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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Khan  
**Respondent:** Vigilant Security (Scotland) Limited t/a Croma Vigilant  
**Heard at:** East London Hearing Centre (by Cloud Video Platform)  
**On:** 22 December 2020  
**Before:** Employment Judge Gardiner  
**Members:** Mr G Bishop  
Mrs A Berry

## Representation

**Claimant:** In person  
**Respondent:** Mr R Chaudhry, solicitor

**JUDGMENT** having been sent to the parties on 23 December 2020, the Claimant has requested written reasons, in an email to the Tribunal dated 4 January 2021.

## REASONS

1. In a Judgment sent to the parties on 10 March 2020, the Tribunal found that the Claimant had been subject to a single act of discriminatory harassment on 15 or 16 June 2018, contrary to Section 26 Equality Act 2010. The harassment was related to the Claimant's Islamic faith. The Claimant's other complaints of harassment and direct discrimination because of his religion failed.
2. The complaints made by the Claimant in these proceedings had been fully discussed at a Preliminary Hearing conducted by Employment Judge Gardiner on 19 October 2019. At that hearing, the Claimant confirmed his complaints were limited to claims brought under Section 13 and 26 Equality Act 2010 – that is, complaints of direct discrimination because of religion and of harassment related to his religion. In addition, there was a complaint that the Respondent had failed to provide him with the rest periods to which he was entitled under the Working Time Regulations.
3. At the outset of the Final Hearing, the Claimant confirmed that the issues identified in the Preliminary Hearing remained the issues to be determined by the Tribunal. There was no claim for failing to pay him for accrued but untaken holiday pay. Nor was there a claim for failing to pay him notice pay. Finally, there was no claim for unfair dismissal or for victimisation contrary to Section 27 Equality Act 2010.

4. In his most recent Schedule of Loss, which was provided to the Tribunal on the morning of today's Remedy Hearing, the Claimant has sought to claim holiday pay, notice pay and basic and compensatory awards. We do not award any of these remedies. The simple reason is that the Claimant did not bring the required complaints that could lead the Tribunal to award these remedies; and so there was no finding in the Claimant's favour on any such complaints at the Final Hearing.
5. The Tribunal's task at this Remedy Hearing is a conceptually straightforward one. We are to quantify the financial award to make to the Claimant for the single complaint of harassment on which the Claimant succeeded at the Final Hearing.
6. The Claimant argues that there are three consequences that flow directly from the proven harassment, for which he should be compensated:
  - a. Injury to feelings;
  - b. Personal injury in the form of his condition of diabetes, his eye condition, his stress and deteriorating mental health, and problems with his knees;
  - c. Financial loss.
7. On these points the Claimant has given oral evidence, and been cross examined, although he did not produce a witness statement in support of the remedies he was seeking. He has also sought to refer to certain pages of his bundle and of the Respondent's bundle at the Final Hearing; and to further documents which were provided to the Tribunal by email shortly before the Remedy Hearing. Mr Chaudhry, who has represented the Respondent today, as he did at the Final Hearing in February, has not objected to the inclusion of these documents, nor to the Claimant giving evidence without having first set out his evidence in a witness statement.
8. Mr Chaudhry also prepared and submitted a Counter Schedule of Loss, and submitted written submissions supporting the position taken in the Counter Schedule.

### **Injury to feelings**

9. The Claimant argued that the award should be in the bracket from £800 to £25,200, which is said to be the low to middle *Vento* bracket. The Respondent contends that the appropriate award is one of £3000 for injury to feelings.
10. We consider that the appropriate award in this case falls into the lowest of the three *Vento* brackets. Consistent with the latest Presidential Guidance, this bracket starts at £900 and ends at £9000. In deciding where to assess the award within this bracket we bear in mind the following factors:
  - a. The act of harassment complained of occurred on a single occasion in the context of a conversation about the Claimant's availability to work on the day shift that was about to start. He did not establish at the Final Hearing that there had been other instances of harassment by Mr Thomson;

- b. The harassment was an angry comment about the extent of Muslims' religious observance made on the very day of the festival of Eid, coupled with a threat that the Claimant's refusal to work might impact on the Claimant's request for a permanent contract;
  - c. The Claimant was offended by the comment, as is apparent from the text messages sent shortly after it was made;
  - d. Mr Thompson apologised for the comment within three hours. He explained his behaviour by reference to feeling under extreme pressure and said he would understand if Mr Khan chose not to deal with him anymore.
11. We consider that the apology was a genuine one, which would have gone some way to reduce the extent to which the Claimant's feelings would have been injured by the comment. In saying that he understood if Mr Khan did not want to deal with him anymore, Mr Thompson was effectively offering him the opportunity to deal with someone else in the control room in the future.
12. The Claimant continued to complain about the comments made by Mr Thomson when he submitted his grievance on Saturday 16 June 2018. There was a delay in dealing with this grievance and it was eventually considered at a hearing on 7 August 2018. His grievance was partially successful in that Mr Brady found that Mr Thomson's behaviour had amounted to an unprofessional approach. However, there was no acceptance that this was discrimination. The subsequent appeal was unsuccessful and the Claimant referred to the matter again in the contents of his ET1 which was submitted on 23 October 2018. It is clear he was still upset about the comment at this point. He has maintained his dissatisfaction with the comment throughout these proceedings.
13. We consider that the appropriate figure for injury to feelings is £3000 as the Respondent contends. This comment was not at the very lowest point of the lowest bracket, given it was made on the day of Eid and caused the degree of offence reflected in the language used in the text exchange. However, being an isolated instance, albeit causing some degree on ongoing injury to the Claimant's feelings, we do not consider that it reaches the midpoint of the lowest bracket. Every case turns on its own features, but we derive some support for our figure from the cases which are referred to in Mr Chaudhry's skeleton argument for this hearing.

### **Personal injury**

14. We have listened carefully as the Claimant has attempted to link his medical condition to the specific comment made by Mr Thomson. However, we do not find that there is the necessary medical evidence to persuade us that his diabetes, his eye condition, his knee symptoms or any deterioration in his mental health has been caused by the comment itself. This is a matter which would require specific detailed evidence and that evidence has not been produced. We cannot infer from the proximity in time between the comment and the diagnosis of diabetes that this was the result of the treatment. Nor can we infer from the reference on a medical

document to both diabetes and the Claimant's eye condition of keratonconus that the exacerbation of this condition has been caused by the onset of the Claimant's diabetes. We have not been directed by the Claimant to any document specifically linking his stress levels to Mr Thomson's comments.

15. Therefore, we make no separate award for personal injury.

### **Financial loss**

16. The Claimant's case is that he was not offered shifts to the extent to which he was offered shifts previously, after the date on which Mr Thomson made his comment.
17. We reject that argument. We do not accept that there was any financial loss as a consequence of the comment itself. Indeed, it does not appear to be the Claimant's case that the comment caused the financial loss. Rather he is now arguing that his financial loss in not being offered many shifts was caused by his reaction to the comment in accusing Mr Thomson of denigrating his religion. That might be a valid argument if the Claimant had been bringing a complaint of victimisation under Section 27 Equality Act 2010. However, the Claimant's claim - and the claim which we need to value - is a claim for harassment brought under Section 26 Equality Act 2010.
18. Therefore, we conclude that the amount to which the Claimant is entitled to receive is £3000 by way of injury to feelings, plus interest.

### **Interest**

19. Interest is payable on the award for injury to feelings. This is at the rate of 8% per annum under Regulation 3 of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996, being the current Judgment Act rate. This rate applies from the date of the incident to the date of the Judgment. This equates to 8% per annum at 2.52% which is a total of 20.16% = £604.80.

Employment Judge Gardiner

10 February 2021