



EMPLOYMENT TRIBUNALS

Claimant

Mr W Mohammed

v

Respondent

Cummins Limited

Heard at: Bury St Edmunds

On: 13 November 2019

Before: Employment Judge Cassel

Members: Mrs S Morgan and Mr B Smith

Appearances

For the Claimant: Mr J Carter, Counsel

For the Respondent: Mr O Holloway, Counsel

JUDGMENT on REMEDY

1. The Respondent is to pay to the Claimant the following sums:

a.	a basic award of	£12,714.00
b.	compensation for loss of pay	£ 2,839.98
c.	interest thereon	£ 272.64
d.	compensation for pension loss	£ 1,975.09
e.	damages for injury to feeling	£10,000.00
f.	interest on e. above	<u>£ 1,920.00</u>
		£29,721.71

2. The Respondent is thus to make a payment of **£29,721.71** to the Claimant.

3. The Respondent is to account to the Claimant and to HMRC for any Tax and National Insurance payable.

RESERVED REASONS

1. The Liability Hearing took place on 12 – 16 August 2019 and in our Judgment on Liability, promulgated to the parties on 19 September 2019, the claim of discrimination arising from disability succeeded, as did the claim of unfair dismissal.

2. The Remedy Hearing was adjourned until today. The Claimant was again represented by Mr J Carter and the Respondent by Mr O Holloway.

Evidence

3. We heard evidence today from the Claimant who confirmed the truth of his third witness statement and who was cross examined by Mr Holloway. We also heard evidence from Mrs D Graham, who is employed as the Line HR Leader for the Respondent. We had produced to us a further bundle of documents, this time comprising 354 pages. In fact, of those 354 pages we were only referred to approximately 15 pages.

Conclusions

4. We make the following findings of fact based on the balance of probabilities having heard evidence from the two witnesses and having been referred to the documents both before the Tribunal for the Liability Hearing and for today's Remedy Hearing.

- 4.1 Following his dismissal, the Claimant has remained unwell and unable to work.

- 4.2 We heard evidence from the Claimant that he would have returned to work had he been given just a final written warning by Mr Smith, instead of being dismissed. When being cross examined, however, he was asked whether he would have returned to work following the disciplinary hearing and stated,

"I wouldn't have gone back to work for the company because of the way they treated me".

Looking at the nature, complexity and frequency of the Claimant's sense of grievance in the latter part of his employment, we find it highly unlikely that he would have returned to his work, notwithstanding his long period of employment.

- 4.3 We accept that the Occupational Health Department, in using their best endeavours were genuine in trying to have him return to work prior to the disciplinary hearing. We accept the evidence of Mrs Graham, who told us that she had 25 years of HR experience, but in her experience, it was highly unlikely that had the Claimant returned to work, it would have been a sustained return over any period of time. In having considered all of the evidence to which our attention was drawn, we do find that it was highly probable that the relationship would have broken down and inevitably, the Claimant's employment would have come to an end.

- 4.4 We were shown some details of the Company's sickness policy. It is a generous policy which allows for six month's full pay and six month's half pay. There was little dispute that as far as the entitlement was concerned, based on our finding of fact that the Claimant would not have returned to work, a proper procedure would have led to his dismissal on or around 16 January 2018. We bear in mind that by that date, he would have exhausted his entitlement to sick pay and in our judgment, it would have made little difference had the departure been delayed beyond that.
- 4.5 In our judgment the dismissal would have been inevitable under the Company's capability and sickness policy and any future loss would not be their responsibility.
5. We are reminded by both advocates that our approach must be to consider injury to feelings on the basis of the wrongful act that we have found had taken place. It is always difficult to disentangle feelings of disenchantment and grievance, which the Claimant clearly had, with the damages that flow from the wrongful act. However, we assess injury to feelings for the act of discrimination and we remind ourselves that the procedures which led to his dismissal took place over several months, to fall within the mid-range of Vento damages. We consider the appropriate sum as £10,000.
6. In Tribunal we announced our Judgment on compensation which is recorded above. It is unlikely that any Tax and National Insurance is payable on the awards, but in the event that it is, the Respondent is to account to the Claimant and HMRC for any sums so payable.

Employment Judge Cassel

Date: 15 November 2019

Sent to the parties on: ...29.11.19.....

.....
For the Tribunal Office