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EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss ME Iheme

AND

Nigeria High Commission

HELD AT: London Central **ON:** 30 September 2019

BEFORE: Employment Judge Brown

Representation:

For Claimant: In person

For Respondent: Did not appear and was not represented

JUDGMENT

The Judgment of the Tribunal is that:

1. Pursuant to r21 ET Rules of Procedure 2013 the Claimant's complaints of direct sex discrimination, direct religion discrimination and victimisation succeed.
2. The Respondent shall pay the Claimant £ 70,747.06 in compensation for discrimination and victimisation, comprising:
 - a. An injury to feelings award of £ 11,680, comprising £8,000.00 for injury to feelings and £ 3,680 interest at 8% from 6 January 2014 to the date of hearing.
 - b. An award for economic loss totalling £ 59,067.06, comprising losses of £ 48,022 and interest of £ 11,045.06 , calculated at 8% from the midpoint of the period from the date of dismissal to the date of hearing.

REASONS

1. The Claimant attended today's hearing. The Respondent did not attend. On 31 July 2019 the Tribunal had sent both parties a Record of a Preliminary Hearing held on 29 July 2019, which stated that the Final Hearing in this case would be held on 30 September and 1 October 2019.
2. I was satisfied that the Respondent had had notice of the Hearing starting on 30 September 2019, but had failed to attend, and had not contacted the Tribunal to explain its absence.
3. The Record of a Preliminary Hearing contained orders that, by 2 September 2019, the Respondent serve on the Tribunal and Claimant, its ET3 defence to the claim, any relevant documents and its witness statements.
4. The Respondent had not presented an ET3 defence. It had not sent any documents or witness statements to the Claimant or Tribunal. The proceedings had originally been served on the Respondent on 13 March 2014. The Respondent was given until 12 June 2014 to present its defence. It had failed to present any defence for over 5 years.
5. I was satisfied that it was appropriate for me to proceed in the absence of the Respondent and to determine the claims. The Respondent had not defended the claims.
6. The Claimant's domestic law complaints had been dismissed on withdrawal on 29 July 2019.

R21 Judgment

7. I was satisfied that it was appropriate to enter judgment r21 ET Rules of Procedure 2013 in her remaining claims based on EU law – the claims of direct sex discrimination, direct religion discrimination and victimisation. As stated, the Respondent had failed to present a response to the claims based on EU law, despite having been given a number of opportunities to do so. The Supreme Court in *Benkharbouche v Sudan* [2017] UKSC 62 decided that states do not have diplomatic immunity from claims based on Article 47 of the European Charter of Fundamental Rights. The Respondent did not have immunity from the Claimant's remaining claims based on EU law.

Remedy

8. The Claimant gave evidence regarding the remedy she sought. She sought compensation for loss of earnings, loss of gratuity, loss of statutory rights, job hunting expenses, notice pay, failure to provide terms and conditions, injury to feelings and failure to comply with the ACAS Code of Practice. She had previously submitted documents, a witness statement and a schedule of loss to the Tribunal.

Findings of Fact

9. The Claimant told me, and I accepted, the following. The Respondent had dismissed the Claimant when she had taken only 2 days off work, sick, and had texted a colleague telling him that she was unable to attend work. The Respondent had failed to pay her notice pay and had failed to give her a reference. The Respondent had dismissed some male colleagues who were found to have acted fraudulently, but paid them their notice pay and gave them references. The Claimant felt upset and aggrieved that these male colleagues were treated more favourably than she was, when they had been dismissed for much more serious acts of misconduct.

10. The Claimant is a Christian. A female colleague of the Claimant, who was Muslim, failed to attend work for a month but gave her clocking in card to another worker, so that she would be recorded as having attended work throughout her absence. The Respondent became aware of this but took no disciplinary action against the Muslim colleague at all. The Claimant felt very hurt and humiliated by being dismissed for a very minor matter when her Muslim colleague was retained in employment. The Claimant felt indignant that the Respondent had favoured her Muslim colleague, who was guilty of serious acts of misconduct.

11. The Claimant had great difficulty in obtaining other work after her dismissal. She was diligent in her efforts and incurred expenses such as printing costs, postage costs, travel expenses and telephone costs. She had not retained receipts for these expenses, which were incurred a number years ago. She found it very difficult to live without an income and was very distressed.

12. The Claimant presented her claim to the ET on 21 February 2014. The Respondent asked the Claimant to withdraw her claim but she refused to do so. The Respondent was very displeased. In February 2015 the Claimant eventually obtained work, through Hays Specialist Recruitment Limited, at Barclays Plc. She had been working at Barclays for a week when she was informed by Hays that they had received a very bad reference from the Respondent and that her work at Barclays would therefore be terminated. The Claimant was walked from the building.

13. The Claimant took 81 weeks to secure alternative employment. She had worked for the Respondent for 3 years and 9 months. After 5 years' employment she would have been entitled to a bonus of 26 weeks' pay. Her dismissal deprived her of the opportunity to receive this bonus.

14. The Claimant's most recent payslips before her dismissal showed that she received £446 per week net.

Discussion and Decision

15. Taking into account the facts, I awarded the Claimant the following sums in compensation for direct discrimination and victimisation.

16. I awarded 81 weeks' loss of earnings: $81 \times £446 = £36,126$.
17. I awarded the Claimant a further 26 weeks' loss of earnings, for the loss of the bonus she would have earned after 5 years employment, had she not been dismissed. $26 \times £446 = £11,696$.
18. I also awarded the Claimant £300 for expenses in looking for work for 81 weeks. I did not award the Claimant the £1,750 she sought for such expenses. She had not retained receipts. I considered that £300 was a reasonable sum to award for her expenses over that period. I had accepted that she had incurred postage, telephone, printing and travel expenses in looking for alternative work.
19. The total economic loss was $£36,126 + £11,596 + £300 = £48,022$.
20. I did not award the Claimant an additional sum for the Respondent's failure to pay her notice pay. I had awarded the Claimant her full loss of earnings from the date of dismissal for 81 weeks, in any event. I did not award the Claimant a sum for loss of statutory rights. She had withdrawn her unfair dismissal claim, which was based on UK domestic law.
21. I did not award the Claimant a sum for failure to provide her with a statement of terms and conditions. That claim was based on UK statute law, not EU law.
22. I awarded the Claimant compensation for injury to feelings.
23. I accepted the Claimant's evidence that she was very distressed by her dismissal. She was humiliated and hurt by the Respondent's discrimination, by it favouring other employees on the basis of their religion and sex. She was further humiliated by her removal from Barclay's due to the Respondent's unfavourable reference. The Claimant found it very difficult survive in the UK without an income and she took well over a year to find alternative work.
24. The dismissal was a one-off act, but the Respondent then victimised the Claimant by giving her a bad reference, which frustrated her efforts to find alternative work.
25. The dismissal took place 2014 and the victimisation in 2015.
26. I took into account the case of *Prison Service v Johnson* [1997] IRLR 162. Awards for injury to feelings are compensatory, they should be just to both parties, fully compensating the Claimant, (without punishing the Respondent) only for proven, unlawful discrimination for which the Respondent is liable. Awards that are too low would diminish respect for the policy underlying anti discrimination legislation. However, excessive awards could also have the same effect. Awards need to command public respect. Society has condemned discrimination because of a protected characteristic and awards must ensure that if it seen to be wrong.

27. It is helpful to consider the band into which the injury falls, see *Vento v Chief Constable of West Yorkshire Police* [2003] IRLR 102. The EAT increased the *Vento* bands for injury to feelings to allow for inflation in *Da'Bell v NSPCC* [2010] IRLR 19. *Da'Bell* was heard at the end of 2009. From then the lower band is £500 to £6,000 the middle band is £6,000 to £18,000 and the upper band is £18,000 to £30,000. In *Vento* the Court of Appeal said that the top band should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the grounds of race or sex. The middle band should be use for serious cases which do not merit an award in the highest band the lower band is appropriate for less serious cases such as where the act of discrimination is an isolated or one off occurrence.

28. In *Simmons v Castle* [2012] EWCA Civ 1039 *Simmons v Castle* [2012] EWCA Civ 1288, the Court of Appeal ruled as follows; "Accordingly, we take this opportunity to declare that, with effect from 1 April 2013, the proper level of general damages in all civil claims for (i) pain and suffering, (ii) loss of amenity, (iii) physical inconvenience and discomfort, (iv) social discredit, (v) mental distress, or (vi) loss of society of relatives, will be 10% higher than previously.

29. I awarded the Claimant £8,000 for injury to feelings for the dismissal which took place on 6 January 2014 and the victimisation in February 2015. I considered that the appropriate award was at the bottom of the *Vento* middle band. The Claimant was very distressed by her dismissal and the effect on her ability to find work thereafter.

30. I awarded interest on the injury to feelings award at 8% from the date of dismissal, until today - 5 years and 39 weeks (5.75 years) - £8,000 x 5.75 x 8% = £3,680 interest. The total award for injury to feelings, including interest, was £11,680.

31. I also awarded 8% interest on the economic loss from the midpoint between the date of dismissal and today's date: $(£48,022 \times 5.75 \times 8\%) / 2 = £11,045.06$. The total award for economic loss, including interest, was £59,067.06.

32. I did not award the Claimant an uplift for failure to follow the ACAS Code of Practice. Such an award was dependent on UK law, not EU law.

Employment Judge Brown

Dated: 30th Sept 2019

Judgment and Reasons sent to the parties on:

01/10/2019

For the Tribunal Office