



EMPLOYMENT TRIBUNALS

Claimant: Ms M Bari

Respondent: The Commissioner of the Police of the Metropolis

Heard at: Croydon **On:** 16 October 2020

Before: Employment Judge Wright
Mrs T Bryant
Ms M Foster-Norman

Representation

Claimant: Mr P Livingston - counsel
Respondent: Mr P Martin - counsel

RESERVED JUDGMENT ON REMEDY

It is the unanimous Judgment of the Tribunal that the claimant is awarded the following sums by way of remedy:

Unauthorised deduction from wages £117.57 gross

Interest thereon £17.00

Injury to feelings £13,000.00

Interest thereon £4,051.72

A total sum of £17,186.29

REASONS

1. By a claim form presented on 11/7/2016 the claimant presented claims of disability discrimination under the Equality Act 2010 (EQA) and of unauthorised deduction from wages under the Employment Rights Act 1996 (ERA).
2. The history of the proceedings is set out in the Reserved Judgment on liability dated 21/1/2020.
3. The final hearing to consider liability and remedy was listed to take place over seven days commencing on 10/12/2019 and it was then converted to a five-day hearing to consider liability only.
4. The claimant's claims were successful in part and as such, a remedy hearing was listed for one day on 3/7/2020. In accordance with the Presidents' Guidance in respect of the Covid-19 pandemic, that hearing was converted into a telephone case management discussion. The remedy hearing was relisted for 16/10/2020.
5. Once all the missing paperwork had been located, the hearing commenced. The Tribunal heard evidence from the claimant. For the respondent, it heard from Mr John Moynihan, Strategic HR Business Partner. The Tribunal had a bundle and heard submissions from both representatives. The claimant's counsel provided written submissions.
6. In respect of the unauthorised deduction from wages claim, this is now conceded by the respondent and it is agreed the claimant is owed £117.57 gross pay. She is also entitled to interest in the sum of £17.00.
7. The claimant remains employed by the respondent and so seeks an award for injury to feelings. She claims the case falls within the upper Vento band and as such, seeks an award of £33,000. The respondent accepts an award for injury to feelings is due. It however, suggest the mid-Vento band is the appropriate starting point and suggests a figure of £10,000.
8. The claimant seeks interest upon the award of injury to feelings. The respondent again accepts interest is due, although it says it would be unjust to award interest at the rate of 8% for the entire period from the date of the act of discrimination to the date of this hearing.
9. Finally, it is the claimant's case she is due a further award under s. 124 (7) EQA, on the basis that the respondent had failed to comply with the Tribunal's recommendation. The claimant seeks £1,000. The respondent resists this claim.

10. S. 124 EQA states that the amount of compensation which may be awarded for discrimination corresponds to the amount which could be awarded by a County Court in England and Wales or a Sheriff in Scotland. S. 119 EQA provides that an award of damages may include compensation for injured feelings. In Prison Service & Ors v Johnson [1997] ICR 275, the EAT summarised the general principles that underlie awards for injury to feelings and they have been considered.
11. Three bands of injury to feelings awards were set out by the Court of Appeal in Vento v Chief Constable of West Yorkshire Police (No 2) [2003] ICR 318. The injury to a claimant's feelings are subjectively, rather than objectively measurable and encompass:

'subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise...Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms.'
12. It is the effects of the wrong are the measure, not the wrong itself. In Komeng v Creative Support Limited UKEAT/0275/18 the EAT emphasised the importance of focusing on the actual injury suffered by the claimant and not the gravity of the acts of the respondent. It is accepted an injury to feelings award is not punitive, but should compensate the claimant.
13. The Presidential Guidance for Employment Tribunal Awards for Injury to Feelings and Psychiatric Injury (and subsequent annual updates) provides further guidance.
14. The Tribunal is not concerned with the respondent's subsequent acts.
15. The Tribunal finds that this is a mid-Vento band case. It was not a more serious case, where there has been a lengthy campaign of discriminatory harassment which has a profound effect on the victim.
16. The conduct was over a period of about four-and-a half-months. It however was concerned with two incidents in mid-January 2016, a question over weekend working in mid-February 2016, the claimant's return to work on 22/2/2016 and thereafter and an incident on 3/6/2016. The Tribunal did not uphold the claimant's claims of more 'offensive' discrimination and found against her in respect of those allegations. In short, the Tribunal found the acts of discrimination were the result of an undertrained (in fact there was no training) and un-supported line manager.

17. The claimant's witness statement set out how her feelings were injured as a result of the discrimination.
18. The Tribunal was troubled that there was no medical evidence from the claimant, not even her GP notes. She referred to undergoing counselling, but again, there was no evidence produced in relation to that assistance.
19. The Tribunal finds that this is a case falling the mid-point of the middle band. The parties agree the middle band at the relevant time was £8,115.97 to £23,347.40. As such, the Tribunal awards £13,000 for injury to feelings.
20. In respect of interest, the history of the litigation was set out in the Judgment on liability. The Tribunal awards interest up to the point of the liability hearing, as originally that hearing was listed to address both liability and remedy and the reason it was unable to hear the remedy element was not the fault of either party. The Tribunal therefore calculates interest runs from 19/1/2016 to 10/12/2019, which is 1422 days. The calculation is:

$$£13,000 \times 8\% / 365 \times 1422 = £4,051.73$$

21. The final issue is the award which the claimant seeks under s. 124 (7) EQA. That section provides:

If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation, the tribunal may—

 - (a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid;
 - (b) if no such order was made, make one.
22. The Tribunal declines to make an award under this section. There was no time-limit given in respect of when the respondent should have complied with the recommendation. It was not possible to give a time-limit and if one had been given, it would have been so long as to be meaningless (e.g. five years). It is accepted that for a respondent of this size, needs time to implement any recommendation. This is not to say however that the Tribunal's recommendation should not be implemented and the respondent is urged to reflect upon the previous findings and the reasons for them.
23. The Tribunal was told the claimant is due to return to work after a period of leave in November 2020 and it expresses the hope that now this litigation has concluded, the parties will be able to work together professionally and respectfully.

Employment Judge Wright

20 October 2020