



THE EMPLOYMENT TRIBUNAL

SITTING AT:
BEFORE:
MEMBERS:

LONDON CENTRAL
EMPLOYMENT JUDGE ELLIOTT
MS D OLULODE
MS L JONES

BETWEEN:

Ms S Khan

Claimant

AND

SN Estates Property Services Limited (1)
Mr M Miah (2)

Respondents

ON: 8 December 2020

Appearances:

For the Claimant:

In person

For the First Respondent:

Mr A Otchie, counsel

For the Second Respondent:

Mr A Chelliah, solicitor

RESERVED JUDGMENT **ON REMITTED RECONSIDERATION ON REMEDY**

The judgment on Reconsideration on a Remitted point on Remedy is that the award to the claimant made at the original remedy hearing on 15 February 2019 is restored so that the respondents shall pay to the claimant the sum of **£100,877.49**.

REASONS

1. Our initial decision on remedy was given on 15 February 2019. We reconsidered our decision on remedy and gave judgment on 2 September 2019.
2. The claimant initially applied for a reconsideration of our judgment on reconsideration of remedy. That application was refused. The claimant appealed the decision on Reconsideration of Remedy, by which her award

was reduced by approximately £19,000.

3. By a sealed order dated 7 May 2020 His Honour Judge Barklem ordered that the appeal be stayed pending referral back to this tribunal to answer, if practicable within 28 days of the sealed order, the following questions set out in the attached Reasons. The reasons are set out in full:

“The Appeal is against a reconsideration judgment, the Respondents having sought a reconsideration of a judgment following an earlier remedy hearing at which an award of £100,887.49 was made, including £28,900 for psychiatric injury, after a 15% reduction.

A number of issues were raised at the reconsideration hearing, and the majority were resolved in favour of the Claimant – that is, the original findings stood.

However, in relation to an issue arising from the interpretation of the report of a jointly instructed expert, Dr Stein, the ET accepted that there was a degree of ambiguity in the report, and consequently reduced the award for psychiatric injury to £20,290. There was a consequential reduction in the interest that fell due.

I share the Claimant’s difficulty in understanding clearly the rationale behind the reduction. This matter is inevitably going to be resolved by the same ET, if (as to which I express no view) it is held to be wrong in law that the reduction was made, or that inadequate reasons have been provided.

Consequently, in the interests of saving time, the ET is requested to reconsider its findings in this regard and to explain them in greater detail. It is also asked to look at the Appellant’s contentions as to the calculation of interest and to consider whether the calculation has been correctly performed. This pursuant to the Burns/Burke procedure.”

4. The Order of the EAT was not brought to the attention of the Employment Judge in this case until 24 August 2020. It was then necessary to convene a date when the original tribunal could convene with Members.
5. This hearing was listed take place on Thursday 5 November 2020. Due to the fact that there was a confusion in the information sent to the parties, with a Notice of Hearing sent on 23 September 2020 making it clear that the parties need not attend and an email on 13 October 2020 saying that it was an “in person” hearing, the respondents attended but the claimant did not. It was unclear how this situation had arisen. The tribunal considered it unfair to the claimant to proceed.
6. In addition, and most probably due to a change in the respondents’ solicitors, the respondents’ representatives who attended on 5 November 2020 were not aware of the EAT’s Order of 7 May 2020. The tribunal

considered that they needed to be fully aware of this to understand the precise remit of the hearing and to prepare properly.

7. For these reasons and with some regret due to the delays that had already occurred, this hearing was postponed until today.

The issue for this hearing

8. The matter remitted to us to reconsider and explain in greater detail therefore is in relation to our Judgment on Reconsideration on Remedy made on 2 September 2019 and is in relation to paragraphs 49-52 of that decision.
9. In consequence this also requires consideration of our original decision on Remedy made on 15 February 2019 and paragraphs 83-90 of that decision.
10. We are asked to reconsider our findings as to the reduction in the award for psychiatric injury to £20,290 and provide our rationale for it. Any change in that award will have a consequential impact on the interest calculation so we must also consider this. Interest calculations were carried out at previous hearings with the input of the parties. We have not been pointed to any specific error other than if the figure for psychiatric injury needs to be amended, the interest will also need to be recalculated.
11. To the extent that there were submissions on any other matters, we confined our consideration specifically to the matters remitted to us by the EAT.

Documents

12. The hearing on 5 November 2020 was converted to a case management hearing. The parties were given the option to attend this hearing or rely on written submissions.
13. All parties attended this hearing on 8 December 2020. Oral submissions were to heard supplementing the parties' written submissions. These were fully considered even if not expressly referred to below.

The original decision on remedy

14. We made an award for psychiatric injury of £34,000 plus the cost of treatment at £5,000.
15. We made a reduction of 15% based on our finding that there were some non-discriminatory reasons causing upset to the claimant but they were minimal.
16. On reconsideration we reduced the amount for psychiatric injury to £20,290 being the bottom of the moderately severe range in the Judicial College Guidelines 14th edition which we also reduced by 15% for the same reason as above.

17. It is this reduction to £20,290 and the rationale for it that is remitted to us for reconsideration/reasons. Our focus is on this matter.

The submissions

18. We make reference below to some of the submissions from the parties accepting that this is not the entirety of their submissions which were fully considered.
19. The parties noted the ambiguity in Dr Stein's report at paragraph 37.6. The second respondent reminded the tribunal of the Judicial College Guidelines Chapter 4 on psychiatric damage generally and the factors to be taken into account when valuing claims. These include:
 - i. The claimant's ability to cope with life, education and work
 - ii. The effect on the claimant's relationship with family and friends
 - iii. The extent to which treatment would be successful
 - iv. Future vulnerability
 - v. Prognosis
20. The second respondent accepted that based on Dr Stein's report, the claimant "does have issues" with her ability to cope with life, education and work and the effect on her relationship with family and friends. The second respondent said that in relation to the other factors set out above, the claimant's situation is "*much more promising*" as Dr Stein stated that "*the way out for her is to get treatment*". It was accepted that the award we made for the cost of treatment has not yet been paid to the claimant.
21. For the second respondent it was also submitted that the claimant did not meet the criteria for PTSD so that this should not have been taken into account by the tribunal.
22. The respondents said they could see "*no error in the tribunal's calculation*" in the decision on Reconsideration of Remedy. The claimant's position (final paragraph of her written submission under the heading "Closure") is that the original award on remedy was the correct one. The claimant raised other points but we confined our consideration in this hearing to the matter remitted to us by the EAT.

Conclusions

23. Dealing with the second respondent's submission that the claimant did not meet the criteria for PTSD we rely on paragraph 37.5 of Dr Stein's report which clearly states "*she fulfils the criteria for PTSD*". This was not questioned by the respondents in the expert's report at the time the report was produced and our finding on this stands.
24. On the submission that the claimant's prognosis is that she will respond well to treatment, we took account of the fact that the respondents have not paid

the award we made for the cost of treatment. This makes it difficult for the claimant to access the treatment she needs. Our original finding stands.

25. The point in issue stems from the ambiguity in Dr Stein's report where he used the words "moderate severity". We reminded ourselves that we made a finding of fact in February 2019, our Reasons paragraph 85, that what he meant was "Moderately Severe" in terms of the classifications in the Judicial College Guidelines.
26. We agree that on Reconsideration in September 2019, our reasons for the reduction in the award for psychiatric injury were insufficient. At that reconsideration hearing, we accepted the respondents' submission that the ambiguity meant that we should reduce the award.
27. On this reconsideration/remission from the EAT, we take the view that we should have placed more emphasis on Dr Stein's expert opinion at paragraph 37.6 that he placed the claimant "*roughly in the middle of this range*". What we did in September 2019 was to override that view and place her at the bottom of the range. It also weighed into our reasoning that when Dr Stein produced his report, the respondents chose not to ask him about this in supplemental questions. This was the point at which his expert view should have been challenged or clarity sought.
28. For these reasons we accept the claimant's submissions made at this hearing and we restore the original finding on the award for psychiatric injury with the interest calculation that goes with that. In regard to the interest calculation we were given no submission as to any error of calculation on the figures and we mention that when the interest calculations were done, this was with the input of the parties at the time so that the figure-work could be agreed.
29. The final award to the claimant is therefore restored in the total sum of £100,877.49 for the reasons given in the decision of 15 February 2019. For the avoidance of any doubt the respondents are jointly and severally liable.
30. The tribunal apologises for the delay in providing this decision, particularly given the request to do this within 28 days of the sealed Order from the EAT. For reasons doubtless connected to the pandemic, the EAT's request for the ET to Reconsider this matter was not seen by the ET Judge until 24 August 2020 despite the EAT's Order having been sealed on 7 May 2020. It then became necessary to reconvene with the Members as it was a three person decision and this required Listings to find a date suitable for the tribunal panel.
31. Again for administrative reasons most probably connected to the pandemic, the parties had conflicting information as to whether the hearing on 5 November 2020 required their attendance and as the claimant did not attend and the respondents had attended, it was considered in the interests of justice to postpone to allow the parties to be on an equal footing. The tribunal regrets the delay that this has caused.

Employment Judge Elliott
Date: 8 December 2020

Judgment sent to the parties and entered in the Register on: 08/12/2020 : :

_____ for the Tribunals