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EMPLOYMENT TRIBUNALS

Claimant ***Respondent***

Ms D Kingson **AND** **Government of the State of Qatar**

HELD AT: **London Central** **ON:** **21 October 2019**

BEFORE: Employment Judge Brown (Sitting alone)

Representation:

For Claimant: **Mr M Epstein**
For Respondent: **Did not appear and was not represented**

REMEDY JUDGMENT

The Judgment of the Tribunal is that:

1. The Tribunal orders the Respondent to pay the Claimant £388,920.15 total compensation on account of sex and religion or belief discrimination and unpaid holiday pay.

1.1 That award is comprised as follows: £287,772.52 compensation for sex and religion or belief discrimination and holiday pay + £101,147.63 grossing up for tax = £388,920.15.

1.2 The element of the award for sex and religion or belief discrimination is comprised as follows:

a. £115,240 compensation for non-pecuniary loss comprising:

(1) An award for injury to feelings of £32,000, including £10,000 aggravated damages;
(2) An award for psychiatric injury of £ 35,000;
(3) Totalling £67,000; and

(4) £48,240 interest on £67,000, that is: 8% interest per annum on £67,000, calculated from 2010 to the date of the Remedy Hearing.

b. £126,282.52 compensation for past economic loss comprising:

(1) £104,079 past economic loss; and
(2) £22,203.52 interest at 8% per annum on that sum, from the midpoint between the date of dismissal and the Remedy Hearing.

c. £45,000 compensation for future economic loss.

1.3 The element of the award for holiday pay is £1,250.

2. The Tribunal also orders the Respondent to pay the Claimant £7,000 costs.

REASONS

Findings of Fact

1. The Claimant was employed by the Respondent from 1 July 2006 until 30 June 2014. On 7 November 2014 she presented claims to the Employment Tribunal against the Respondent.

2. On 19 September 2019, judgment under *r21 ET Rules of Procedure 2013* was entered in her favour, against the Respondent, in respect of her claims of sex discrimination and religion and belief discrimination and failure to pay holiday pay. These claims derived from European Law. The Claimant's domestic law claims against the Respondent were dismissed on withdrawal by the Claimant.

3. The Claimant told me, and I accepted her evidence, that she was subjected to a lengthy campaign of discrimination because of sex and religion or belief for the whole of her employment. This included the following acts by the Respondent's employees and agents, in the course of their employment by the Respondent:

(a) Fahed Al-Mushairi, Executive Ambassador at the Qatari Embassy, doing the following:

(1) Between 2006 and 2008, repeatedly inviting the Claimant to chew Qat at his penthouse, telling the Claimant that his friend, an ambassador, became sexually aroused by chewing Qat and implying to the Claimant that he wished her to come to his penthouse and chew Qat for similar reasons, paragraph 12 of the Claimant's particulars of claim.

(2) In 2008, telling the Claimant about Mr Al-Mushairi having had sex with another woman and giving explicit details of the encounter, paragaraph 13 of her particulars of claim.

(3) Making persistent sexual advances towards the Claimant., paragraph 16 of her particulars of claim.

(4) When the Claimant did not consent to his sexual advances, telling the Claimant, on 18 December 2010, that he wished to propose to the Claimant's 19 year old daughter. The Claimant understood him to mean a short marriage so that he could have sex with the Claimant's daughter without this breaching rules in Islam preventing sex outside marriage, paragraph 17 of her particulars of claim.

(5) On 18 December 2010, talking in a sleazy way to the Claimant's daughter, wrapping his gown around her and asking the Claimant to take a photo of her, paragraph 18 of her particulars of claim.

(6) From 2010 to 2013, telling the Claimant that he would take the Claimant's daughter to Paris and buy her anything she wanted and asking the Claimant repeatedly about her daughter, paragraph 19 of her particulars of claim.

(7) Giving the Claimant a warning for following an appropriate booking process, that is, when the Claimant was not at fault and when men were not given warnings in such circumstances, paragraph 22 of her particulars of claim.

(8) Refusing to accept the Claimant's Ramadan greeting in 2012 because he said the Claimant did not believe in God and telling the Claimant that she should follow Islam because her family name originated from the prophet Mohammed, paragaraph 25 of her particulars of claim.

(9) In April 2013, suspending the Claimant for two weeks when a visitor was not met at the airport due to the Claimant being provided with the wrong information by the Claimant's male colleague, Haysam, but Haysam not being disciplined at all, paragraph 27 of her particulars of claim.

(10) In April or May 2013, on the Claimant's return from suspension, telling the Claimant that she should not have returned and that she would be dismissed in two weeks' time, and smiling and enjoying the Claimant's distress while doing so, paragraph 28 of her particulars of claim.

(11) Thereafter, repeatedly threatening to dismiss the Claimant for no reason, paragraphs 30-31 of her particulars of claim.

(b) Mr Mahmoud Ayyad, Head of Protocol and the Claimant's Line Manager, doing the following:

(12) Repeatedly promoting the Claimant's colleague Haysam through several roles in a short period of time, with no transparent process applied, but never promoting the Claimant, paragraph 15 of her particulars of claim.

(13) On 29 January 2014 asking the Claimant to go to Paris to deliver an item to the Prime Minister's son outside working hours and requiring her to return to work the next morning, to humiliate the Claimant, paragraph 36 of her particulars of claim.

(14) On 30 June 2014 dismissing the Claimant, without giving any reason, alongside a male employee, who was then reinstated.

(c) Mr Ali Al Harjri, Consultant Diplomat at the Qatari Embassy, doing the following:

(15) Insisting that the Claimant arrange a host private parties for him, which the Claimant understood to be sex parties, paragraph 23 of her particulars of claim.

(16) Attempting to persuade the Claimant to go to Cuba on holiday with him and suggesting that the Claimant transfer to the Paris Embassy.

4. I accepted the Claimant's evidence that all these things were done because the Claimant was seen as not being a good Muslim woman, because she was not Muslim, and she was seen by these male employees to be liable to be willing to engage in sexual conduct with male employees of the Embassy.

5. I accepted the Claimant's evidence that she was not paid holiday pay to which she was entitled, that is, half a month's holiday pay of £1,250, when she was dismissed.

6. The Claimant told me, and I accepted, that her net pay while she was employed by the Respondent was £2,500 a month.

7. I found that, because the Claimant was employed as a PA or a secretary at the Embassy, and that those acts were done by senior members of the Embassy staff, the Embassy staff abused their position in treating the Claimant as they did.

8. I accepted the Claimant's evidence that, as a result of this treatment, she suffered severe injury to feelings, including feeling fear, humiliation and shame, difficulty sleeping at night, loss of appetite, being fearful and being reduced to tears, both during and after the working day. The Claimant experienced feelings of depression, inability to cope with her emotional

distress and ultimately clinical depression, leading her to contemplating suicide. She told me, and I accepted, that she consulted her GP about feelings of depression and anxiety for the first time in her life in 2006 - 2007. The GP notes show that she did consult her GP in 2006, 2007, 2013 and 2014 regarding stress at work and feelings of upset.

9. A GP report prepared for these Tribunal proceedings dated 11 October 2019 confirmed that the Claimant continues to suffer from moderate depression and that her work and job issues continue to affect her mental state. The GP report told the Tribunal that the Claimant has recurrent moderate depression, which continues to be treated with medication, Amitriptyline and Sertraline. The report stated that the Claimant has had counselling and regular reviews.

10. The Claimant told me, and I accepted, that she feels wholly reliant on her medication for her wellbeing and that her mental state has been worsened by the fact that she was dismissed and has been unable to find permanent employment thereafter.

11. The Claimant told the Tribunal, and I accepted, that she was unable to escape the treatment that she suffered while at the Embassy because she was afraid to leave her job because she feared that she would be unable to obtain alternative work. She was a single parent at the time and needed to provide for her two dependent children.

12. I found that the Claimant was subjected to humiliating treatment which violated her dignity and made her feel outraged and degraded and that she was insulted throughout her employment.

13. The Claimant told me and I accepted that, since her dismissal, she has looked for work. She provided 4 lever arch files of job applications covering the period 2014 to 2019, evidencing 700 jobs in different categories of employment activity, for which she had applied, but had not been successful. She told me and I accepted that she had taken temporary and voluntary jobs in the hope that they would lead to permanent employment, but she had not found permanent alternative employment.

14. The only significant period of work which the Claimant was successful in achieving was a temporary contract at the bank of Kuwait in 2016. The Claimant told me that this was a temporary contract and that, while she hoped that it would lead to an offer of permanent work, unfortunately it did not. I accepted, therefore, that it did not break the chain of causation in terms of her loss of earnings between the date of her dismissal and the date of the Tribunal Remedy Hearing.

15. The Claimant has survived on savings and on state benefits. She is now in receipt of universal credit. She told me, and I accepted, that her financial situation weighs heavily upon her. I accepted the Claimant's figures for calculation of past loss.

16. Regarding future loss, I found that the Claimant had applied to, and been accepted by, various employment agencies. I accepted that, on the basis of the Claimant's previous lack of success, she will have difficulty in obtaining work in the future. She is now 58. However, the Claimant is a qualified, skilful woman. She has secretarial skills, she is eloquent and capable, she prepared the bundles and her statement for the Employment Tribunal. She is bilingual in English and Arabic. She told me that she is willing and able to undertake work in any capacity, whether temporary or permanent. In those circumstances, I concluded that it is impossible for me to say that she will not work again in the future. She lives in London, has considerable skills and she is dedicated to finding alternative work. In London there are plentiful administrative and secretarial jobs and many people in the city work well beyond the age when others retire. Accordingly, while I accepted that she has been extremely unfortunate, so far, in her searches for work, I found that, given her undoubted skills and capabilities, she will find work in the future. I decided that it was likely to take her another 18 months to do so. I found that, once she is in work, she is likely to retain the work, because of her undoubted capabilities, until what would normally be around the age when she is entitled to a state pension.

The Law

Injury to Feelings

17. The Tribunal is guided by principles set out in *Prison Service v Johnson* [1997] IRLR 162 in relation to assessing injury to feeling awards. 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.

18. Awards should bear some broad general similarity to the range of awards in personal injury cases. Tribunals should remind themselves of the value in everyday life of the sum they have in mind by reference to purchasing power. It is helpful to consider the band into which the injury falls, see *Vento v Chief Constable of West Yorkshire Police* [2003] IRLR 102.

19. In *Vento* the Court of Appeal identified 3 bands for compensation for injury to feelings, " 1. The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.2. The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band. 3. Awards of between

£500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence."

20. 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 was £500 to £6,000 the middle band was £6,000 to £18,000 and the upper band was £18,000 to £30,000.

21. 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, unless the claimant falls within section 44(6) of LASPO. Injury to feelings awards were also to be increased in accordance with the +10% principle.

22. *Joint Presidential Guidance on Employment Tribunal Awards for Injury to Feelings and Psychiatric Injury following Da Vinci Construction (UK) Limited* [2017] EWCA Civ 879 was issued on 4 September 2017. It reviewed the effect of recent case law and inflation on the Vento Bands and said that, when awards are made by Tribunals, the Vento bands should have the appropriate inflation index applied to them, followed by a 10% uplift on account of *Simmons v Castle* [2012] EWCA Civ 1039 *Simmons v Castle* [2012] EWCA Civ 1288.

23. The *Joint Presidential Guidance concluded as follows*,"…as at 4 September 2017, that produces a lower band of £800 to £8,400 (less serious cases); a middle band of £8,400 to £25,000 (cases that did not merit an award in the upper band); and an upper band of £25,200 to £42,000 (the most serious cases), with the most exceptional cases capable of exceeding £42,000. … the Employment Tribunal retains its discretion as to which band applies and where in the band the appropriate award should fall."

Aggravated Damages

24. Aggravated damages are available for an act of discrimination (*Armitage, Marsden and HM Prison Service v Johnson* [1997] IRLR 162, [1997] ICR 275, EAT).

25. The award must still be compensatory and not punitive in nature, *Commissioner of Police of the Metropolis v Shaw* [2012] IRLR 291, EAT . In that case, a whistleblowing case, compensation was assessed on the same basis as awards in discrimination cases). The EAT said that the circumstances attracting an award of aggravated damages fall into three categories: (a) The manner in which the wrong was committed. The basic concept here is that the distress caused by an act of discrimination may be made worse by it being done in an exceptionally upsetting way. In this context the phrase "high-handed, malicious, insulting or oppressive" is often referred

to – it gives a good general idea of the kind of behaviour which may justify an award, but should not be treated as an exhaustive definition. An award can be made in the case of any exceptional or contumelious conduct which has the effect of seriously increasing the claimant's distress (b) Motive. Discriminatory conduct which is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is, as a matter of common sense and common experience, likely to cause more distress than the same acts would cause if evidently done without such a motive – say, as a result of ignorance or insensitivity. That will, however, only of course be the case if the claimant is aware of the motive in question: otherwise it could not be effective to aggravate the injury. There is thus in practice a considerable overlap with (a). (c) Subsequent conduct. This can cover cases including where: the defendant conducted his case at trial in an unnecessarily offensive manner; the employer rubs salt in the wound by plainly showing that he does not take the claimant's complaint of discrimination seriously; the employer fails to apologise; and the circumstances are such as those in Bungay v Saini.

26. In *HM Land Registry v McGlue* UKEAT/0435/11, [2013] EqLR 701, EAT. The EAT said that aggravated damages 'have a proper place and role to fill', but that a tribunal should also 'be aware and be cautious not to award under the heading “injury to feelings” damages for the self-same conduct as it then compensates under the heading of “aggravated damages”'. Such damages are not intended to be punitive in nature.

Injury to Feelings and Psychiatric Injury

27. In *HM Prison Service v Salmon* [2001] IRLR 425, EAT Ms Salmon was employed at Canterbury prison from September 1991. She was increasingly unhappy about the sexualised nature of her working environment. This culminated in an incident in October 1996, when a male colleague, Officer David, wrote offensive and sexually degrading comments about her in the dock book at Canterbury Crown Court. This led to her being off work with what was later diagnosed as a moderate to severe depressive illness. Eventually she took medical retirement in December 1997. Mrs Salmon successfully claimed that she had been discriminated against on grounds of sex by the Prison Service and by Officer David. The employment tribunal found that the Prison Service had created a humiliating working environment for women officers. Male colleagues openly read pornographic magazines and engaged in unacceptable sexual banter. The tribunal found that Officer David's comment in the dock book amounted to sexual harassment. The tribunal awarded £20,000 for injury to feelings, including £5,000 aggravated damages and and the equivalent of £15,000 compensation for personal injury in respect of the psychiatric damage, on the basis that her illness fell within the category of "moderately severe" psychiatric damage as defined in the 1998 edition of the Judicial Studies Board Guidelines for personal injury damages, for which a bracket of £9,500 to £27,500 was given.

28. The EAT upheld the awards in *Salmon*. It decided that they overlap between the injury to feelings for which the applicant would be compensated and the injury covered by the award of general damages for psychiatric injury

was not such as to give rise to a substantial degree of double recovery. It said that, in principle, injury to feelings and psychiatric injury are distinct. In practice, however, the two types of injury are not always easily separable, giving rise to a risk of double recovery. In a given case, it may be impossible to say with any certainty or precision when the distress and humiliation that may be inflicted on the victim of discrimination becomes a recognised psychiatric illness such as depression. Injury to feelings can cover a very wide range. At the lower end are comparatively minor instances of upset or distress, typically caused by one-off acts or episodes of discrimination. At the upper end, the victim is likely to be suffering from serious and prolonged feelings of humiliation, low self-esteem and depression; and in these cases it may be fairly arbitrary whether the symptoms are put before the tribunal as a psychiatric illness, supported by a formal diagnosis and/or expert evidence. There is nothing wrong in principle in a tribunal treating "stress and depression" as part of the injury to be compensated for under the heading "injury to feelings", provided it clearly identifies the main elements in the victim's condition which the award is intended to reflect (including any psychiatric injury) and the findings in relation to them. But where separate awards are made, tribunals must be alert to the risk that what is essentially the same suffering may be being compensated twice under different heads.

Judicial Studies Guidelines

29. Judicial College Guidelines 14th Edition (A) Psychiatric Damage Generally [7.1] with 10% uplift provide as follows:

“The factors to be taken into account in valuing claims of this nature are as follows:

(i) the injured person's ability to cope with life, education and work

(ii) the effect on the injured person's relationships with family, friends and those with whom he or she comes into contact;

(iii) the extent to which treatment would be successful;

(iv) future vulnerability;

(v) prognosis;

(vi) whether medical help has been sought;

(vii) Claims relating to sexual and physical abuse usually include a significant aspect of psychiatric or psychological damage. The brackets discussed in this chapter provide a useful starting point in the assessment of general damages in such cases. It should not be forgotten, however, that this aspect of the injury is likely to form only part of the injury for which damages will be awarded. Many cases include physical or sexual abuse and injury. Others have an element of false imprisonment. The fact of an abuse of trust is relevant to the award of damages. A further feature, which distinguishes these cases from most involving psychiatric damage, is that there may have been a long period during which the effects of the abuse were undiagnosed, untreated, unrecognised or even denied. Aggravated damages may be appropriate.

(a)	Severe	£43,710 to £92,240	£48,080 to £101,470

In these cases the injured person will have marked problems with respect to factors (i) to (iv) above and the prognosis will be very poor.

(b) Moderately Severe £15,200 to £43,710 £16,720 to £48,080

In these cases there will be significant problems associated with factors (i) to (iv) above but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases of work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category.

(c) Moderate £4,670 to £15,200 £5,130 to £16,720

While there may have been the sort of problems associated with factors (i) to (iv) above there will have been marked improvement by trial and the prognosis will be good.

(d) Less Severe £1,220 to £4,670 £1,350 to £5,130

The level of the award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were affected. Cases falling short of a specific phobia or disorder such as travel anxiety when associated with minor physical symptoms may be found in the Minor Injuries chapter.

Discussion and Decision

30. In this case I was satisfied, taking into account the guidance in the case of *Salmon,* that it was appropriate to make awards separately for injury to feelings and psychiatric injury. I took into account the Judicial Studies Board Guidelines and the medical evidence presented to me. I considered that the Claimant had suffered moderately severe psychiatric injury by way of her clinical depression and anxiety since 2006 - 2007, that is, for 12 years until the Remedy Hearing. It had not resolved and was still being treated. I took into account that the Claimant told me that she was able to return to work and she was willing and keen to work. Her case was not one where the work- related stress had resulted in permanent disability preventing a return to comparable employment. Nevertheless, I considered that the Claimant had already suffered from this injury for 12 years and that the prognosis was that it would not resolve entirely, it will continue at a similar level.

31. The Claimant had clearly suffered a separate medical injury, which her doctor has confirmed. I considered that, because of the very length of period of the psychiatric injury and the fact that it was continuing, that the appropriate Judicial Studies Board band for this psychiatric injury was in the upper region of the Moderately Severe bracket. I assessed it at £35,000.

32. I also concluded that it was appropriate to award the Claimant a separate injury to feelings award. I decided that there was no double recovery in doing so because I accepted that the Claimant, quite separately from her psychiatric injury, had suffered injury to feelings in terms of humiliation, insult and feelings of being trapped in a job which she was unable to escape, because of her duty to care for her two dependent children.

33. I further considered that there were aggravating features in this case. The Claimant was a relatively junior employee and the treatment was carried out by much more senior members of the diplomatic staff at the Respondent's Embassy. The treatment by these more senior officers involved subjecting the Claimant to humiliating and sexually degrading suggestions. It involved suggesting to the Claimant that her daughter be married for sexual purposes to an older man. I decided that there was also an element of high handed and capricious conduct in relation to the repeated threats to dismiss. I accepted that the Claimant was subjected to threats of dismissal which were evidently enjoyed by the person who was making them. That was demeaning and abusive of the Claimant. The treatment of her was disrespectful of her sex and the difference in her religion and belief. I decided that the treatment was appropriately described as high handed, malicious, insulting or oppressive. I considered also that the motive was relevant in this case; the treatment of the Claimant was spiteful and vindictive.

34. Accordingly, I decided that it was appropriate to award the Claimant an award in the upper Vento bracket. From 2010 the upper Vento bracket was £18,000 to £30,000.

35. The treatment was sustained from 2006 on until 2014, for 8 years. I considered that the appropriate award was a total of £32,000: £22,000 plus £10,000 for aggravated damages. The total injury to feelings award was £32,000.

36. I awarded interest on the total award of £67,000 (psychiatric injury of £35,000 and injury to feelings of £32,00) at 8% per annum. There was not a single date on which that injury to feelings and psychiatric injury arose. I awarded interest for 9 years from 2010, rather than from the end of the employment, or the beginning of the employment. 9 x 0.08 x £67,000 = £48,240.

37. I ordered the Respondent to pay the Claimant a total of £115,240, including interest, for injury to feelings, psychiatric injury and aggravated damages.

Economic Loss

38. With regard to past loss, I accept the Claimant's calculations. She was paid £2,500 net per month by the Respondent.

39. I accepted that there were 64 months from the date of dismissal until the Remedy Hearing. The Claimant had therefore lost £160,0000 earnings.

40. The Claimant mitigated her loss. She received £10,496 in earnings, state benefits of £20,228 and universal credit of £25,197. In total she received £55,921 in mitigation of her loss. Her net loss by the date of the Remedy Hearing was £104,079. She was entitled to interest at 8% per annum from the midpoint between the date of her dismissal and the Remedy Hearing. The

calculation was: 64/12 (months) x 0.04 x £104,079 = £22,203.52 interest. Total past loss, including interest was £126,282.52.

41. With regard to future loss, 18 months x £2,500 per month = £45,000.

42. I also awarded the Claimant her unpaid holiday pay at £1,250.

43. All these figures needed to be grossed up.

44. I added up the all the figures that I had awarded: £115,240 + £126,282.52 + £45,000 + £1,250 = £287,772.52.

45. The first £30,000 of that sum is tax free.

46. £287,772.52 - £30,000 = £257,772.52.

47. I added the following sum by way of grossing up, I added 20% (lower tax rate) to the first £35,500 of £257,772.52 = £6,900. I added 40% to the next £115,500 = £46,200. I added 45% (highest rate of income tax) to the remaining £106,772.52 = £48,047.63. The total amount added for grossing up was £6,900 + £46,200 + £48,047.63 = £101,147.63.

48. The total amount the Respondent must pay to the Claimant was therefore £287,772.52 + £101,147.63 = £388,920.15.

Costs

49. The Claimant asked that I order the Respondent to pay her costs.

Relevant Law

50. A Tribunal has a duty to consider making an order for costs where it is of the opinion that any of the grounds for making a costs order has been made out under *r76(1) ET Rules of Procedure 2013.*

51. In doing so, it must give the parties an opportunity to make representations as to why such an order should or should not be made.

52. There must be a finding that the statutory threshold under *r 76(1)(a) or (b) ET Rules of Procedure 2013* has been met, and, if it has, the Tribunal must then consider whether it is appropriate to make an order in all the circumstances, in the exercise of its discretion, *Ayoola v St Christopher's Fellowship* UKEAT/0508/13 (6 June 2014, unreported) at paras 17–18; *Robinson v Hall Gregory Recruitment Ltd* [2014] IRLR 761, EAT, at para 15.

53. The purpose of an award of costs is to compensate the party in whose favour the order is made, and not to punish the party ordered to pay the costs; *Lodwick v Southwark London Borough Council* [2004] EWCA Civ 306, [2004] IRLR 554, at para 23; *Davidson v John Calder (Publishers) Ltd and Calder Educational Trust Ltd* [1985] IRLR 97, [1985] ICR 143, EAT).

54. Although the potential receiving party does not have to serve a schedule of costs on the other side, or on the tribunal, in the case of a summary assessment (*Ayoola v St Christopher's Fellowship* UKEAT/0508/13 (6 June 2014, unreported), at para 52), it is beneficial to do so as it assists both tribunal and paying party to know precisely what is being claimed and to enable them to challenge or query any particular amounts. The Tribunal is required to explain why the amount of costs awarded is appropriate and show that it has independently scrutinised the sums claimed, *Ayoola,* above.

55. Where a claimant has entered into a damages-based agreement (DBA) with his legal representative, under which he agrees to pay to the representative, if he is successful, a percentage of any compensation recovered from the respondent, he will only be able to make a costs claim against the respondent under r 76(1) if he can properly be said to be the beneficiary of any order made, *Barry v University of Wales Trinity St David* Case No 1603120/2013, ET. This will depend on the wording of the agreement. If the DBA provides that any costs recovered from the respondent will be set off against the contingency fee payable to the representative, so that it is the claimant and not the representative who will benefit from a costs order, there will be no bar to his making an application under *r 76(1).*

Discussion and Decision

56. I considered that it was appropriate for the Tribunal to make an award of costs. The Respondent has put forward no defence to the claims brought against it under European law. It has not engaged in the proceedings, has made no attempt to resolve the matter and therefore has required the Claimant to pursue her claim through the Tribunal to a remedy hearing. The Respondent has acted unreasonably in doing so. The Claimant has been put to expense and inconvenience in doing so and it is appropriate that the Respondent pay costs as a result. The Respondent chose not to attend the Remedy Hearing. It would have had a chance to respond to the application for costs had it done so. It was appropriate to make an order for costs in its absence.

57. The Claimant told me, and I was satisfied in this case, that, pursuant to the terms of her DBA, she will be the beneficiary of any order made.

58. The Claimant's representative told me that costs in this case are more than £20,000; he has spent about 5 hours a day since May 2019 dealing with the case. A schedule of loss, detailed witness statement, and Bundles showing efforts to find alternative work have all been prepared. The Claimant's solicitor has written to the Tribunal on several occasions, seeking to progress the claim.

59. However, it is also the case that I was told that the Claimant had prepared the materials for the Employment Tribunal. The Tribunal proceedings have not been contested by the Respondent and there has been

no contested hearing, either at liability or remedy stage. This ought to have reduced the costs.

60. No schedule of costs has been produced. I did not consider that it was appropriate to award £20,000 in costs.

61. I accepted, however, that the Claimant's solicitor has engaged in correspondence with the Tribunal, has represented her at the hearing today and has assisted and advised the Claimant in preparing for the case. This is was a valuable and sensitive case. The Claimant's solicitor is a partner in the firm and I considered that it was, indeed, appropriate for a senior solicitor to take conduct of the case.

62. I therefore assessed the appropriate award of costs in this case, on a summary basis, at £7,000. That figure reflected attendance at Tribunal and the advice, assistance and correspondence required by a partner in a solicitors' firm to properly conduct this case to its conclusion.

Employment Judge Brown

Dated:08th Nov 2019

Judgment and Reasons sent to the parties on:

11/11/2019

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For the Tribunal Office