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THE EMPLOYMENT TRIBUNALS

Claimant: Ms Phathiswa Nomthetho Queenette Cunningham

1st Respondent: Transitional Care Ltd

2nd Respondent: Peppermill London Limited

3rd Respondent: Advance 5 Limited

Heard at: East London Hearing Centre

On: 29 July 2019

Before: Employment Judge Burgher

Members: Ms M Long

Mr M Rowe

Representation

Claimant: In person

1st Respondent: No appearance

2nd Respondent: No appearance

3rd Respondent: No appearance

REMEDY JUDGMENT

1. The Second Respondent is ordered to pay the Claimant the total sum of £21,693.87 consisting of £21,200.27 as compensation arising from unlawful victimisation and of £493.60 in respect of preparation time order and travel costs.
2. No orders are made in respect of the Third Respondent.

REASONS

Issues

1. The matter was listed for remedy in respect of the unlawful victimisation claims that the Claimant had made against the Second and Third Respondents. The Claimant's claims against the First Respondent had failed.

Evidence

2. The Tribunal heard evidence from the Claimant under oath. She did not prepare a witness statement but provided a schedule of loss and provided miscellaneous documents outlining her attempts to seek alternative work, including her work undertaken through her business, Majestic, and medical documents outlining that she suffered from depression and anxiety for which counselling and medication was required.

Findings

3. Following review of the evidence the Tribunal concluded that there was no award payable by the Third Respondent. The Third Respondent is a payroll company and it provided the Claimant with her P45 and there was no indication that it did not provide relevant payslips or comply with relevant payments and recording procedures to cause any detriment to the Claimant.

4. The Second Respondent employed the Claimant under contract where it guaranteed to provide the Claimant with a minimum of 336 hours, payable at a minimum wage, during the course of '*any full 12 month period*'. The Second Respondent had a contractual obligation to seek assignments for the Claimant and provide the Claimant with this guaranteed pay if assignments could not be secured. However, there were no payments made or engagement with the Claimant by the Second Respondent following her protected acts. The Tribunal assesses compensation for the Claimant on this basis.

5. When considering the amount of compensation the Tribunal assessed the Claimant's evidence and relevant documentation.

6. The Claimant maintains that her mental ill-health was caused by the Second Respondent. However, the Claimant's medical evidence indicates that a large part of her stress and anxiety was due to her perceived poor treatment by the First Respondent, for which her claims were unsuccessful. We balanced these considerations and conclude that the failure of the Second Respondent to engage with the Claimant to get her back to work and to allow her to rebuild confidence played some part to the deterioration of her mental health. We assess this at 20%.

7. When considering the Claimant's loss of earnings, she claimed £100 a day for each day she was not working. The Claimant earned £900 for two daily sessions working with her company Majestic.

8. We accept the Claimant's ill-health affected her ability to work, she was undergoing counselling and taking medication and was able to work until 24 February 2019 when the pressure of litigation became too great for her and she notified businesses that she could no longer undertake Majestic work.

9. The period of loss that the Tribunal assesses compensation is the 58 weeks running between 9 January 2018 to 24 February 2019. The Claimant was unavailable for work before 9 January 2018 this as she was in Cape Town and the CR investigation that she was being subjected to prevented her working prior to that. The Claimant was not fit for work due to the pressures of Tribunal litigation from 24 February 2019.

10. We concluded that it would be just and equitable to deduct 13 weeks from the 58 week period to account for school holidays were the Claimant would not be able to be placed at schools.

11. There were a number of other variables that may have affect the Claimant's ability to earn £100 per day including whether she would have connected with her pupil, whether the roles offered were full time work, sessional or part time and what the rate of pay would have been. The Claimant was also running her own business which may have impacted on her availability for work. Finally, there was no guarantee of an ongoing relationship with the Second Respondent if they were unable to place the Claimant. Statutory minimum notice could have been given. We concluded that a further 40% reduction in compensation was appropriate to account for these variables.

12. Therefore the compensation due to the Claimant from the Second Respondent is calculated as follows:

Loss of earnings

45 weeks at £500 per week	£22500
Reduction 40%	- £9000
Total loss of earnings	£13,500

Injury to feelings £5500

The Tribunal accepted the Claimant's assessment in her schedule of loss as appropriate having regard to the update Vento guidance on injury to feelings awards.

Personal Injury

20% contribution of £3000 £600

Counselling costs

20% of counselling fees £280 £56

Subtotal **£19,656**

Interest of injury to feelings £676.27 (561 days x £1.20)

The injury to feelings amount is £5,500. The interest rate is 8%. The daily interest payable is therefore £1.20. The claim was brought on 14 January 2018 and the date of remedy 29 July 2019. Total of 561 days.

Interest on loss of earnings and personal injury £868 (280 days x £3.10)

The loss of earnings and personal injury amount is £14,156. The interest rate is 8%. The daily interest payable is therefore £3.10. The midpoint calculation means that interest is payable for 280 days. claim was brought 14 January 2018 and the date of remedy 29 July 2019. Total of 561 days.

Total compensation **£21,200.27**

13. The total compensation award payable by the Second Respondent to the Claimant is therefore **£21,200.27**.

14. The Claimant also claimed for preparation time order under rule 76 of the Employment Tribunal Rules of Procedure 2013 on the grounds that the Second Respondent was unreasonable in failing to respond to the proceedings and forcing her to attend two preliminary hearings to advance her case against them.

15. The Claimant claimed 10 hours preparation time. The rate prevailing in 2018 was £38. The Tribunal considers that it is appropriate to award preparation time order and exercises its discretion to do so. The Tribunal therefore orders the Second Respondent to pay the Claimant the sum of £380 in respect of her preparation time.

16. The Claimant also claimed train and tube costs of £56.80 for two days attendance at the different preliminary hearings considering who her employer was. The Tribunal orders the Second Respondent to pay the Claimant the sum of £113.60 in respect of this.

17. The Second Respondent is therefore ordered to pay the Claimant the total sum of £21,693.87.

18. The Second Respondent has not played any part in the proceedings. If there is a proposal to strike off this company from the register at Companies House, the Claimant may wish to write to the Registrar at Companies House and ask for the Second Respondent to be kept on the register until such time as the remedy has been resolved.

Employment Judge Burgher

31 July 2019