



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms M Morgan

v

Buckinghamshire Council

Heard at: Aylesbury, via CVP

On: 15 January 2021

Before: Employment Judge Hyams

Members: Mr W Dykes
Mr T Poil

Appearances:

For the claimant: Ms M Cornaglia, of counsel

For the respondent: Mr L Davidson, of counsel

REASONS FOR REMEDY JUDGMENT

- 1 On 15 January 2021, we heard (via CVP; the resumed hearing was held completely via CVP) oral evidence from the claimant about the impact on her of the act which we had found, in our reserved judgment on liability which was sent to the parties on 10 December 2020, constituted harassment within the meaning of section 26 of the Equality Act 2010 (“EqA 2010”). That act was the use of these words in the letter of Ms Jackson to the claimant dated 3 February 2020:

“It is also of great concern that you chose to withhold your autism through ‘masking’ throughout much of your employment potentially putting at risk the vulnerable children with which you were working.”

- 2 We then heard submissions from both parties about the amount of the award that we should make in that regard. Both parties had very helpfully prepared written skeleton arguments, and they both made a number of additional submissions orally.

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- 3 We announced our decision on the day of the hearing, 15 January 2021, and a judgment for that amount (£9,000 plus interest) was subsequently issued. On 26 January 2021, the claimant's representative sent an email to the tribunal, asking for written reasons for that decision. These are those reasons.
- 4 We concluded that the injury to the claimant was on the cusp between the lower *Vento* band (i.e. the lower range of awards for damages for injury to feelings as first stated by the Court of Appeal in *Vento v Chief Constable of West Yorkshire Police* [2002] EWCA Civ 1871, [2003] IRLR 102, [2003] ICR 318) and the middle *Vento* band. We did so in part by reference to the range of cases which were put before us (and to which we were in any event going to refer ourselves), referred to in *Harvey on Industrial Relations and Employment Law* at paragraphs L[1046] to L[1053.08]. In coming to that view, we concluded that the case of *Miss M James v Capital Care Service* (London East) (Case No: 3200600/2017) (25 July 2018, unreported), which was a case with an award at the top of the lower *Vento* band, was comparable to this case, as was the case of *Davies v Remploy (Manchester)* (Case No 2407487/09) (8 September 2009, unreported), which was a case with an award at the lower end of the middle *Vento* band. However, we regarded the latter case as being possibly less serious than the case of *James* and this case. In any event, we concluded that the right place for the award was precisely on the cusp of the two brackets.
- 5 In coming to that conclusion, we accepted that the claimant had not, when she made her first witness statement, i.e. the one which she put before us for the hearing which started on 12 October 2020, referred directly to any hurt being felt by her about the comment which we have set out at the end of paragraph 1 above. She had instead simply referred to the comment in paragraph 93 of that witness statement, in this way:

“I appealed the decision but felt the appeal hearing officer, Karen Jackson, was worse. At each turn the accusations became more extreme and serious. Eventually stating that I was a danger to children and that the masking techniques used by autistic people amounted to a form of deception - a total misinterpretation of that term and I felt this constituted direct discrimination.”
- 6 That was in marked contrast to fact that the claimant had described the impact that she had said other acts of the respondent had had on her, such as in paragraph 47 of that witness statement. However, during the liability hearing, which started on 12 October 2020, when giving oral evidence the claimant said that she had spoken to the National Autistic Society about the comment set out at the end of paragraph 1 above. During the remedy hearing before us of 15 January 2021, the claimant said that she had, before the liability hearing, reported that comment to the police as a hate crime. We accepted that evidence. That showed to us that the claimant had been affected quite seriously by the comment.

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- 7 In addition, the claimant during oral evidence on 15 January 2021 said that the comment of Ms Jackson had been directed at her (the claimant's) chosen career in what she felt she was called to do, and that there was "always someone who puts you down and kicks you and when you go down it takes a while to get back up and as time goes by it can take longer". Ms Cornaglia submitted to us, and we accepted, that the comment hit at the claimant's *raison d'être*, or what one might call her core identity. The suggestion that the claimant had deliberately sought to deceive in such a way that service users could be at risk was, as we said in paragraph 144 of our reasons for our liability judgment, offensive.
- 8 In addition, we took into account what Ms Preece had written in paragraphs 10 and 11 of her letter dated 7 January 2021 at pages 7-9 of the bundle put before us for the hearing of 15 January 2021. That was as follows:
- "10. In February 2020 Miranda contacted me extremely distressed after receiving a letter from her previous employer which detailed the unacceptable comments stating that she was a risk to children because of her autism. I was appalled, shocked and speechless by these comments. As a social worker myself I could not believe that a local authority who provide statutory services to the community would hold such a belief about autistic people, and write these discriminatory and hostile comments in a letter to a person with Autism.
11. Miranda was in floods of tears, she was inconsolable, and this significantly affected her confidence and self-esteem. ... Miranda is a social worker who has dedicated her life to the profession and to safeguarding and promoting the welfare of children, which is central to everything she does."
- 9 We accepted that the impact which Ms Preece described there was in part the result of the fact that the claimant's appeal had been dismissed by Ms Jackson, so that the distress that the claimant exhibited was in part caused by things which we found were not unlawfully discriminatory. Nevertheless, the comment that Ms Jackson had made was unnecessary (and in a place in the appeal decision letter in which it did not appear to belong), which made it all the more difficult to understand why it was made, and that in our view must have added to the impact that the comment (alone) had on the claimant.
- 10 On the other hand, an objective observer might have been able to shrug off the comment as obviously mistaken and misguided. However, and finally, we took into account the fact that it was the vulnerable claimant to whom it was made, and that the principle that a tortfeasor takes the wronged person as he or she is (the "eggshell skull" principle) applied.
- 11 Ms Cornaglia helpfully reminded us that the Third Addendum to the Presidential Guidelines applied. That provided:

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“In respect of claims presented on or after 6 April 2020, the *Vento* bands shall be as follows: a lower band of £900 to £9,000 (less serious cases); a middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band); and an upper band of £27,000 to £45,000 (the most serious cases), with the most exceptional cases capable of exceeding £45,000. NB these bands take account of the 10 per cent *Simmons v Castle* uplift.”

- 12 In the light of all of those factors, we concluded that the right figure to award as damages for injury to the claimant’s feelings was £9,000. No other loss was claimed by reason of the harassment that we found had occurred. Interest was awardable on that sum of £9,000, and the parties and we agreed that it was to be awarded at the rate of 8% per year for 347 days. That was £684.49.

Employment Judge Hyams

Date: 10 February 2021

JUDGMENT SENT TO THE PARTIES ON

.....18/2/2021.....

FOR THE TRIBUNAL OFFICE