



EMPLOYMENT TRIBUNALS

Ms L Aboulossoud v Royal Borough of Greenwich (1)
Ms Dawn Squires (2)

Claimant

Respondents

Heard at: London South
On: 24-27 July 2017 Part Heard: 12-13 October 2017

Before: Employment Judge Nash
Dr S Chacko
Ms N O'Hare

Representation

Claimant: Mr Butler, Counsel
Respondent: Mr Cross, Counsel

REMEDY JUDGMENT

1. The Respondents shall pay to the Claimant the sum of £6,000 for injury to her feelings.
2. By consent, the Respondents shall pay to the Claimant the sum of Interest £846 in respect of interest on the award.
3. The Claimant has paid fees in connection with this claim. In **R (on the application of UNISON) v Lord Chancellor** [2017] UKSC 51 the Supreme Court decided that it was unlawful for Her Majesty's Courts and Tribunals Service (HMCTS) to charge fees of this nature. HMCTS has undertaken to repay such fees.

4. There is no adjustment to the Tribunal award under 207A Trade Union and Labour Relations (Consolidation) Act 1992.
5. No penalty is ordered against the Respondents pursuant to Section 12A of the Employment Tribunals Act 1996.
6. The Tribunal makes the following Recommendation pursuant to section 124(3) Equality Act 2010 by consent:
 - i. The Equality and Discrimination Policy found at page 207-8 of the Tribunal bundle in these proceedings be revised so that it outlines, in an accessible way, what behaviour can amount to discrimination and harassment in the workplace under the Equality Act 2010 in so far as this is not outlined in the council's Dignity and Respect at Work policy dated December 2015.
7. The Tribunal makes the following Recommendation pursuant to section 124(3) Equality Act 2010:
 - i. With three months, the First Respondent shall amend as necessary, its equality, diversity and/ or discrimination training to managers and staff to include the December 2015 Dignity and Respect at Work policy at page 207-8 of the Tribunal bundle.
 - ii. Within three months the First Respondent shall send to all line managers i) The December 2015 Dignity and Respect at Work policy ii) a briefing on the policy and iii) a statement that this policy should be referred to when managing grievances in respect of discrimination, harassment and victimisation. If the First Respondent elects to send the policy electronically, it may do so, but not by only posting the policy on its intranet.
 - iii. Within a year, the First Respondent shall provide to its staff who act as investigators and hearing officers, training relating to discrimination and harassment including but not limited to the December 2015 Dignity and Respect at Work policy.

REASONS

Compensation

1. The Tribunal firstly considered compensation for injury to feelings. The discrimination found by the Tribunal was Ms Squires's conduct in the meeting of 8 January 2016 and the failure of the Respondent to uphold the grievance in full.
2. The Tribunal considered what band would be appropriate following **Vento v Chief Constable of West Yorkshire Police (No. 2)** [2002] EWCA Civ 1871, [2003] IRLR 102, [2003] ICR 318. In **Vento** the Court of Appeal in England & Wales identified three broad bands of compensation for injury to feelings awards, as distinct from compensation awards for psychiatric or similar personal injury. The lower band of £500 to £5,000 applied in less serious cases. The middle band of £5,000 to £15,000 applied in serious cases that did not merit an award in the upper band. The upper band of between £15,000 and £25,000 applied in the most serious cases (with the most exceptional cases capable of exceeding £25,000). In **Da'Bell v NSPCC (2009)** UKEAT/0227/09, [2010] IRLR 19 the Employment Appeal Tribunal revisited the bands and uprated them for inflation. The lower band was raised to between £600 and £6,000; the middle band was raised to between £6,000 and £18,000; and the upper band was raised to between £18,000 and £30,000. As the claim was presented before September 2017, the 5 September 2017 Presidential Guidance was not applicable; however, the bands might still be increased to allow for inflations since **Da'Bell**.
3. The Tribunal found that the appropriate **Vento** band was the lower band and held the award to fall toward the top of the lower band. The Tribunal reminded itself that it must prioritise the effect on the Claimant in determining the level of award. The Tribunal took into account the Claimant's evidence of her distress in respect of only the events of 8 January and the investigation and grievance outcome. It did not take into account any effect of the other of the alleged acts of harassment. The Tribunal found it relevant that the harassment related to the Claimant's late father and that the 8 January meeting involved a number of the Claimant's colleagues. Further, the Claimant's distress was significantly exacerbated by the outcome of the grievance. The Tribunal noted that there was no medical evidence and that - fortunately - the Claimant had been able to continue working since the harassment. Accordingly, the Tribunal found that the appropriate award under **Vento** was £6,000. The parties agreed that the correct amount of interest due on this award under the Equality Act was £846.

4. The second element of compensation sought was an uplift to the award under section 207A of, and Schedule A2 to, the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended by the Employment Act 2008), which gives tribunals the power to increase or reduce an employee's compensation by up to 25% if either party has unreasonably failed to comply with a relevant code of practice.
5. It was not in dispute that the relevant code was the Acas Code of Practice on Discipline and Grievance. However, the Tribunal was unable to identify a specific paragraph of the Code that had been breached by the Respondent. In general terms the Respondent's procedure was, from a procedural point of view, unexceptional. Accordingly, the Tribunal did not find that the Respondent had failed unreasonably to comply with a relevant code and no increase was made to the award.
6. The third element sought was for repayment of Tribunal fees and travel costs. In **R (on the application of UNISON) v Lord Chancellor** [2017] UKSC 51 the Supreme Court decided that it was unlawful for Her Majesty's Courts and Tribunals Service (HMCTS) to charge fees of this nature. HMCTS has undertaken to repay such fees and the fee refund arrangements are now available online from <https://www.gov.uk/employment-tribunals/refund-tribunal-fees>. The Claimant no longer pursues the claim for travel costs.
7. The fourth and final element sought was for a financial penalty on the First Respondent pursuant to Section 12A of the Employment Tribunals Act 1996. The Tribunal did not find that there were aggravating features to the harassment sufficient to trigger its powers under Section 12A and accordingly imposed no such financial penalty.

Recommendations

8. The Claimant also sought recommendations. Pursuant to section 124(3) Equality Act, an appropriate recommendation is a recommendation that within a specified period, the Respondent takes specified steps, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.
9. The Tribunal explored the question of recommendations with the parties. After consideration, the parties confirmed that they had agreed the following recommendation:

- The Equality and Discrimination Policy found at page 207-8 of the Tribunal bundle in these proceedings be revised so that it outlines, in an accessible way, what behaviour can amount to discrimination and harassment in the workplace under the Equality Act 2010 in so far as this is not outlined in the council's Dignity and Respect at Work policy dated December 2015.
10. The Claimant sought a further recommendation that Mr Dalley attend equality and diversity training and for that training to be updated on a regular basis. The Respondent did not consent to this. The Respondent provided to the Remedy Hearing a Dignity and Respect at Work policy which was dated December 2015 and which it stated had been in force at the material time.
 11. The Tribunal reminded itself that it only had the power to order recommendations with the purpose of obviating or reducing impact of the harassment on the Claimant herself; a Tribunal has no power to make wider recommendations. The Claimant's evidence made clear that it was not just Ms Squires's conduct on 8 January which had caused her distress; it was the failure of the Respondent as an organisation to recognise and take effective steps to make itself aware of what constitutes unlawful discrimination and harassment, to deal appropriately with unlawful discrimination.
 12. The Tribunal, especially having regard to the workplace experience of its lay members, found it telling that none of the Respondent's employees, (including senior managers and those from Human Resources) who were involved in a grievance about alleged unlawful harassment was aware of any relevant policy other than the page and a half Equality policy at page 207; further no Respondent witness gave any indication that they were aware of the purportedly newly implemented Dignity and Respect at Work Policy, both during the internal procedure and during these Tribunal proceedings, although specific questions as to relevant policies were asked of witnesses at the Employment Tribunal Merits Hearing. The Dignity and Respect at Work Policy was not before the Tribunal at the Merits Hearing.
 13. In the view of the Tribunal, the unlawful harassment would have been less likely to have occurred and be less likely to occur again had the Respondent's Dignity and Respect at Work policy been effectively implemented. A significant element of the effect of the harassment on the Claimant was the Respondent's failure to understand and deal with the harassment effectively; in effect the Claimant has

lost faith in the Respondent employer's capacity to apply the law. The Claimant remains employed and accordingly, any effective implementation of the Dignity and Respect at Work Policy will be of assistance to her.

14. Accordingly, the Tribunal made the following recommendations: -

- With three months, the First Respondent shall amend as necessary, its equality, diversity and/ or discrimination training to managers and staff to include the December 2015 Dignity and Respect at Work policy provided to the Remedy Hearing in these proceedings.
- Within three months the First Respondent shall send to all line managers i) The December 2015 Dignity and Respect at Work policy ii) a briefing on the policy and iii) a statement that this policy should be referred to when managing grievances in respect of discrimination, harassment and victimisation. If the First Respondent elects to send the policy electronically, it may not do so by only posting the policy on its intranet.
- Within a year, the First Respondent shall provide to its staff who act as investigators and hearing officers, training relating to discrimination and harassment including but not limited to Dignity and Respect at Work policy.

Employment Judge Nash

Date 7 January 2018