks. This was temporary as it was to cover the employer until they had recruited apprentices. This was around June or July 2018.

42 Additionally the Claimant obtained some temporary work, being on a list of “bank” workers at a Montessori nursery. She told them that she was available to work from Mondays to Fridays. When she needed to attend this Tribunal for the liability hearing of these proceedings (21 – 22 and 28 – 29 November 2018) she was not offered further work by this agency after telling them that she was leaving to attend Court, although they did not notify her of the reasons for not offering her further work.

43 In addition, also on a “bank” basis the Claimant worked for a childcare organisation called “Frankfield”.

44 For the period in which the Claimant is claiming compensation (13 January 2018 – 12 January 2019) the Claimant obtained £3,352.39 through the part-time work she obtained, described above.

45 The part-time work provided to the Claimant was bits and pieces, described as two days here, three days there.

46 More recently the Claimant has obtained more regular work, working at a nursery where her child attends.

47 The Claimant estimates that she applied for a lot of jobs, perhaps 30 – 40 a week.

48 The Claimant’s financial circumstances were difficult in that she has two young children, aged 4 and 6. At the time that she was working with the Respondent she was the main breadwinner, with her husband studying. Since leaving the Respondent’s employment, her husband stopped the studying he was undertaking and has been self-employed. He has borrowed the money from friends to cope with their financial difficulties.

49 Did the Claimant take reasonable steps to mitigate her losses? The Tribunal finds that she did including because:

49.1 In view of Mrs Akpan’s comment to the Claimant about ensuring that she would never work in the care industry again, it was reasonable for the Claimant to believe that she would not get any favourable reference from the Respondent for any care jobs that she might apply for and not to be making such applications.

49.2 The Claimant had an obvious financial imperative to find work. She was unable to claim benefits, she had been the main breadwinner and leaving her job caused her financial hardship. The Tribunal is satisfied that she was doing her best, and certainly taking reasonable steps, to find other

work.

49.3 The Claimant was making a great number of job enquiries and applications in order to attempt to find work.

49.4 The Claimant was successful, to some extent, in finding alternative work, albeit sporadic and part-time during the year for which she is claiming. After that she is not making a claim.

49.5 The Tribunal is satisfied that for the 12 months in question, the Claimant did take reasonable steps to find alternative employment, for the reasons given above.

49.6 Additionally, the Respondent has the burden of proof of showing a failure to mitigate and has provided no evidence on the issue of mitigation.

Injury to Feelings .

50 As a result of the Respondent's treatment of her following the events of 25 and 26 October 2017 (described in the findings of fact of the Tribunal at the liability hearing) the Claimant completely lost trust in the Respondent. She felt constantly stressed. At home she described herself as "constantly crying".

51 The Claimant found the thought of going to work making her feel anxious. Although she is a person who from time to time feels anxious, her anxiety was greatly increased when the Respondent's treatment of her became unsympathetic and even hostile. The Claimant got to a point where she felt so overwhelmed by the treatment she was receiving at work so as to decide that she could not carry on working there, even although she did not have another job to go to.

52 Once the Claimant gave in her resignation she had a feeling of relief. At the point of doing so she described herself as "I was a mess".

53 In addition, the Claimant felt stressed because of the financial consequences of her leaving the Respondent's employment. She was unable to buy things that she had planned to buy. She was getting demands for bills to be paid.

54 The Respondent's failure to pay her holiday pay when due, or properly, also made the Claimant feel bad, feeling that it was money that she had worked for and had not been paid.

55 The Claimant's stress led to a period on using an inhaler more often for her asthma (although the Claimant brings no personal injury claim). The Claimant, although feeling stressed, did not consult her GP practice for treatment because of this. She has not been on medication for stress or depression.

Closing Submissions

Submissions on the Claimant's Schedule of Loss

56 Both representatives gave oral submissions.

57 On behalf of the Respondent, Mr Claire's submissions included the following points:

57.1 The Claimant had failed to take adequate steps to mitigate her losses. She had worked for only about five months earning only about £500 a month. She could have applied for other types of work. She was afraid of not getting a reference from Shiloz and the possibility that any employer might contact them. Her screen shot of jobs and saying that she applied for about 30 – 40 jobs per week, unsuccessfully, showed that she should have applied for something different.

57.2 As regards injury to feelings there was one major incident, together with the non-payment of holiday pay. She has not presented medical evidence. She submitted that an injury to feelings award of £5,000 would be more appropriate.

57.3 As regards an uplift of award he accepted that there had been a failure to invite an appeal and suggested a 10 percent uplift, if any. Upon the Judge suggesting to the advocates that, as the Claimant had left her employment before issuing the grievance upon which she relies for an uplift, the ACAS Code appeared to apply to employees, rather than former employees. Mr Claire then suggested that no uplift should be made.

58 On behalf of the Claimant Mr Rozycki's closing submissions included the following points:

58.1 The obligation for a pension was for the employer to contribute 1% of salary prior to April 2018 and 2% from 2018. He gave the Tribunal the Claimant's net earnings including pension, figures from which Mr Claire did not dissent.

58.2 As regards the Claimant's duty to mitigate her losses, the Claimant given clear evidence that she wanted to work, and why she did not apply for work in care jobs. The Respondent had given no evidence of its own to show how and where the Claimant would have found work. Nothing was put to the Claimant along the lines of "had she done x, y or z she would have found work". It was "happenstance" to do with the market that she did not find work sooner and there had been no failure to mitigate.

58.3 As regards injury to feelings, the discrimination was not an isolated incident. There were numerous incidents of discrimination that were upheld and it was not a lower band case restricted to single incidents. Seeking £10,000, towards the lower end of the middle band, was being

generous towards the Respondent. As regards Mr Claire's criticisms of the Claimant not going to the doctor as a result of increased stress and anxiety, she was not bringing a personal injury claim. The impact on non-payment of holiday pay involved the Claimant having to make financial sacrifices being pursued for debts and she was the main breadwinner at the time, with two young children.

58.4 As regards the grievance, there had been breaches by the Respondent of paragraphs 33 and 40 of the ACAS Code on grievance procedures. The employer had failed to arrange for a formal meeting to be held without unreasonable delay, a meeting at which workers have a statutory right to be accompanied. The Claimant was not given any right of appeal. A 25% uplift would be appropriate.

58.5 Upon the Judge suggesting that, as the grievance on which the Claimant relied was issued after the Claimant had left her employment and so perhaps did not apply, Mr Rozycki submitted that, although he was not aware of any authority on the point, the "TULCRA" legislation includes ex-employees (although he did not say where). He submitted that it would be just and equitable to make an award but that, in view of the Claimant having left, a lower level of award than the maximum might be appropriate.

59 In support of the Claimant's application for costs Mr Rozycki made the following submissions:

59.1 He accepted the Judge's suggestion that the rules did not allow for the Claimant to claim both a costs order and a preparation time order. The claim was limited to a costs claim, namely his fees for representing the Claimant; (£6,170); and a limited amount of costs the Claimant incurred to the solicitors she consulted (£996).

59.2 At paragraphs 52.2, 72, 74.3 and 74.5 of the Tribunal's judgment on liability the Tribunal had made adverse findings about the honesty of the evidence given by Mr and Mrs Akpan. The Tribunal referred to the evidence of Mr and Mrs Akpan on holiday pay being flatly contradictory (paragraph 52.2); the Tribunal's criticisms of Mrs Apkan's evidence on what she told Mr Ogbebor (paragraph 72); concerns about the evidence of Mrs Akpan and Mrs Edagobo at paragraph 74.3; and concerns expressed about the reliability of the Respondent's witnesses highlighted at paragraph 74.5. In the case of *Daleside Home Ltd v Matthew* it was held that the making of a false allegation lying at the heart of a race discrimination claim constituted unreasonable action in bringing a claim. The Respondents had given contradictory and false evidence and this was unreasonable conduct.

59.3 The manner of the conduct of litigation from its inception was unreasonable by the Respondent. The documents for the Claimant were not delivered when ordered, being delivered on 24 July, not 6 July 2018. The Claimant just received an envelope with loose papers, not a trial

bundle. When she tried to agree the bundle of documents for the hearing and wanted further documents included she was told by the Respondent's solicitors to produce a supplementary bundle. This caused the Claimant, largely acting for herself, difficulties. It was not how a represented party should conduct itself. The Respondent's representatives were obstructive. The Claimant needed an application for specific disclosure for the daily activity report which was only provided after the application. With four days left before the trial the Respondent delivered a new bundle to the Claimant, with renumbered documents and some removed. The Claimant's documents had been removed which left the Claimant with significant difficulty; and difficulty for himself when conducting the hearing as to page numbers of documents. It was no way to conduct mitigation.

59.4 There had been three significant attempts to engage the Respondent in negotiations. In May 2017 on the first day of the trial they were flatly denied by the Respondent. The only attempt to negotiate was the last working day before this remedy hearing.

60 In reply to the Claimant's application for costs, Mr Claire's submissions included the following points:

60.1 It was rare for a Tribunal to make a costs order; and, in every case, one side loses and another wins.

60.2 The Respondent was entitled to defend the claim even if not successful.

60.3 Disputing that the overall conduct of the case was unreasonable. The Respondent had to chase the Claimant for her documents, which she had not produced by the date ordered, by 8 June.

61 The Judge invited submissions on whether the Respondent's failure to pay holiday pay when due, which formed one of the allegations of protected disclosure detriment, until the matter was raised at the Preliminary Hearing before Employment Judge Brook on 11 May 2018 constituted unreasonable conduct. Mr Rozycki submitted that it did, Mr Claire that the Claimants were then paid what they were owed and the failure did not amount to unreasonable conduct.

Conclusions

Loss of earnings

62 The Tribunal found in its findings of fact above that the Claimant did take reasonable steps to mitigate her losses during the 12 month period for which she is claiming loss of earnings.

63 It follows, therefore, that the Claimant is entitled to the 12 months loss of earnings she is seeking, as failure to mitigate is the sole basis upon which the claim has been challenged.

64 The Claimant's net earnings for the year in question are agreed at the sum of £18,837.60. The figure of £1118.24 as to the pension contributions the Respondent would, or should, have made during the 12 months in question is unchallenged. Together these sums amount to £19,995.84. From this sum should be deducted the figure of £3,352.89 found by the Claimant during the time in question.

65 The Claimant's loss of earnings award amount, therefore, to £16,642.95.

66 The Claimant was unable to claim benefits (see paragraph 49.2 above), so the Recoupment Regulations do not apply.

Injury to feelings award

67 The Tribunal prefers the submissions on behalf of the Claimant on this issue, to those on behalf of the Respondent. Six of the Claimant's allegations of protected disclosure detriment succeeded, for all of which she is entitled to compensation for injury to feelings in accordance with the guidance given in the case of *Melia v Magna* (above). The discrimination experienced by the Claimant during her employment started on 26 October 2017 and continued throughout the remainder of the Claimant's employment on 12 January 2018, a period of between two and three months. Although the Claimant experienced a feeling of relief as to resigning, having got to a pitch where she felt "overwhelmed" some of the protected disclosure detriment occurred after the Claimant's resignation, namely how her grievance was investigated and the Respondent's failure to pay her outstanding holiday pay. Some of the Respondent's behaviour, such as what appeared to be a belated and vindictive accusation of breach of patient confidentiality was particularly upsetting for the Claimant. In the Tribunal's findings of fact above, we described how the Claimant was greatly upset by the detrimental treatment she received from the Respondent, and the effects it was having on her life.

68 The Respondent's unlawful treatment of the Claimant was, clearly, more than an isolated or one off incident. The Tribunal is satisfied that they are easily sufficient to be placed in the middle category. We would agree with Mr Rozycki's submission that the sum claimed on £10,000 was generous towards the Respondent. Left to ourselves the Tribunal might have been inclined to place the award at around or close to the midpoint of the middle of the guidelines given in the *Vento* case, as updated in the *Da'Bell* case and the guidance given by the Presidents of the Employment Tribunals. The Tribunal awards, therefore, the sum claimed of £10,000.

Interest on injury to feelings award

69 The Employment Tribunals (Interest on awards in discrimination cases) Regulations 1996 set out, at Regulation 1, the awards to which the Regulations apply. The protected disclosure legislation is not referred to as being covered by the Regulations. The Tribunal, therefore, makes no award of interest under this legislation.

Uplift of award

70 The Claimant's employment terminated on 12 January 2019.

71 The Claimant's grievance was issued on 19 January 2019. The Claimant resigned about one week before issuing her grievance and her contract of employment with the Respondent had terminated before her grievance was issued.

72 The statutory ACAS Code on disciplinary and grievance procedures is stated as providing practical guidance to *"employers"* and *"employees"*. By the time the Claimant had started the grievance upon which she relies for an uplift of award, her employment with the Respondent had ended. It appears to the Tribunal, therefore, that the Tribunal does not have power to make an award to the Claimant for any failure on the Respondent's part to fail to comply with the statutory grievance procedures.

73 Had the Claimant's grievance been instigated prior to the termination of the Claimant's employment and the outcome of the grievance post-dated their employment, the Tribunal would have regarded itself as able to uplift the award. As the matter stand the Claimant's grievance appears to be nearer to a letter before action prior to litigation than an attempt to resolve a workplace dispute to seek to enable the working relationship to be improved and the employee to continue working for their employer. The purpose of the statutory grievance procedures appears to be to enable employees and employers to resolve workplace problems and thus to preserve the employment relationship.

74 The Tribunal makes no award, therefore, of an uplift pursuant to Section 207A TULCRA.

Application for Costs

75 The Tribunal did make a number of criticisms at the liability hearing of the evidence of the Respondent's witnesses, particularly as highlighted by Mr Rozycki in his submissions.

76 In particular, at paragraph 52.2, the Tribunal was particularly critical of Mr Akpan's evidence as to the reasons for the Respondent not paying holiday pay. His evidence was untruthful in this respect.

77 The Tribunal is aware that the witness giving untruthful evidence does not necessarily give rise to a costs order. The Tribunal does, however, consider that this aspect of the Respondent's conduct of litigation was unreasonable.

78 As regards the submissions about the Respondent's conduct of litigation as to disclosure of documents, the Tribunal would not of itself make an order for costs on this issue. The Tribunal was not provided with much in the way of detail as to what happened and the parties' representatives were disputing what had taken place. The Tribunal recollects that, at the liability hearing, Mr Rozycki was caused difficulties in identifying the documents that were in the Tribunal bundle, and page numbers of the bundle he had prepared is client's case on. This aspect did appear unhelpful to the Claimant and her representative. To this extent the Tribunal considers the issue as part of the general picture of the Respondent's behaviour in the litigation, although not worthy of a costs order in itself.

79 As regards to holiday pay, the Respondent failed to pay the Claimant holiday pay

which they knew was owed to her; and then, as described in our findings of fact at the liability hearing, gave evidence that was flatly contradictory as to why this was. They persisted in this failure, prolonging their detrimental treatment of the Claimant (issue 8h of the list of issues attached as an appendix to the liability judgment). Although holiday pay claim was issued in the County Court, not the Employment Tribunal, the holiday pay detriment claim was part of these proceedings. Failing to pay the Claimant holiday pay the knew they owed her until after the Preliminary Hearing was also unreasonable conduct.

80 The effect of the Respondent's unreasonable behaviour was to cause additional stress to the Claimant. Additionally, as to the failings in the Respondent's evidence the Tribunal has identified, it is possible that, objectively advised, there might have been a better prospect of settling the proceedings.

81 The Tribunal does not, however, consider the Respondent not responding to settlement discussions before the hearing as being unreasonable conduct.

82 The Tribunal has considered whether to exercise its discretion to make an award of costs. We see no reason why the Respondent should not face consequences of their unreasonable behaviour.

83 The Claimant's claim for costs amounts to slightly over £7,000. No submissions were made as to the counsel's fees or solicitors costs being unreasonable, nor as to the Respondent's ability to pay.

84 The Tribunal considers that it will be appropriate to make an award or slightly less than half of the costs claimed.

85 The time for preparation for the remedy hearing and settlement negotiations was quite short, in view of the Tribunal's judgment being sent out relatively close to the provisional hearing date that had been fixed at the end of the liability hearing. The Claimant was not successful with all the claims she made at the remedy hearing. The Tribunal is not sure exactly what period of time the solicitor's costs were incurred. The Tribunal takes a "broad brush" approach, as Tribunals are frequently been encouraged to do, and considers an award of £3,000 to be an appropriate sum. We order the Respondent to pay this sum.

Total sums awarded to the Claimant

86 The sums the Respondent is ordered to pay the Claimant amount, therefore, to £16,642.95 compensation for unfair dismissal, £10,000 compensation for injury to feelings, and £3000 costs.

Employment Judge Goodrich

10 June 2019