



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4111748/2019 (V)**

5 **Held via Cloud Video Platform (CVP) on 21 September 2020**

**Employment Judge A Kemp**

10 **Ms D Chambers**

**Claimant  
Represented by  
Mr P Kissen -  
Solicitor**

15 **Regis UK Limited (in administration)**

**Respondent  
No appearance  
No representation**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

1. **The claimant was unfairly dismissed by the respondent.**
2. **The Tribunal makes a declaration that the respondent unlawfully discriminated against the claimant contrary to sections 20, 21 and 26 of the Equality Act 2010.**
3. **The claimant is awarded the sum of TWENTY SIX THOUSAND SIX HUNDRED AND FORTY FOUR POUNDS EIGHTY EIGHT PENCE (£26,644.88) in respect of her unfair dismissal.**
- 30 4. **The claimant is awarded the sum of TWELVE THOUSAND FIVE HUNDRED AND TWENTY POUNDS (£12,520.00), as injury to feelings for the breaches of the Equality Act 2010.**
5. **For the purposes of the Employment Protection (Recoupment of Benefits) Regulations 1996:**

- (i) The monetary award is THIRTY NINE THOUSAND ONE HUNDRED AND SIXTY FOUR POUNDS EIGHTY EIGHT PENCE (£39,164.88).
- 5 (ii) The prescribed element is FIFTEEN THOUSAND NINE HUNDRED AND TWENTY FOUR POUNDS EIGHTY ONE PENCE (£15,924.81).
- (iii) The date to which the prescribed element relates is 23 September 2020, and the prescribed period is that from 27 August 2019.
- 10 (iv) The amount by which the monetary award exceeds prescribed element is TWENTY THREE THOUSAND TWO HUNDRED AND FORTY POUNDS SEVEN PENCE (£23,240.07).

## REASONS

### Introduction

- 15 1. The claimant pursued a claim of unfair dismissal under section 94 of the Employment Rights Act 1996 and for unlawful discrimination on the ground of disability by a failure to take reasonable adjustments under sections 20 and 21, and for harassment under section 26, of the Equality Act 2010. It was not defended by the respondent, which did not enter a
- 20 Response Form. The respondent is in administration, and the administrator has both consented to the claim proceeding and confirmed by email dated 17 September 2020 that it would not attend to give evidence at the Final Hearing. The respondent did not therefore appear at it.
- 25 2. The Final Hearing had been fixed for the issue of remedy alone. The claimant's solicitor had helpfully provided a written statement, supporting documentation, and a Schedule of Loss.
3. The claimant was represented by Mr Kissen.

### The Issue

4. The issue before the Tribunal was - what remedy should be given to the claimant for each of the claims made?

## 5 The Evidence

5. The claimant gave evidence herself, and spoke to the documentation submitted which is referred to above.

### The facts

6. I make the following findings in fact:
- 10 7. The claimant is Ms Deborah Chambers. Her date of birth is 10 June 1987.
8. She was employed by the respondent Regis UK Limited from 28 August 2019. The respondent was a hairdressing business, and the claimant was a Manager at a store known as "Supercuts".
- 15 9. She had mental health issues primarily being depression for which she received treatment from her GP. The conduct of a meeting held on 8 January 2019 left the claimant feeling shaken and she could not stop crying. She was accused of not being ill, and what she said was dismissed improperly. The respondent did so because of the claimant being a disabled person.
- 20 10. After this meeting her condition deteriorated, with an increase in depressive thoughts.
11. On or around 4 April 2019 the claimant found out that members of staff of the respondent had been discussing her mental health in front of clients. She felt very upset and that their doing so was a clear breach of her privacy. She complained to the respondent.
- 25 12. Following the investigation into this, Fiona McCracken told the claimant it had happened because those concerned were ignorant with regard to privacy laws. That was an inadequate response to the complaint, and an inadequate outcome which happened because the claimant was a

disabled person. What had happened was harassment of the claimant, and the failure to address that adequately was also harassment.

13. The claimant was off work ill as a result. She then found out that the respondent had made Demi McKechnie the Manager of the shop where she, the claimant, was manager. The claimant went into a state of shock, fearing that she had lost her position. She felt angry and frustrated.
14. Those feelings were made worse when she saw the post for Ms McKechnie's position advertised on an online jobs site. The claimant's niece saw the job post and brought it to her attention. She was very upset by that, and became more anxious, nervous and depressed. She complained again to the respondent.
15. The respondent told her that the post had been put up in error. That was untrue. It was contradicted by the respondent's website.
16. The respondent further claimed, untruthfully, that they had not received her doctor's fit note. She then found out that her parking pass had been blocked, and went to complain. She was told that the staff had requested that the pass be blocked. She felt that it was another of the attempts to bully her because of her disability. She felt greatly upset and could not help crying in the office of the managers.
17. She submitted a formal grievance at the treatment she had received in August 2019. There was a grievance hearing held shortly thereafter by the respondent. Throughout the grievance hearing she was not taken seriously.
18. The outcome of the grievance was to reject it. The decision the claimant felt to be biased against her as a disabled person.
19. The outcome aggravated her depression and anxiety. She appealed it. The claimant was so upset by what had happened that she could not bring herself to go in to see the appeal officer in person and asked for the appeal to be conducted in writing. Her appeal was rejected.
20. The claimant submitted another fit note. When Fiona McCracken received it she responded electronically with the word "shocker". The claimant felt

that the respondent showed a complete disregard for her feelings and condition as a disabled person. She decided to resign, which she did on 27 August 2019.

- 5 21. Despite her having resigned, the respondent told others that she had been dismissed for stealing, which was untrue.
- 10 22. Throughout the period of the events set out above the claimant regularly attended her General Practitioner. She was prescribed increased dosage of venlafaxine, an anti-depressant, and was proscribed propranolol, to relieve symptoms of anxiety and diazepam, also an anti-depressant. She started seeing a psychiatrist. She continues to receive such medication and it is likely to continue.
- 15 23. The claimant earned £263.48 gross per week while employed by the respondent, the net sum of £245.88. She also received £220 per week in working tax credits. There was no pension arranged for her. The tax credits stopped after she resigned on 27 August 2019.
24. In September 2019 she made a claim for Universal Credit, which she was awarded.
- 20 25. She decided to try to start her own business as a self-employed hairdresser. She obtained loan funding to do so, and purchased equipment to commence the role in November 2019. She has not yet made a profit from doing so, and does not expect to earn a profit for about two years given the costs of operating, the restrictions from the Covid-19 pandemic.
- 25 26. She gave birth to her third child on 29 May 2020, with her other two children aged 12 and 4. Had her employment with the respondent continued, she would have received Statutory Maternity Pay following the birth of her child, initially for six weeks at 90% of her former pay, and thereafter at the statutory rate of £151.20 per week for a further 33 weeks.
- 30 27. She continues to receive Universal Credit, and expects that to continue. It is currently paid at £1,314.97 per month.
28. The respondent entered administration on 23 October 2019.

**The law***(i) The reason*

5 29. It is for the claimant to prove that she was dismissed under section 95(1)(c) of the Employment Rights Act 1996 (“the 1996 Act”). If she does, it is for the respondent to prove that the reason is one that is potentially fair, under section 98 of the 1996 Act. If the reason is not proved by the employer as one that is potentially fair under section 98(2) of the Act, the dismissal is  
10 unfair in law.

30. The definition of a disabled person is found in the Equality Act 2010 (“the 2010 Act”). The provisions as to reasonable adjustments are found in sections 20 and 21 of the 2010 Act. What constitutes harassment is found in section 26 of the 2010 Act.

15 31. In the event of a finding of unfair dismissal, the tribunal requires to consider a basic and compensatory award which may be made under sections 119 and 122 of the 1996 Act respectively, the latter reflecting the losses sustained by the claimant as a result of the dismissal.

20 32. Where there is a breach of the 2010 Act the remedy provided for that is referred to at section 124.

**Observations on the evidence**

33. Ms Chambers was, I considered, an entirely credible and reliable witness. She spoke convincingly of the events that happened, and I had no difficulty in accepting all that she had said.

**Discussion**

25 34. The claimant has been unfairly dismissed. That was not defended, and the hearing was on liability only, but it was entirely clear from the events described that the claimant’s claim that she had resigned because of a repudiatory breach of contract by the respondent, of the implied term that  
30 the respondent shall not act in a manner calculated or likely to damage, or

seriously destroy, the obligation of trust and confidence, that the claimant had resigned because of that, and had not unduly delayed in doing so. The respondent has not established that the reason for the dismissal was a potentially fair one. No evidence was led by the respondent. It follows that the dismissal was unfair.

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35. Similarly although the hearing was only on remedy I was clear that the claimant was a disabled person under the 2010 Act, that the facts of what happened together with the failure to address the legitimate grievances and complaints that the claimant had was a breach of sections 20 and 21 of the 2010 Act, and that in the circumstances the claimant had been subject to harassment under the terms of section 26 of the 2010 Act. I have made a declaration on the breaches of those provisions above.

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### Remedy

36. The claimant provided a detailed Schedule of Loss with supporting vouching, together with a written statement that she spoke to in evidence, which she supplemented by answering questions from me, and I was satisfied that the evidence given was credible and reliable as to losses, and that the claimant has mitigated her loss.

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37. In light of the claimant's age, service and earnings the **basic award** is as set out in the Schedule of Loss at £2,766.50.

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38. The **compensatory award** is also set out fully in the Schedule of Loss, which I accept largely, although it requires some amendment and clarification.

39. I deal first with the **past loss**, for the period to the date of the Judgment.

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(i) For the period from the date of termination to the birth of her child, a period of 35.43 weeks, the claimant would have earned the same net wage of £245.88 as she had with the respondent. That is the sum of £8,711.53.

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(ii) Her statutory maternity pay would then have commenced. Initially, it would have been at 90% of her pay, which is the sum of £237.13 for six weeks a total of £1,422.78.

(iii) Thereafter the statutory maternity pay would have been at £151.20 for a further 33 weeks, part of which is within the period to the date of this Judgment, that part being 20 weeks. That amount, being £151.20 for 20 weeks, is a sum of £3,024.

5 (iv) The total of those sums is £13,158.31.

(v) To that I add the sum of £500 which I consider reasonable for loss of statutory rights.

(vi) The final total for past loss is therefore £13,658.31.

40. The next head I deal with is the award for **future loss**.

10 (i) There is firstly the balance of statutory maternity pay being 13 weeks at £151.20, a total of £1,965.60.

(ii) The claimant would have returned to work at that stage, being on 21 January 2021. For the period thereafter the claimant sought eight months for future loss. Having heard the evidence I am satisfied that that is reasonable given the circumstances of the claimant seeking to establish a new business at such a difficult time as the present pandemic, with many and varying restrictions from time to time. She gave evidence that the delay before becoming profitable may be two years, and in those circumstances what is sought is I consider moderate. The award for that eight month period is £8,254.47.

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(iii) The total award for future losses is therefore £10,220.07.

41. The total sum I award for unfair dismissal is therefore the basic award added to the past and future elements of the compensatory award, a total of £26,644.88.

25 42. In making that award I wish to add that I am aware that the respondent had entered into administration on 23 October 2019. The precise arrangements for that, the cause of it, and the effect if any of that on the trading position of the respondent were not before me. I was concerned lest the respondent may have ceased to trade such that, unconnected to the present proceedings, the claimant's employment could have ended at or about that time in any event, and that she would then have received a

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statutory redundancy payment, as well as notice of termination, with payment if necessary sought from the Insolvency Fund. I was not addressed on that however, the administrators have not defended the proceedings or otherwise sought to be involved, and the only evidence before me therefore was that given by the claimant. On that basis I have made awards for periods that continue after the administration.

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43. I turn to the award for **injury to feelings**, which is made for the discrimination claims. I was satisfied that this was a case, as was argued by the claimant, that fell within the middle band of ***Vento v Chief Constable of West Yorkshire Police (No 2) [2003] IRLR 102*** in which the Court of Appeal gave guidance on the level of award that may be made. Three bands were referred to in that authority being lower, middle and upper.

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44. In ***Da'Bell v NSPCC [2010] IRLR 19***, the EAT held that the levels of award needed to be increased to reflect inflation. The lower band would go up to £6,000; the middle to £18,000; and the upper band to £30,000. In ***De Souza v Vinci Construction (UK) Ltd [2017] IRLR 844***, the Court of Appeal suggested that it might be helpful for guidance to be provided by the President of Employment Tribunals (England and Wales) and/or the President of the Employment Appeal Tribunal as to how any inflationary uplift should be calculated in future cases. The Presidents of the Employment Tribunals in England and Wales and in Scotland thereafter issued joint Presidential Guidance updating the ***Vento*** bands for awards for injury to feelings, which is regularly updated. In respect of claims presented on or after 6 April 2019, the ***Vento*** bands include a middle band of £8,800 to £26,300.

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45. I considered however that the sum sought by the claimant was higher than in my judgment is appropriate. Firstly, there was an existing condition which was exacerbated. Secondly no medical report or other evidence has been provided. Thirdly, whilst the behaviours of the respondent that have been set out above and did amount to harassment which lasted a material time leading to the claimant's constructive dismissal were wholly wrong, and clearly were very upsetting for the claimant, case law has indicated. In all the circumstances I consider that the appropriate award is the sum

of £12,000. I award interest on that at the rate of 4% per annum from the date of termination to the date of Judgment, which I calculate to be £520.

46. The total of all the awards is therefore the sum of £39,164.88. That sum exceeds the figure by which awards are tax free. The excess is the sum of £9,164.88, but that excess is partly in respect of the injury to feelings award, and I do not consider that that is taxable for present purposes. No application was made for grossing up in the Schedule, and I do not do so. In the event that there is an issue as to taxation, the claimant may seek a reconsideration of the Judgment.

## 10 Recoupment

47. The claimant stated in evidence that she received benefits after the dismissal, being Universal Credit. The Employment Protection (Recoupment of Benefits) Regulations 1996 therefore apply to the award. For the purposes of those Regulations:

- 15 (i) The monetary award is £39,164.88.
- (ii) The prescribed element is £15,924.81.
- (iii) The date to which the prescribed element relates is 23 September 2020, and the prescribed period is that from 27 August 2019.
- (v) The amount by which the monetary award exceeds prescribed  
20 element is £23,240.07.

48. The effect of the Regulations is that the sum of £24,240.07 is now payable. There is a period of 21 days after this Judgment is sent to the parties for the service on the parties of a Recoupment Notice, which sets out the amount if any that must be deducted from the prescribed element and paid to the Department for Work and Pensions. The balance of the prescribed  
25 element is then payable to the claimant. If there is no Recoupment Notice served within that time, the full amount of the prescribed element is payable to the claimant save where there are sufficient reasons for any delay in serving such a notice.

## 30 Conclusion

49. The claimant was unfairly dismissed, and a declaration is made in relation to the 2010 Act.
50. She is awarded the sums set out above.

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Employment Judge: Sandy Kemp  
Date of Judgment: 23 September 2020  
Entered in register: 28 November 2020

10 and copied to parties