



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs T Houlihan

**Respondents:** (R1) Sainsbury's Supermarkets Limited  
(R2) Mr DM

**Heard at:** Leicester

**On:** 26 July 2017

**Before:** Employment Judge Ahmed

**Members:** Mrs B Tidd  
Mr M Alibi

## Representation

**Claimant:** In person

**Respondents:** (R1) Ms Dee Masters of Counsel  
(R2) Ms NM, Daughter

# JUDGMENT

The unanimous judgment of the Tribunal is that:-

1. The First and Second Respondents are jointly and severally liable and ordered to pay to the Claimant £8,400.00 as damages for injury to feelings together with interest thereon of £1,185.00 totalling £9,585.00 net.
2. The claims for damages for personal injury, loss of earnings (including future loss), aggravated damages, an uplift for breach of the ACAS Code of Practice and post-termination losses are all dismissed.
3. The Recoupment Regulations do not apply.

# REASONS

1. This was a hearing on the issue of remedy. The Tribunal had found earlier that the Claimant's complaint of sexual harassment against the First and Second Respondents succeeded but that the complaint of direct sex discrimination was dismissed.

2. At this hearing the Claimant once again represented herself, the first Respondent was represented by Ms Masters of Counsel and the second Respondent by his daughter as previously. Only the Claimant gave oral evidence.

3. The Claimant in her schedule seeks loss of earnings of both past and future totalling £91,189.00. This appears to be based on career loss, that is to say the Claimant does not expect to work again. She seeks £42,000.00 in respect of injury to feelings, £100,000 in respect of personal injury and £50,000 in respect of aggravated damages. Her total claim is for £283,189.00. She does not give any reasons as to why the top band for injury to feelings is appropriate. She has not found alternative employment and not worked since being dismissed by Sainsbury's.

4. The position of the first Respondent is that it accepts the Claimant should receive damages for injury to feelings but they should be limited to the lower band. The position of the second Respondent, so far as we can discern, is that there should be no award whatsoever.

5. In coming to our decision we have borne in mind the following:-

5.1 That injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator. Feeling of indignation at the discriminator's conduct should not be allowed to inflate the award.

5.2 Awards should not be too low as that would diminish respect for the policy of the anti-discrimination legislation.

5.3 Awards should bear some broad similarity to the range of awards in personal injury cases.

5.4 That we should take into account the value in everyday life by reference to purchasing power or by reference to earnings.

5.5 We should bear in mind the need for public respect for the level of award made.

6. We do not consider an award of aggravated damages is appropriate. The relatively high threshold that is required for such an award is not met in this case.

7. In respect of damages for personal injury, the injury relied upon by the Claimant is 'Fibromyalgia'. However, there is no medical evidence that the condition was caused by the harassment. It is not typically something we would expect to arise out of an act of sexual harassment.

8. The primary issue is which 'Vento' band (see **Vento v Chief Constable of West Yorkshire Police** [2003] IRLR 102) for the award of injury to feelings is appropriate and where within that band the award should be placed.

9. In coming to our decision we take into account the 'Presidential Guidance' issued on 5 September 2017 in terms of the effects of inflation since the **Vento** decision was handed down in 2003.

10. Having regard to the Guidance (in particular the contents of paragraph

10) the bands should now be updated as follows: £800 - £8,400 (the lower band), £8,400 -£25,200 (the middle band) and £25,200 - £42,000 (the upper band).

11. In all of the circumstances we consider that this is a lower band case. The act of harassment was not career threatening nor objectively should it be viewed as such. There was not a lengthy campaign of harassment. It was a one off single act, albeit one that the Claimant quite properly regarded as deeply unpleasant. The only act of harassment which the Claimant complained of so far as these proceedings is concerned was the October 2016 incident. Although we dealt with the 'wet dreams' incident, that was not the alleged act in question.

12. The Claimant was dismissed after a lengthy absence from work. Her reaction in not returning to work, particularly after Mr DM had been dismissed, was in our view disproportionate and not entirely related to the unlawful act. Every reasonable effort was made to accommodate her. Her real indignation was Mr DM's purported apology which she regarded as insincere and the way in which the matter was handled by her line manager. Her expectation that Mr DM should have been dismissed immediately was both unrealistic and unreasonable. The Respondent was obliged to follow a fair procedure in dismissing Mr DM or face a further claim, this time from Mr DM. After a full and proper investigation Mr DM was dismissed.

13. We find that the Claimant's lengthy absence from work culminating in her dismissal was not attributable to the unlawful act. We therefore make no award for any loss of earnings either before or after termination of employment.

14. The Claimant was back at work shortly after the act of sexual harassment prior to going on long term absence. In her letter of 18 November she wrote:

*"As the problem hasn't been dealt with to my satisfaction, this has caused me stress and depression and has resulted in a visit to my GP being signed off for 2 weeks."*

15. The Claimant's hurt feelings as at November 2016 were more to do with the way in which the matter had been dealt with rather than the act of harassment itself.

16. In all of the circumstances we therefore accept the primary submission of Ms Masters that this is a lower band case, albeit at the top of the lower band. The appropriate award for injury to feelings is £8,400.00.

17. In relation to the apportionment of the award between the two Respondents we take into account the decision in **Hackney London Borough Council v Sivanandan and others** [2011] ICR 1374. That makes it clear that only in exceptional circumstances should a Tribunal split awards between Respondents. Accordingly, both Respondents will be jointly and severally liable for payment. The reality of course is that the First Respondent is likely to pick up the tab.

18. The Claimant is entitled to interest on the award of £8,400.00 at 8%. The date of the unlawful act was 20 October 2016. This hearing has taken place on 26 July 2018. There are 644 days between the date of the act and this hearing. The daily rate of interest is £1.84 per day (£8,400.00 x 8% = £672.00 divided by 365, hence a daily rate of £1.84). The total interest is £1,185.00 rounded up to the nearest pound.

19. There is no breach of the ACAS Code that the Claimant is able to identify.

20. The Recoupment Regulations do not apply.

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Employment Judge Ahmed

Date: 4 September 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE