



EMPLOYMENT TRIBUNALS

Claimant: Mr T Sherbourne

Respondent: N Power Ltd

HELD AT: Leeds

ON: 27 June 2019

BEFORE: Employment Judge Shulman
Mr R Stead
Mr K Smith

REPRESENTATION:

Claimant: Miss N Smith, Mother of the Claimant

Respondent: Mr M Winthorp, Solicitor

JUDGMENT

The Respondent shall pay the Claimant the sum of £35,914.34 by way of compensation.

REASONS

Introduction

1. This is a remedy hearing arising out of a finding of indirect discrimination – disability and failure to make reasonable adjustments. The substantive hearing was before us on 1 May 2019.

Matters occurring during the hearing

2. The Claimant filed a schedule of loss and the Respondent a counter-schedule of loss. As a result of construction of those documents the following were agreed:

- 2.1. Loss of earnings £7,475.02.
 - 2.2. Loss of pension payments - withdrawn by the Claimant.
 - 2.3. Holiday pay £993.30, subject to deduction of tax and national insurance.
 - 2.4. Job seeking expenses £94.86.
 - 2.5. Preparation time costs - withdrawn by the Claimant.
 - 2.6. Injury to feelings £9,500.
- Total of agreed sums £18,063.18 (the agreed sums).

Sole remaining issue

3. This relates to what the Claimant described in his schedule as future loss - loss of earnings. The Claimant maintains that his contract was not for a fixed term and, therefore, he was entitled to a sum based on his inability to work going forward. The Respondent said there was a fixed term contract and that there should be no future loss.

The law

4. The Tribunal has had regard to the following provisions of the law:
 - 4.1. This issue essentially relates to a proper construction of the contract of employment. A contract must be interpreted in line with the meaning it would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract. See **Spectrum Agencies v Benjamin** EAT 0220/09 (Spectrum).
 - 4.2. If the Respondent is right that the contract was fixed it is open to a Tribunal to award compensation if there was a discriminatory dismissal arising from knowledge that it was such and in this regard Mr Winthorp referred us to **O'Donoghue v Redcar and Cleveland Borough Council** [2001] IRLR 615 (O'Donoghue).

Facts

5. The Tribunal having carefully viewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):
 - 5.1. We rely on the facts that we found in our earlier decision on 1 May 2019.
 - 5.2. Additionally we have looked in more detail at the contract which is substantially titled as a fixed term contract but also has reference to notice, holidays and sick pay which relate to periods longer than the fixed term.
 - 5.3. We also find that at a preliminary hearing conducted by Employment Judge Wade on 5 February 2019 she declined to make an order for a schedule of loss because then the Claimant asserted lost earnings between April and September 2018.
 - 5.4. Although Miss Smith did her best to try and secure terms for the Claimant going forward towards the end of the Claimant's employment, she did so not on the basis that the contract was not a fixed term contract but on the basis of trying to find other opportunities for the Claimant. The documentary evidence at pages 196 to 204 in the bundle substantiates this.

- 5.5. The Claimant has been unable to secure employment going forward and we find that there is a clear connection between the facts which we have found on 1 May 2019 and his ongoing inability to find work.

Determination of the issues

6. (After listening to the factual and legal submissions made by and on behalf of the respective parties and in this regard we would like to thank Mr Winthorp and Miss Smith for the kind assistance that they have given the Tribunal,) we find:
- 6.1. The Claimant is entitled to the agreed sums.
- 6.2. We find that this was indeed a fixed term contract, having regard to the guidance in Spectrum.
- 6.3. We find that there is no evidence that anyone tried to argue that the contract was anything other than a fixed contract during its currency, having regard to the information available to the parties at the time.
- 6.4. We do not however think that the matter stops there when considering the question of future loss. Having regard to O'Donoghue the facts found by the Tribunal show very clearly that the manner in which the Claimant was treated and we do take into account that his disability has inhibited his ability to find work so far and exercising our judicial discretion we are of the view that he has been unable to find further employment because of it. We therefore award him 12 months future loss from 30 September 2018, which sum is £20,949.84 net. From that sum we should deduct Employment Support Allowance in the sum of £5,759.00. So the sum awarded for future loss is £15,190.84.
- 6.5. We award interest on injury to feelings at 8%. This is awarded throughout the period from the date of termination to today's date and is £760.00. That is of course awarded on the sum of £9,500.00.
- 6.6. As to interest on the remainder at the same rate, taking as the mid-point 8 February 2019 we award interest on the sum of £23,754.02, which is on everything except for the £9,500.00 injury to feelings and the sum is £1900.32.
- 6.7. We therefore award to the Claimant the grand total of £35,914.34.

Employment Judge Shulman

Date 5 July 2019

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