



# EMPLOYMENT TRIBUNALS

Claimant: Respondent:  
Ms P Anguin v Homes for Haringey Limited

Heard: By video conference On: 10 July 2020  
(CVP)

Before: Employment Judge Hawksworth (sitting alone)

## Appearances

For the Claimant: Ms K Basra (claimant's friend)  
For the Respondent: No attendance or representation

## RESERVED REMEDY JUDGMENT

### Employment Tribunal Rules of Procedure 2013 – Rule 21

1. The respondent must pay the claimant compensation for sex discrimination in the total sum of £35,934.14 which is made up of:
  - 1.1. £16,987.46 for financial losses to the date of the hearing (of which £827.06 is interest);
  - 1.2. £4,656.38 for future loss of salary;
  - 1.3. £11,023.56 for injury to feelings (of which £1,023.56 is interest); and
  - 1.4. £3,266.74, a 10% increase of the award in respect of the failures to comply with the Acas Code of Practice on disciplinary and grievance procedures.

## REASONS

The claim, hearing and evidence

1. By a claim presented on 19 November 2019 the claimant brought a complaint of sex discrimination. The respondent did not present an ET3

(response form). A judgment under rule 21 (default judgment) was issued on 3 July 2020.

2. A remedy hearing took place on 10 July 2020 by video conference (CVP). This was a hearing under rule 21. The claimant attended and was represented by her friend Ms Basra. The respondent was sent details of the hearing but did not attend and was not represented.
3. At the hearing I heard evidence from the claimant and from Ms Basra, and both made closing comments on remedy issues. I reserved judgment.

The issue for decision

4. The judgment of 3 July 2020 was that the claimant's claim of sex discrimination succeeded. The issue for decision at this hearing was what the claimant should be awarded by way of remedy for sex discrimination.

Findings of fact

5. I make the following findings of fact which are relevant to remedy.
6. The respondent manages council housing in Haringey. The claimant was employed by the respondent as a feedback officer. She began working for the respondent on 12 March 2018 on a fixed term contract initially to cover maternity leave. The contract was extended and was due to end in October 2020.
7. The claimant's role was to reply to complaints. Although her letter writing skills and abilities were good, the claimant needed support to use the respondent's software packages and database. However, when she joined the respondent she was only given short periods of training of 20 minutes to an hour from time to time, and these took place in the middle of the office and during the working day. In total she had around 1-2 days training.
8. The claimant's male comparator performed the same role as she did. He joined a year after the claimant. He was given intensive training for one month before he had to do correspondence on his own. Over the next 6 months he was still being given training. The claimant suggested to the respondent that as issues had been raised with her use of the respondent's software systems, she should be included in the training that her male comparator was receiving. The respondent did not reply to her suggestion. The claimant was spoken down to and criticised for her work.
9. The failure to provide the claimant with the same training as her male comparator has been found in the rule 21 decision of 3 July 2020 to amount

to sex discrimination. The discrimination started in March 2019 when the claimant's male comparator joined the respondent.

10. The claimant was dismissed for poor performance on 11 September 2019. She was dismissed with immediate effect and escorted from the building. There were no issues with the claimant's letter writing skills. I find that if she had had the same training as her male colleague on the software and database, she would not have been dismissed for poor performance.
11. I have to consider whether, if the claimant had not been dismissed, she would have remained with the respondent until the end of her contract in October 2020. This is an assessment of a hypothetical situation. It is very unlikely that the claimant would have decided to leave. There are other circumstances that could have led to the claimant's employment ending earlier, such as redundancy. The covid-19 measures are another example of circumstances that could have affected the claimant's employment, although the respondent's work is likely to have continued as essential work during the period of covid-19 restrictions. I had no evidence before me about the possibility that the claimant's employment would have ended before October 2020 even if she had not been subject to discrimination. I assess this chance as very low, but not non-existent. I conclude that there was a 90% chance that the claimant would have remained in her role until her fixed term contract expired in October 2020 if she had not been dismissed. There is a 10% chance that she would have been dismissed at some point before that date.
12. The claimant was denied a right of appeal against the dismissal as the respondent did not reply to her requests for a copy of the recording of the dismissal hearing.
13. At the time of her dismissal, the claimant's monthly pay was £2,559 gross and £1,884 net. Her net weekly pay was £434.77 (£1,884 x 12 months/52 weeks). The claimant received two weeks' pay in lieu of notice.
14. Before her dismissal the claimant made a grievance complaint about the training issues and the effect this was having on her. The grievance was not completed by the time of her dismissal and the respondent decided not to continue with it after the claimant left.
15. Since her dismissal the claimant has been looking for work but has not been able to find anything. She is 59 years old and believes that her age has played a part in her inability to find alternative work. There has also been less work available since the covid-19 measures were implemented in March 2020.
16. The dismissal has left the claimant feeling insecure, vulnerable and nervous. It has affected her confidence.

The law

Compensation for discrimination

17. Under section 124(2)(b) of the Equality Act, where a tribunal finds that there has been a contravention of a relevant provision of the act, it may order the respondent to pay compensation to the claimant. The compensation which may be ordered corresponds to the damages that could be ordered by a county court in England and Wales for a claim in tort (section 124(6) and section 119(2)). There is no upper limit on the amount of compensation that can be awarded.
18. The aim of compensation is that 'as best as money can do it, the [claimant] must be put into the position she would have been in but for the unlawful conduct' (Ministry of Defence v Cannock and ors 1994 ICR 918, EAT). In other words, the aim is that the claimant should be put in the position she would have been in if the discrimination had not occurred. This requires the tribunal to look at what loss has been caused by the discrimination.
19. Loss may include financial losses and injury to feelings. (The claimant did not make any claim for personal injury.)

Acas Code of Practice on disciplinary and grievance procedures

20. The Acas Code of Practice on disciplinary and grievance procedures is a relevant Code of Practice for the purposes of section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.
21. Section 207A applies to proceedings set out in Schedule A2, which includes claims for discrimination at work brought under the Equality Act 2010. Sub-section (2) provides:

"If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

- (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
- (b) the employer has failed to comply with that Code in relation to that matter, and
- (c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%."

Conclusions

- 22. I have first considered the financial losses caused by the discrimination. I have compared the claimant's position with the position she would have been in if the discrimination had not occurred.
- 23. The claimant was paid until 11 September 2019 and then received two weeks' pay in lieu of notice. She was paid by the respondent until 25 September 2019.
- 24. I have found that if the claimant had not been subject to discriminatory treatment she would not have been dismissed, and she would have stayed in her role working for the respondent. I have found that there was a 90% chance that the claimant would have stayed with the respondent until October 2020.

Financial loss to date of hearing

- 25. The claimant has past loss of salary from 25 September 2019 to the date of the hearing, 10 July 2020. This is a period of 41.3 weeks. The net loss of salary per week is £434.77, so in total the net past loss of salary is £17,956. I award 90% of this sum to reflect my finding that there is a chance that the claimant's employment could have ended earlier than 10 July 2020 for other reasons. The award for past financial loss is £16,160.40.
- 26. The claimant is entitled to interest on past loss at a rate of 8% from the midpoint of the period from the start of the discrimination up to the date of the calculation (today's date). I have calculated interest as £827.06. Calculation details are in the table below:

Interest on past financial loss	
Start of discrimination	31 March 2019
Date of calculation	10 July 2020
Number of days	467
Number of days to midpoint	233.5
Daily rate of interest	$0.08 \times \text{£}16,160.40/365$
Total interest calculation	233.5 days x daily rate of interest
Total interest	£827.06

- 27. Therefore, total financial loss to the date of the hearing is £16,160.40 + £827.06 = £16,987.46.

Future financial loss

28. The claimant also has future loss of salary for the period 11 July 2020 to 1 October 2020. This is a period of 11.9 weeks. The net loss of salary per week is £434.77 so the future loss of salary for the 11.9 week period is £5,173.76. I award 90% of this sum to reflect my finding that there is a chance that the claimant's employment could have ended earlier than 1 October 2020. The award for future financial loss is £4,656.38.

Injury to feelings

29. The claimant also suffered injury to her feelings as a result of the discrimination. She felt insecure, vulnerable and nervous and her confidence was affected.
30. The Vento bands for awards of injury to feelings are broad bands of compensation for injury to feelings. The lower band applies in less serious cases where the unlawful treatment was an isolated or one-off occurrence. The upper band applies in the most serious cases. I have decided that the claimant's case does not fall within either the lower or upper band, and that the appropriate award for injury to feelings in her case is an award in the middle Vento band.
31. The Presidential Guidance on injury to feelings dated 5 September 2017 as updated on 25 March 2019 provides that the middle Vento band is £8,800 to £26,300 for claims presented on or after 6 April 2019, as the claimant's was. Taking into account what the claimant told me about the impact of the dismissal on her, I have decided that an award in the lower half of this band is appropriate. The claimant is awarded £10,000 in respect of injury to feelings.
32. The claimant is entitled to interest on the injury to feelings award for the whole period from the start of the discrimination to today's date at a rate of 8%. I have calculated interest on the injury to feelings award as £1,023.56. Calculation details are in the table below:

Interest on injury to feelings award	
Start of discrimination	31 March 2019
Date of calculation	10 July 2020
Number of days	467
Daily rate of interest	0.08 x £10,000/365
Total interest calculation	467 days x daily rate of interest
Total interest	£1,023.56

33. Therefore, the injury to feelings award with interest is £10,000 + £1,023.56 = £11,023.56.

Acas Code of Practice

34. The claimant's claim is one to which the Acas Code of Practice on Disciplinary and Grievance Procedures applies, as it is a claim for discrimination under the Equality Act 2010 and it concerns a disciplinary situation (poor performance) and a grievance complaint.
35. The respondent did not allow the claimant a right of appeal against her dismissal for poor performance. This was a breach of the Acas Code (paragraphs 26 to 29).
36. The respondent also failed to comply with the requirements of the Acas Code as it did not decide the outcome of the claimant's grievance or communicate the outcome of her grievance to her. The claimant was an employee at the time she made her grievance complaint. The Acas Code does not say that its requirements do not need to be followed in circumstances where an employee makes a complaint then leaves her employment before the outcome of the grievance procedure. I have decided that the Acas Code applied to the claimant's grievance. The failure to decide the claimant's grievance was a breach of the Acas Code (paragraph 40).
37. I have considered whether the failures to follow the Acas Code were unreasonable. I have decided that the failure to provide the claimant with an appeal against her dismissal for poor performance was unreasonable. The right of appeal is one of the principal protections provided by the code. The claimant did not agree with the respondent's assessment of her performance but was not given the opportunity to put her case to another manager at an appeal stage.
38. I have decided that the failure to decide the claimant's grievance was also unreasonable. While there may be circumstances in which it would not be unreasonable for an employer to fail to follow the Acas Code after the employee's employment has ended, I have decided that in this case the failure to respond to the claimant's complaint in line with the Acas Code was unreasonable, as the matters raised by the claimant related to her dismissal and had not been not considered in a disciplinary appeal hearing.
39. I have found that the respondent has failed to comply with the Acas Code in relation to both the disciplinary procedure and the grievance procedure, and that those failures were unreasonable, therefore sub-sections 207A(2)(a) (b) and (c) are met.
40. I have considered whether it is just and equitable to increase the claimant's award. I have decided that it is just and equitable to increase the claimant's award by 10%, taking into account the breaches by the respondent and the overall level of the award.

41. The award to the claimant is therefore:

Past financial loss	£16,987.46		
Future financial loss	£4,656.38		
Injury to feelings	£11,023.56		
Total before increase		£32,667.40	
10% increase		£3,266.74	
Total award			£35,934.14

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Employment Judge Hawksworth

Date: 10 July 2020

Sent to the parties on: .....

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For the Tribunals Office

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