



EMPLOYMENT TRIBUNALS

Claimant: Mr P Allen

Respondents: 1. Paradigm Precision Burnley Limited
2. Carl Wheeler

Heard at: Manchester

On: 9-13 March and
16,17 March 2020

Before: Employment Judge Leach
Mr I Frame
Mr C S Williams

Representation:

Claimant: Ms T Barsam (Counsel)

Respondents: Mr A Rozycki (Counsel)

JUDGMENT having been sent to the parties on 20 March 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS ON REMEDY

1. We heard evidence from the claimant in relation to remedy and Mr Rozycki asked the claimant a number of questions.
2. We were required to reach decisions on a number of issues before then undertaking calculations. We were assisted by both counsel including their agreement on a number of the figures relevant to the calculations.

3. There was not agreement between the parties on the following three issues, though:

- (1) The amount of an injury to feelings award, including whether there should be an aggravated element of that award. There was agreement that just one award should be determined taking in to account all relevant complaints upheld;
- (2) The extent to which the claimant has mitigated his losses and whether he has acted unreasonably in the steps taken to mitigate losses; and
- (3) The extent of future losses.

Injury to Feelings

4. We recognised that it is extremely difficult to put a financial figure on injured feelings but that is what we are required to do, having regard to the latest Presidential Guidance on injury to feelings.
5. Ms Barsam made submissions that injury to feelings should be in the top band, that there are a number of aggravating features in this case and the award should reflect that. She made submissions that we should have regard to the following
 - a. The impact on the claimant's private life including an adverse impact on the plans to adopt a child that uncertainty about employment caused.
 - b. The unlawful harassment and the length of time over which the unlawful acts were spread
 - c. Rejecting the claimant's candidature for the general manager role.
 - d. The impact of his sexual orientation having been disclosed at work more widely than he had intended
 - e. The fact that the respondent had reviewed the claimant's facebook and correspondence history and selected personal items with sexual references or references of sexual orientation, adding these to the tribunal bundle and attempting to use them to assist their case.
 - f. The fact that the respondent has sought to put forward a plainly untrue account to the Tribunal
 - g. Evidence provided by the claimant that a prospective employer was "warned off" employing him.

6. For the first respondent, Mr Rozycki submits that an appropriate injury to feelings award is in the middle of the middle band now set by the presidential guidance, so in the region of £18,000..
7. We have decided that this case warrants an injury to feelings award at the top of the middle range or at the bottom of the top range set out in the latest Presidential Guidance, and the award we make is of £26,300.
8. We have taken account of
 - a. the fact that the unlawful acts occurred over a number of months.
 - b. the evidence that we have heard from the claimant about the upset that the unlawful acts caused to him. We accept that the claimant was affected considerably by the discrimination and harassment that we have made findings on.
 - c. the fact that the claimant was medically unfit to work for a period of time following the termination of employment.
 - d. The impact that the events have had on the claimant's plans to adopt a child.
 - e. The unwanted disclosure of, the claimant's sexual orientation to employees of the first respondent (particularly on 20 April 2018);
 - f. The fact that the respondents have, in the course of preparing for this hearing, accessed the claimant's face-book entries including as far back as 2011 and also conducted a thorough search of emails sent by the claimant on the first respondent's system including emails which are not work related and sent by the claimant to friends.
9. The claimant and his husband had a holiday early in 2019 in celebration of the claimant's 40th birthday. Mr Rozycki questioned the claimant about this and made submissions that this holiday indicated the injury to the claimant's feelings were not as significant as the claimant had said. We do not find that the claimant's ability to go on holiday when he did, indicates that his injured feelings were short lived.
10. We heard evidence that the claimant applied for employment at the end of December 2018 and have heard evidence from him that he was unsuccessful in that employment because of comments that the claimant understands were made by the second respondent to the prospective employer, warning that prospective employer against employing the claimant. We have not taken account of this: we are mindful that it was not a matter that was dealt with in the claimant's witness statement; it was not an allegation of victimisation, and the

respondents have not had a proper opportunity of responding to the allegation, so we have not taken that matter any further.

Mitigation

11. We find that the claimant has not acted unreasonably at any stage of mitigation. We have taken into account the fact that he was still signed off as too ill to work until February 2019.
12. We have heard evidence from the claimant about his work with a networking group in the engineering sector, including his participation in presentations on LGBT issues in the sector. We have no criticism of the time that he has taken pursuing this.
13. The claimant chose to set up a consultancy business with the benefit of a Government grant. By May 2019, the business was actively engaged in paid instructions, thereby mitigating the claimant's losses to a reasonable and increasing extent from that date.

Future Losses

14. Moving to the third issue of disagreement, future losses; we were required to reach our decision at a time when 24 hours previously, an announcement had been made by the Government about the very serious consequences that the whole country was about to face with the COVID-19 virus.
15. We decided that it is appropriate to consider likely future losses for an additional 12 months but not beyond then. Our view is that now the claimant has set up a consultancy business he will be well set to obtain contracts in relation to that business and after another 12 months of trading will have effectively closed the gap in relation to earnings.
16. Ms Barsam made submissions that, in assessing future loss, we should take account of
 - a. the claimant's need for holidays (as a consultant he will not be entitled to paid holidays and will not earn anything when he does take time away from the business
 - b. weeks in between contracts when he will not earn any income
 - c. the impact that COVID19 is likely to have on the claimant's ability to earn.
17. We have decided to take some account of these factors but not to the extent submitted by Ms Barsam. Our view is that the nature of consultancy work is that weeks

in between contracts will also often be utilised by the claimant as holiday and it is appropriate when assessing future loss to combine the two. We have decided that ten weeks should be factored in to the calculation as non-earning weeks (whether time in between contracts or holiday time or both)

18. As for the apparent uncertainty and emerging concerns related to COVID-19 we have decided that it is appropriate to factor in an additional six weeks but no more. We are mindful that both employees and contractors are likely to be affected but we do accept that there is likely to be a bigger adverse impact for small businesses/self employed individuals (such as the claimant) in comparison with permanent employees.

19. We set out below the amounts awarded under each head, having gone through our calculations with both counsel and, we believe, reached agreement on the arithmetic behind the amounts:-

(1) A basic award in relation to the unfair dismissal claim:	£3,048.00
(2) Notice (PENP):	£18,478.20
(3) Loss of pension during notice period:	£1,847.82
(4) Loss of statutory rights:	£500.00

20. The awards above were made in relation to the unfair dismissal claim. The awards following are applicable to the Equality Act claims and the detriment claim under the Regulations/s47C Employment Rights Act 1996 on which the claimant was successful:

(1) Losses to hearing:	£45,586.68
(2) Future losses:	£18,126.72
(those future losses carried forward by a further 12 months)	
(3) Injury to feelings	£26,300.00
(4) Interest on injury to feelings	£3,459.00
(5) Interest on the compensatory element	<u>£3,173.00</u>
Total	£120,519.42

(6) The first respondent accepted that it was appropriate to apply an uplift of 15% on the award, for failure to adequately follow grievance procedure.

This amounts to £18,077.92

Total **£138,597.34**

21. This amount was grossed up. Before grossing up, the £30,000 nil rate element was taken off, as was the PENP (which is categorised as a gross figure and from which tax will be deducted by the first respondent).

22. This leaves £90,119.00 – 40% of which is £36,047.66. We added this on to the total award of £138,597.34 leaves a final grossed up award of **£174,645.00**.

Employment Judge Leach

Date: 12 May 2020

REASONS SENT TO THE PARTIES ON

14 May 2020

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