



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

V

RESPONDENT

Mr C Thatcher

Premiere Care (Southern)
Ltd

Heard at: London South
Employment Tribunal

On:

10 March 2021

Before: Employment Judge Hyams-Parish

Members: Mr C Rogers and Mrs C Bonner

Representation:

For the Claimant: Ms Emir (Solicitor)

For the Respondent: Ms P Hall (Solicitor)

REMEDY JUDGMENT

The Respondent is ordered to pay the Claimant the sum of £71,838.21, a sum which has been grossed up for tax and is inclusive of the following:

- A basic award of £2295.00
- A compensatory award of £43,982.69 (inclusive of interest in the sum of £2,393.23)
- An award for injury to feelings in the sum of £15,000.00 (plus interest of £2,192.88)

The Recoupment provisions shall apply to this award. For this purpose:

Prescribed period:	14/05/2019 to 10/03/2021
Total award:	£71,838.21
Prescribed element:	£25,852.75
Balance:	£45,985.46

REASONS

1. The above hearing was listed to determine remedy, pursuant to a decision by the Tribunal, following a two day hearing, that the Claimant had been unfairly dismissed, that the dismissal was an act of disability discrimination and the Respondent had failed in its duty to make reasonable adjustments.
2. The Tribunal's decision on remedy was given at the conclusion of the hearing and oral reasons were provided. These written reasons are provided at the request of the Respondent.
3. A full breakdown of the sums awarded to the Claimant are set out in the Appendix.
4. At the hearing, the Claimant gave evidence about his losses and the effect of the discrimination on him. In particular, the Claimant said he found it extremely difficult to obtain employment in view of his disabilities and was delighted to have been offered employment with the Respondent. It is a job which the Claimant said that he enjoyed. He said that he was very much hurt by the way he was treated and how his employment came to an end. He said it would be extremely difficult to obtain employment due to his disabilities and was seeking future losses up to his retirement.
5. During her submissions, Ms Emir said that the Claimant should be awarded all of his actual losses and future losses up to retirement. She said that the appropriate award for injury to feelings should be in the mid Vento range. She said that there should be an ACAS uplift of 25%.
6. The Respondent called no evidence during the hearing. Whilst a witness statement had been provided for Mr Cole, this simply alluded to the financial difficulties of the Respondent and contained no evidence which was relevant to the decisions the Tribunal had to make at this hearing. In those circumstances, and having canvassed the matter with Ms Hall, he was not called to give evidence.
7. Although Ms Hall questioned the Claimant as to work he had done since dismissal, she was in difficulty because she had no evidence of this. In any event it was denied by the Claimant. The Respondent's primary case was that the Claimant's losses should be restricted because they believe he would have been dismissed in any event, given that he had received a final written warning in July 2018.
8. Ms Hall did not contend that the Claimant had failed to mitigate his loss. She submitted that for the above reasons, any future loss should be limited to 3-6 months. She also submitted that there should be no uplift as there had been no breaches of the ACAS code.

9. Ms Hall accepted that the level of injury to feelings sat within the mid-vento range albeit at the lower end.

Conclusions, analysis and findings of fact

10. The Tribunal concluded that the core data at section 1 of the Appendix is correct.
11. There was no dispute as to the basic award at section 2 of the Appendix. The Tribunal therefore concluded that the Claimant should be awarded the sum stated therein.
12. The Tribunal considered the Respondent's submissions about the likely point that the Claimant's employment would have come to an end, assuming that the Respondent acted fairly and in a non-discriminatory manner. The Tribunal was very conscious that identifying such a date was not an exact science and, in effect, it was being asked to predict what might have happened had the Claimant not been unfairly dismissed. The Tribunal was satisfied that the Claimant's employment would not have continued until retirement. The Claimant did not get on well with his then line manager, Mr Ezinwa, and the Tribunal was satisfied that even if the Claimant's employment would not have come to an end as a result of a fair disciplinary process, the Claimant is likely to have brought his employment to an end through frustration with his line manager and not getting on with him. Had the Respondent dealt with the Claimant fairly, and bearing in mind his length of service and disabilities, the Tribunal did not think there would have been a quick end to the Claimant's employment through a disciplinary process. However, the Tribunal was satisfied that his employment would most likely have come to an end, whether through dismissal or resignation, by September 2021. This would mean that the Claimant would be awarded all of his actual losses and six months future losses. Such a conclusion was consistent with Ms Hall's own prediction which she referred to in her submissions, albeit 6 months' future losses was the maximum she said should be awarded.
13. As there was no evidence upon which the Tribunal could conclude that the Claimant had failed to mitigate his loss, the Tribunal awarded him the actual losses at section 3 of the Appendix and the future loss calculated at section 4 of the same. There was no challenge by Ms Hall to the figures used to calculate these sums, including the pension loss.
14. The compensatory and basic awards were reduced by 15% for contributory fault, the reasons for which were provided in the liability judgment.
15. The Tribunal concluded that there were significant failings of the ACAS code, including a failure to conduct the necessary investigations, there

being no separation in roles (Ms Cole was decision maker and appeal officer) and the Claimant being disciplined for matters which he was not even asked about at the disciplinary hearing. The Tribunal concluded that such failures were serious and unreasonable and that the maximum uplift was appropriate in this case.

16. The Tribunal considered the discriminatory acts to be serious, for reasons stated in the liability judgment. Further, the Tribunal had no doubt that the hurt feelings felt by the Claimant were significant. For these reasons, the Tribunal concluded that the level of injury to feelings sat in the middle of the mid vento range. The Tribunal therefore awarded £15,000.00.
17. In addition to above, interest was awarded on the losses and the award for injury to feelings.

Employment Judge Hyams-Parish
18 March 2021

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APPENDIX

1. Core Data	
Date of birth of claimant	08/05/1963
Date started employment	28/05/2013
Effective Date of Termination	13/05/2019
Period of continuous service (years)	5
Age at Effective Date of Termination	56
Remedy hearing date	10/03/2021
Date by which employer should no longer be liable	09/09/2021
Statutory notice period (weeks)	5
Net weekly pay at EDT	301.15
Gross weekly pay at EDT	360.00
Gross annual pay at EDT	18,720.00
2. Basic award	
Basic award Number of qualifying weeks (7.5) x Gross weekly pay (360.00)	2,700.00
Less contributory fault (basic award) @ 15%	-405.00
Total basic award	2,295.00
3. Compensatory award (immediate loss)	
Loss of net earnings	28,699.60
Plus loss of statutory rights	400.00
Plus Pension Loss	1,715.40
Total actual loss	30,815.00
4. Compensatory award (future loss)	
Loss of future (six months)	7,860.02
Plus Pension Loss (six months)	468.00

Total future loss	8,328.02
5. Adjustments to total compensatory award	
Compensatory award before adjustments	39,143.02
Plus failure by employer to follow statutory procedures @ 25%	9,785.76
Less contributory fault (compensation award) @ 15%	-7,339.32
Plus interest (compensation award) @ 8% for 334 days	2,393.23
Compensatory award after adjustments	43,982.69
6. Non financial losses	
Injury to feelings	15,000.00
Plus interest @ 8% for 667 days	2,192.88
Total non-financial award	17,192.88
7. Summary totals	
Basic award	2,295.00
Compensatory award	43,982.69
Non-financial loss	17,192.88
Total	63,470.57
8. Grossing up	
Tax free allowance (£30,000 – any redundancy pay)	30,000.00
Basic + additional awards	2,295.00
Balance of tax free allowance	27,705.00
Compensatory award + injury to feelings + wrongful dismissal	61,175.57
Figure to be grossed up	33,470.57
Gross up	8,367.64

GROSSED UP TOTAL	71,838.21