EMPLOYMENT TRIBUNALS

Claimant: **Mr A Weatherby**

Respondents: **Amcrol Limited**

Heard at: **Llandudno** **On: 6th,7th,10th & 11th February 2020**

Before: **Employment Judge R F Powell**

Members: **Mrs Peel**
Mrs Atkinson

Representation:

Claimant: **Mrs A Weatherby**

Respondent: **Mr N Bellis, Business development Manager**

JUDGMENT having been sent to the parties on 17 February 2020 and reasons having been requested by the Respondent in accordance with Rule 62(3) of the Rules of Procedure 2013:

1. This is our judgement on remedy following our earlier judgment on liability.

   The basic award; section 119 Employment Rights Act 1996

2. It is common ground between the parties, in light of our judgement, that the principle reason for the Claimant's dismissal was redundancy.

3. It is further agreed between the parties that the Respondent paid to the Claimant £1195.25 in respect of his statutory entitlement to redundancy pay, calculated on the same basis by which the tribunal calculates the basic award.

4. In light of the operation of section 122(4), the value of the redundancy payment extinguishes the Claimant's right to a basic award in this case.

The claim for compensation: section 123 Employment Rights Act 1996

5. Section 123 states that the compensatory award shall be

> "such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to the action taken by the employer".

6. The tribunal has concluded that but for the unlawful behaviour of the Respondent the Claimant would certainly have been dismissed fairly six weeks after the effective date of termination. The Claimant's net monthly salary was £1,263. 93. Applying that figure to the six-week period noted above we have concluded that the just and equitable compensatory sum in respect of loss of earnings is the net sum of **£1,895. 87.**

7. Another aspect of the claim is for loss of the benefit of employer's pension contributions.

8. The parties agreed that prior to 1st April 2090 the Respondent's monthly contribution to the Claimant's pension was £44.67. From 1 April it rose to £46.82.

9. We have applied the following method of calculation and we have multiplied each of those figures by 12 and then divided each by 52. In this way we have reached a weekly sum. In the period prior to 1 April the weekly sum is £10. 31 and thereafter the weekly sum is £10.80. Applying those figures to the six-week period we have concluded that the compensation due to the Claimant is the sum of £**64.33.**

10. The Claimant's third request for compensation relates to costs incurred in seeking employment. Following discussion with the Claimant as to when he had incurred the costs which he claims, it became apparent that the sums claimed post-dated the six-week period following the effective date of termination. In light of our judgement that the Claimant would have been fairly dismissed by that date, we concluded that it was not just or equitable to make any award for such costs because they would have been incurred in any event following a fair dismissal.

11. The Claimant also set out a calculation in respect of future losses. Again, by reference to our conclusion that the Claimant would have been fairly dismissed six weeks after the effective date of termination we do not consider that such losses would flow from any of the unlawful conduct of the employer. For these reasons we make no award in respect of future loss of income.

12. With respect to the Claimant's loss of his statutory rights we make an award in the sum **of £350.**

Injury to feelings

13. The foremost dispute in this case relates to the appropriate level of compensation arising from the Respondent's unlawful conduct with respect to sexual harassment, direct discrimination and subsequent victimisation.

14. The second and third pages of the Claimant's schedule of loss are his submissions in respect of his application for compensation for injury to feelings arising out of the discriminatory conduct as proven.

15. The submissions emphasise the duration of the conduct of CF (May to September 2017, January to June 2018), the adverse effect upon the Claimant, his wife and their family life. The submissions also address the effect of the direct discrimination and victimisation subsequent to CF's conduct.

16. The Respondent's oral submissions maintain the assertions made in evidence it presented, some of which it is evident the tribunal has not accepted. In particular, the date on which the Respondent was first informed of CF's actions and its lack of action. Nevertheless, we do take note of the fact that the course of harassment was curtailed in the autumn of 2017 and, in respect of the successful claim for direct discrimination, the degree of less favourable treatment was modest and of short duration. We have already noted in this judgement that the Claimant would have been fairly dismissed, by reason of redundancy, six weeks after his effective date of termination and that is a matter which we also take into consideration with respect of our finding of victimisation.

17. The Claimant's application for an award of injury to feeling arises from the powers of the tribunal under section 124 of the equality act 2010. Any award of compensation and should be assessed under the same principles as applied to torts, central aim being to put the Claimant position, so far as is reasonable, that he would have been had the tort not occurred: Ministry of Defence v Wheeler (1998) IRLR 23. The general principles that apply to assessing appropriate injury to feelings award are recorded in the case of the Prison Service v Johnson (1997) IRLR162:

    a. injury to feelings award is compensatory should be just to both parties, that should compensate fully without punishing the discriminator. Feelings of indignation at the discriminator's conduct should not be allowed to inflate the award;

    b. awards should not be too low, as that would diminish respect for the policy of antidiscrimination legislation. On the other hand, awards should be restrained as accessible awards could be seen as the way to untaxed riches;

    c. awards should bear some broad general similarity to the range of awards in personal injury cases, not to any particular type of personal injury but the whole range of such awards;

    d. tribunals should take into account the value of the sum they have in mind, by reference to purchasing power or by reference to earnings;

e. tribunals should bear in mind the need for public respect for the level of awards made. The tribunal has reminded itself of the guidance in the case of Vento v Chief Constable of West Yorkshire Police (No2) [2003] IRLR102 as revised by subsequent case law, most recently the De Souza v Vinci Construction (UK) Ltd [2017]. The presidential guidance, updated on 23 March 2018, sets the limits of the three "bands":

The upper band: £25,700-£42,900;

The middle band: £8,600 to 20's £25,700; and

The lower band £900-£8500

18. We have been invited to consider the Guidelines for the Assessment of General Damages in Personal Injury Cases', 15th Edition, in respect of indicative compensatory awards, in personal injury cases, for post-traumatic stress disorder.

19. The Claimant seeks compensation for injury to feelings in the sum of £15,000.00. He does not advance evidence of argument for personal injury before the Employment Tribunal, albeit his schedule of loss refers to the same.

20. We have looked at a number of reported cases summarised in Harveys on Industrial Relations and Employment Law; examples of Employment Tribunal and Employment Appeal Tribunal decisions. We did not find any of those examples to be factually similar to this case.

21. We noted case such of Yamaguchi v (1) Orleans Investment Services Ltd (2) Kotronius [2006] ET/2305176/05 & ET/2301426/06 wherein an award of £12,000.00 was made. That case predated the *De Souza* case, the current Presidential Guidance and is obviously one made thirteen years ago. In that case the Claimant was sexually harassed, assaulted and bullied by her immediate line manager, her complaints were inadequately investigated, the manager was not disciplined and the Respondent was found to have had inadequate systems in place to protect staff. The Claimant was traumatised and prescribed medication.

22. We also considered Porter v Phase Electrical Ltd [2011], Blundell v The Governing Body of St Andrew's Catholic School & others UKEAT/0330/09/JOJ and AA Solicitors Ltd (T/A AA Solicitors) & Anor v Majid UKEAT/0217/15/JOJ. Both of the EAT cases involved a "discriminatory" dismissal which is not a factor in this case. There are a number of descriptions of conduct towards the Claimants in these cases which, whilst different in exact character appear to be of similar gravity. The sums upheld on appeal were both in the middle Vento band.

23. In our judgment CF's conduct through her texts and email messages was a course of conduct which, viewed cumulatively, was a serious course of harassment. CF's comments to the Claimant, her threats to complain about him if he raised a grievance, her comments about Mrs Weatherby's illness and those addressed to Mrs Weatherby sent via the Claimant's email were deeply offensive[1] and led to the break down of

[1] We excluded consideration of direct contact between CF and Mrs Weatherby, save for noting that it corroborated the Claimant's case as to the damage CF's contact with the claimant had caused to his relationship with Mrs Weatherby.

their relationship for a period of time. Despite the Respondent's denial we have found that the Respondent failed to take any action when CF's behaviour was reported orally. The Respondent's external HR investigation upheld the Claimant's complaint and the Respondent subsequently, and without explanation, wrote to the Claimant to say it had not been upheld. The Claimant was unable to sleep and was certified unfit for work due to work related stress.

24. We do not consider the incident of direct discrimination as adding significantly to the Claimant's distress. We further reminded ourselves that the Claimant was distressed by the sudden news of his redundancy and the manner in which he was treated. We balance that with the likely degree of upset that would have occurred in any event if Mr Weatherby's redundancy process had not been tainted by victimisation.

25. We are of the view that this was a serious and sustained case of harassment which was poorly managed and exacerbated by the incidents of direct discrimination and the victimisation.

26. The Respondent has urged us to conclude that this is a case which falls at the bottom of the middle band; £8,600.00. We agree that this is a case which falls within the middle band. However, we consider that it properly falls in the mid- range of that band, but a little below the mid-point. We therefore consider an award of £15,000.00 is the appropriate sum in this case.

Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992

27. The Claimant asserts that the Respondent was in breach of the ACAS code of conduct in respect of its conduct of the appeal against the dismissal of his grievance against CF; the sexual harassment claim.

28. It is documented that the appeal was presented to the Respondent and the Respondent admits that no appeal hearing took place. We have set out our findings of fact on this issue in our liability judgment.

29. The Claimant argues for a 20% uplift; he refers to the clear advice from the Respondent's HR advisor and the failure to follow that advice. The Respondent accepts it could have followed the HR advice but states that default is mitigated by the substantial business difficulties facing the Respondent at the time of the appeal.

30. We find merit in both submissions and consider that it is just and equitable to award a 15% uplift on the award for injury to feelings. 15% of £15,000.00 amounts to the sum of £2,250.

31. Thus, we order the Respondent to pay to the Claimant **£17,250.00** in respect of his injury to feelings.

Interest on the Discrimination award.

32. A tribunal is able to award interest on awards of compensation made in discrimination claims brought under section 124 (2)(b) of the Equality Act 2010, to compensate for

the fact that compensation has been awarded after the relevant loss has been suffered.

33. Interest is calculated as simple interest accruing from day to day (regulation 3(1)). The rate of interest now to be applied is 8%. In respect of the calculation of interest on an award of injury to feelings, calculation commences from the date of the act of discrimination complaint until the date on which the tribunal calculates the compensation. Where a tribunal considers that serious injustice, it can calculate interest on such different periods as it considers appropriate (regulation six (three). In this case the tribunal noted that the discriminatory conduct of CF extended between May 2017 and February 2018. However, it ceased for a period between September 2017 and 12th January 2018.

34. The Respondent has persuaded us that it would be on an injustice to award interest without reflecting that period of inactivity. We therefore proposed our provisional view; the date of the 12th January 2018 (the date on Which CF's harassment recommenced) from which interest would be calculated. Neither party proposed any other date nor objected to the tribunal's proposal.

35. A we have therefore calculated the interest, at 8%, on the sum of £17,500.00 from 12 January 2019 to 11th February 2020, a period of 13 months. Our calculation gave the figure of £1,495.00. We therefore order the Respondent to pay to the Claimant the sum of **£1,495.00** in respect of accrued interest.

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Employment Judge R Powell

Dated: 4 May 2020

REASONS SENT TO THE PARTIES ON

……5 May 2020…….

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS