Case No: 2600119/2020(V)

EMPLOYMENT TRIBUNALS

Claimant: **Mr A Hardy**

Respondent: **Kaby Engineers Limited**

Heard: **Remotely (by Cloud Video Platform)**

On: **16 March 2021**

Before: **Employment Judge Faulkner**
Ms H Andrews
Mr R Loynes

Representation: **Claimant - Mr J Small (Counsel)**
Respondent - Mr J Munro (Solicitor)

JUDGMENT - REMEDY

The unanimous decision of the Tribunal was as follows:

1. The Respondent is ordered to pay to the Claimant the sum of £32,227.56 as compensation for its contraventions of Part V of the Equality Act 2010.

2. In accordance with rule 66 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the above amount was payable by the Respondent within 14 days of the date of the Judgment signed on 18 March 2021.

REASONS

1. Judgment and summary reasons were given to the parties orally on 16 March 2021 and written Judgment was signed on 18 March 2021. These Reasons are provided in response to the Respondent's request for written reasons made by email dated 29 March 2021. That request was not made known to Employment

Judge Faulkner until 10 April 2021, at which point he was on leave, hence the delay in responding.

2. The Remedy Hearing followed a Liability Hearing held over four days in January 2021, at which the Tribunal determined that the Respondent had discriminated against the Claimant by treating him unfavourably because of something arising in consequence of his disability, in the ways referred to below. Written Reasons for the Tribunal's judgment on liability were dated 26 February 2021 ("the Liability Judgment").

Issues

3. It was agreed with the parties at the start of this Hearing that the Tribunal was required to determine the following issues:

3.1. the extent of the compensation the Respondent should be ordered to pay to the Claimant for his financial losses to the date of this Hearing – Mr Munro confirmed that the Respondent raised no issue as to the Claimant's mitigation of those losses and Mr Small that the Claimant did not seek to argue that compensation should be increased because of any failure to comply with the ACAS Code of Practice on Grievance and Disciplinary Procedures;

3.2. whether the Claimant's compensation for those financial losses should be reduced on the basis that his employment would have terminated in any event, and if so to what extent;

3.3. whether the Respondent should be ordered to pay financial compensation to the Claimant in respect of future losses, if so in what amount, and again whether those losses should be reduced on the basis that his employment would have terminated in any event, and if so to what extent;

3.4. the amount the Respondent should be ordered to pay to the Claimant in respect of injury to feelings, Mr Small confirming that there was no claim for compensation for personal injury;

3.5. the interest that should be awarded to the Claimant on the amount of any compensation.

Facts

4. The parties produced a bundle of documents of 230 pages, much of which had been included in the bundle for the Liability Hearing. References were also made to the bundle used at the Liability Hearing. We made clear that we would only consider those documents to which we were taken by one of the parties, and that it was not our responsibility to carefully comb the bundles for potentially relevant material. Written statements were prepared by the Claimant and, for the Respondent, by Martin Payne (Operations Manager) and we heard oral evidence from both; the Claimant also prepared an updated schedule of loss. Both representatives made oral submissions. Mr Small made us aware that he intended to provide written submissions as well, but they were not passed to us by the Tribunal administration until the following day and therefore we were unable to take them into account. Finally, of course, we reviewed and had regard to our decision set out in the Liability Judgment.

5. Based on the above material, we make the following findings of fact. We do not repeat our findings and conclusions from the Liability Judgment except as is necessary to do so to make our conclusions on remedy clear.

6. The parties were helpfully able to agree the following key information:

6.1. the Claimant's net pay per week with the Respondent was £381.84;

6.2. over the 79 weeks between his dismissal and the date of this Hearing, his total loss of wages was therefore £30,165.36;

6.3. his pension loss, based on employer contributions of £99.41 per month over 18 months was £1,789.38;

6.4. the Claimant's mitigation figures set out in his updated schedule of loss were accepted as correct, apart from the total of his Employment and Support Allowance ("ESA") which was £5,450.40;

6.5. his net loss to the date of this Hearing was therefore £21,344.71;

6.6. his claim for future loss was limited to four weeks' salary only, namely £1,527.36;

6.7. there were 558 days from the date of the Claimant's dismissal to the date of this Hearing, giving a midpoint of 279 days;

6.8. there were 688 days from the first act of discrimination to the date of this Hearing;

6.9. the Claimant does not currently pay tax, as his income is only £5,000 per year plus ESA, and his personal allowance is £12,500.

7. As no issue was raised as to mitigation, there was no need for us to make any findings of fact in respect of the Claimant's search for work and earnings since dismissal. Accordingly, we note no more than that he obtained employment with a university in late November 2019, was kept on beyond his trial period but because of Covid-19 lost that role in March/April 2020. He obtained a part-time cleaning job in November 2020, which he retains. His evidence was that the pandemic has created a very difficult job market, and he is also concerned about how he may be perceived by prospective new employers in view of his recent medical history. We should also record that the Respondent paid the Claimant a week's pay in lieu of notice, taxed at source. The figure at 6.5 above takes that into account.

8. Taking in turn the three instances of proven discrimination, and without repeating the details set out in the Liability Judgment, our findings of fact in relation to the Claimant's injury to feelings were as follows.

9. The first act of discrimination arose from the comments made by Mr Payne at a meeting with the Claimant's wife, also attended by Oksana Heanes (HR Manager) at the Respondent's Upper Charnwood Street site on 29 April 2019, which took place whilst the Claimant was in hospital. In summary, Mrs Hardy was dropping off a medical note; during the meeting Mr Payne made what we

found to be unjustifiable enquiries about the Claimant's medical condition and treatment.

10. At paragraph 2 of his statement, the Claimant said that he thought nothing further of the matter when it was relayed to him by Mrs Hardy, by which (he explained in oral evidence) he meant that he tried to brush it off, not wanting to show Mrs Hardy that he was upset. As noted in our Reasons on liability, the Claimant and Mrs Hardy made plans after these events to take any further medical notes to the Respondent's site at Sheene Road instead.

11. We noted the Claimant's emphasis on the fact that at the time of this meeting he was in bed in hospital trying to recover from very serious surgery. We accepted that he told Mrs Hardy they had enough problems to contend with at that time, without this being added to them. We also accepted his evidence that it was very hurtful for him (as it was for Mrs Hardy, though of course we were only concerned with injury to the Claimant's feelings) that Mr Payne had enquired about his condition. As we said in the Liability Judgment, without imputing any ill motive to Mr Payne, the enquiries were very insensitive. The Claimant had not accepted his medical situation himself at that point, in particular the fitting of a stoma, and was certainly not ready for someone else – in this case a senior manager at the Respondent whom he did not know – to be made aware of it.

12. We noted too the text messages between Ms Heanes and Mrs Hardy following the meeting. As we noted in the Liability Judgment, these exchanges were both warm and professional. We had no hesitation however in accepting the Claimant's evidence when commenting on the messages, that the last thing on his and Mrs Hardy's minds was to stir trouble with the Respondent at this point.

13. The second instance of discrimination was the Respondent's failure to pay the Claimant statutory sick pay on 24 May 2019 because of the absence of a sick note.

14. We noted that the Respondent made no contact with the Claimant before withholding his pay. Perfectly understandably, the Claimant was expecting to be paid as normal and on checking his account online discovered that he had not been. We accept that he found this very upsetting, so much so that he raised it with his doctor, no doubt when he found out that it was because the Respondent wanted a sick note. The doctor's response was that the Claimant had more important things to concentrate on, which is unsurprising given that it was just 3 weeks after a second serious operation.

15. The Claimant could not believe that the Respondent wanted a note from someone lying in a hospital bed and found it hurtful that this was the Respondent's priority. We accept that this put him under unnecessary pressure to obtain a note – unnecessary pressure for the reasons set out in the Liability Judgment. The Claimant had two specific direct debits – relating to telephone and water – that were covered by him going into overdraft as a result of the non-payment.

16. The third act of discrimination was the Claimant's dismissal with effect from 5 September 2019.

17. Mr Munro put to the Claimant that he had accepted he was dismissed by reason of redundancy. We concluded that the Claimant did not accept this in the sense of agreeing that it was appropriate; he accepted it only in the sense that he did not think it worth fighting what he viewed as the Respondent's already-determined decision. More importantly, he certainly did not accept it was right to select him for redundancy partly because of his sickness absence – see further below.

18. The Claimant knew and accepts that the Respondent embarked on a broader redundancy programme, there being a first round prior to his dismissal and a second round affecting a number of colleagues and the Claimant himself. As set out in the Liability Judgment, the redundancy programme which included the Claimant's dismissal was clearly genuine in nature – employee representatives had been warned of the second round of redundancies at a Works Committee meeting shortly before the Claimant was advised that he was at risk, and other employees left in that tranche as well as the Claimant, though he was the only Quality Inspector in that round.

19. The Claimant did not see at the time of his dismissal the redundancy selection matrix which the Respondent produced for the Liability Hearing – page 61 of that bundle. He told us that he was more qualified than several of the other Quality Inspectors included in that matrix, referring to his previous career, including at Rolls Royce, and the fact that he was going to set up an ultrasonic department for the Respondent. There was no meaningful challenge to that evidence and we therefore accepted it.

20. The Claimant also told us that the Respondent employed twenty Quality Inspectors, five on the dayshift at Upper Charnwood Street, four on the afternoon shift and four on the night shift, three at the Respondent's site at Sheene Road, two at the nearby site from where an associated business known as Ariel Fabrications/Engineering was operating, and two at Nedham Street. Mr Payne told us that in fact the Respondent employed twelve Quality Inspectors, which seemed to us to be borne out by the document at page 61 of the Liability Hearing bundle referred to above, in which it can be seen that ten Quality Inspectors were listed, the additional two apparently being employed by Ariel. The document identified different site allocations for the Inspectors to that suggested by Mr Payne in his oral evidence, but we accepted his point that they were moved between sites from time to time. Two of those listed had been dismissed in the earlier redundancy round. Given its consistency with this document, we preferred Mr Payne's evidence on this point.

21. Mr Payne gave evidence that whether the Claimant would have been dismissed had he not accepted his fate at the meeting on 5 September would have been determined at a second meeting on the basis of a "last in, first out" selection ("LIFO"). We come back to that in our conclusions. What is clear from page 61 is that none of the Quality Inspectors listed there had shorter service than the Claimant.

22. Unsurprisingly, the Claimant described his dismissal as "heart-breaking" given, as he told his wife he believed at the time and as we concluded was the case, it was due to his absence when that was not his fault and he was ready to return to work. As he put it, by August/September 2019, he felt like he had got his life in order again and the dismissal knocked him back. He was referred for counselling shortly thereafter and prescribed anti-depressants.

23. Mr Munro sought to establish that any injury to feelings suffered by the Claimant was at least in part the result of pre-existing mental health issues, and therefore not solely the result of his dismissal. He referred to:

23.1. an extract from the Claimant's GP notes, dated 1 December 2016 (page 153 of the bundle for the Liability Hearing) where there is reference to a diagnosis of stress;

23.2. a similar reference on 20 October 2016 (page 154 of the same) to stress at work;

23.3. another similar reference on 4 October 2010 (page 161 of the same).

24. We noted that by the time of his dismissal, the Claimant was ready to return to work, having made what by any assessment was a quick recovery from two serious operations. As early as July 2019 he was asking the Respondent about returning full time. Mr Small drew to our attention the GP record at page 171 of the bundle for the Liability Hearing which includes a note of the Claimant being prescribed 20 mg citalopram on 13 September 2019, which was just a few days after his dismissal. The Claimant's unchallenged evidence (paragraph 12 of his statement) was that he was signed off work for 3 months.

Law

Financial compensation

25. Noting again that no issue was raised as to mitigation, we applied the following principles in determining financial compensation for discrimination:

25.1. The object of an order to pay compensation is to put the Claimant in the position he would have been in but for the Respondent's acts of discrimination.

25.2. There must be a link between the financial loss for which compensation is ordered to be paid and the Respondent's acts of discrimination.

25.3. In accordance with the Court of Appeal's decision in **Abbey National plc v Chagger [2010] ICR 397**, the fact that the protected characteristic – race in that case, disability (or more particularly, absence arising from it) in this case – was a significant factor in a dismissal decision is sufficient to establish liability for that loss, but does not assist in determining the measure of the loss. It was therefore necessary for us to ask what would have occurred had there been no unlawful discrimination. If there was a chance that dismissal would have occurred in any event, even if there had been no discrimination, then in the normal way that had to be factored into our calculation of financial loss.

25.4. The assessment of whether to order payment of compensation for future loss of earnings is necessarily speculative to some extent. We had to consider what it is likely the Claimant will earn in the future, assuming he continues to fulfil his duty to mitigate his losses. In this case, it was unnecessary to speculate overmuch, given that the Claimant sought only four weeks' pay.

25.5. On the same basis, we did not think it appropriate to apply a discount to any award for future financial loss to take account of accelerated receipt.

Injury to feelings

26. We applied the following principles in respect of compensation for injury to feelings:

26.1. Given that the Claimant presented his Claim Form in January 2020, with reference of course to the decision in **Vento v Chief Constable of West Yorkshire [2003] ICR 318** and subsequent Presidential Guidance, the lower band was £900 to £8,800 (for less serious cases) and the middle band £8,800 to £26,300 (for cases that do not merit an award in the upper band).

26.2. As with much of the exercise of assessing compensation, determining an award for injury to feelings is not an exact science. What is clear is that any award should be compensatory for the Claimant and not punitive of the Respondent.

26.3. Our focus was therefore on the effect of the proven discrimination on the Claimant, taking into account in particular the degree of hurt and upset caused to him by the discrimination, which was of course assessed in accordance with the evidence he produced to the Tribunal and which can take into account factors such as the seriousness of the discrimination (it is the effect on the Claimant that matters but clearly calculated and purposeful discrimination will generally have a greater effect).

26.4. The burden was on the Claimant to establish injury to feelings.

26.5. Given Mr Munro's submissions, the Tribunal needed to consider whether factors other than the proven discrimination, namely any pre-existing mental health condition, contributed to the Claimant's hurt feelings. If they did, the award for injury to feelings should be reduced proportionately.

26.6. Awards for injury to feelings should bear relation to awards given in personal injury cases and to the value of the amount in everyday life.

Interest and tax

27. The award of interest on compensation for discrimination is governed by the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 ("the Interest Regulations"). The appropriate rate of interest is 8% (regulation 3). Regulation 4(1) provides that the "day of calculation" for these purposes "means the day on which the amount of interest is calculated by the tribunal". Regulation 6(1) sets out what interest "shall be" in respect of a sum for injury to feelings and for past financial loss respectively.

28. Regulation 6(3) provides, "Where the tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2), it may – (a) calculate interest, or as the case may be interest on the particular sum, for such different period, or (b) calculate interest for such different periods in respect of various sums in the award, as it considers appropriate in the circumstances, having regard to the provisions of these Regulations". The parties agreed that given the relatively small time between the first act of discrimination and the last (the

dismissal), there would be no injustice to the Respondent in calculating interest by application of the usual principles.

29. As to tax, whilst awards for injury to feelings related to discrimination during the Claimant's employment may be paid without deduction for tax, all compensation connected with the termination of the Claimant's employment, including any award for injury to feelings, falls to be taxed to the extent it exceeds £30,000 – see **Moorthy v Revenue and Customs Commissioners [2018] EWCA Civ 847**.

Analysis

Financial loss to date

30. Mr Small confirmed that the Claimant sought no award for financial loss in respect of the acts of discrimination prior to dismissal. The award sought was therefore solely to compensate for financial loss flowing from the discriminatory dismissal.

31. In his closing submissions, Mr Munro sought to argue another cause for that loss, essentially that it was a result of the Claimant's views as to the job market and how he would be perceived by potential new employers were they to know about his medical history. That seemed to us to be at odds with the Respondent's position on mitigation, which is recorded above and which meant that the Claimant's account of his job search activities set out in his witness statement was not challenged during his oral evidence at all. In view of that, and given that it seemed to us very likely that it would not have been easy for the Claimant to secure new employment in very difficult economic conditions generally, we were satisfied that it was appropriate to proceed on the basis that the Claimant's financial losses flowed from his dismissal.

32. His losses to the date of this Hearing, of £21,344.71, were therefore the starting point for our calculation of compensation. The only substantive issue for us to determine on this point was whether he would have left the Respondent's employment anyway, absent the discrimination, and if so, when.

33. It seemed to us that Mr Small's initial submissions on this point fell into the trap identified by the Court of Appeal in **Chagger**. His argument in summary was that given our conclusion that the dismissal was discriminatory, it was plain that the only possible alternative – absent discrimination – was that the Claimant would not have been dismissed at all. On the basis of the Court of Appeal's decision, the fact that the Claimant's absence arising from disability was a significant factor in the dismissal decision was sufficient to establish liability for that loss, but did not assist us in determining the measure of the loss. It was therefore necessary for us to consider the world as it would have been had the Claimant's sickness absence not featured at all in the Respondent's decision-making.

34. As noted above, the Claimant's dismissal was part of a wider round of redundancies, in fact two such rounds. The need for redundancies was undoubtedly genuine, it having been announced to the Works Committee, and other employees having left before the Claimant and in the same round as him. We could not say therefore that there was no prospect of the Claimant being dismissed had his absence been wholly ignored. In deciding on liability, we did

not conclude that the Claimant's absence was the only factor in his dismissal. Accordingly, at the remedy stage, we concluded that it was not open to us to say that there was no prospect he would have been dismissed anyway. It seemed to us that Mr Small recognised that to be the case by the time his submissions concluded.

35. Mr Munro's submission was that it was absolutely clear that the Claimant would have been dismissed in any event, either at the same time or within a week or two thereafter. We considered that submission very carefully.

36. It was not clear to us why the Respondent needed to make a single Quality Inspector redundant in the second round of redundancies, but we were prepared to accept given the broader financial context for the Respondent and the other redundancies that took place, that some reduction in the number of Quality Inspectors was genuinely thought necessary. There would have been no need to produce the list of Quality Inspectors at page 61 of the bundle for the Liability Hearing otherwise. It was not for us to second guess the needs of the Respondent's business in this regard, and there was in any event no evidence before us at any stage that would have merited our doing so.

37. The Respondent's case was however very confused as to the basis on which redundancy selections, including that of the Claimant, were made, as we recorded in the Liability Judgment. Its oral evidence was that it adopted a strict LIFO principle, as Mr Payne insisted in his evidence at this Hearing, whilst in its Response it said that a selection matrix was used. As set out in the Liability Judgment, the most likely basis on which selections were made was that set out in the form HR1 (pages 63 to 64 of the bundle for the Liability Hearing), namely everyone with less than two years' service with a high absenteeism record. This was what was reported to a government body, was the only evidence we had of the basis for selection in the first redundancy round, and the Respondent told the Works Committee that the second round would be carried out on the same basis.

38. In the complete absence of any details as to the absence record of other Quality Inspectors listed in the redundancy selection matrix, it was not possible for us to say that it was certain the Claimant would have been dismissed even if his absence had been disregarded. As we repeatedly made clear throughout this case, it was not for us to fill in the gaps in either party's evidence.
There was little for us to go on in deciding the percentage chance that the Claimant would have been dismissed by reason of redundancy anyway. What we did have however, within the redundancy selection matrix, was evidence of two Quality Inspectors with less than 2 years' service, the Claimant and one other. As just indicated, the matrix is incomplete, so that we had no knowledge of the other person's absence record. Having accepted that the Respondent legitimately needed to dismiss one of its Quality Inspectors, it was most logical to conclude therefore, on the limited evidence before us, that there was a 50% chance the Claimant would have been dismissed in any event – it was either the Claimant or the other Inspector with less than two years' service who would have been dismissed, even with absence entirely put out of account.

39. That reduced the Claimant's financial loss to the date of this Hearing to £10,672.36. The interest on that sum, using the midpoint noted above, was 279/365 x £10,672.36 x 0.08 = £652.62. The total compensation for financial loss to the date of this Hearing was therefore £11,324.98.

Future loss

40. The starting point for calculation of future financial loss was, as noted above, £1,527.36. On the basis set out above, this fell to be reduced by 50% to £763.68. With no interest payable on it and no discount for accelerated receipt, that was the final figure for future loss.

41. The total financial loss awarded to the Claimant was therefore £12,088.66.

Injury to feelings

42. Some of the Claimant's evidence as to his injured feelings cut across our findings on liability, for example his statement that he was told by Mr Payne and Ms Heanes at the meeting on 23 July 2019 that his job was safe; we expressly found in the Liability Judgment that this was not said. Nevertheless, his evidence was wholly consistent with what he said at the liability hearing in relation to how the various instances of discrimination had affected him, and despite a valiant effort by Mr Munro, that evidence was not undermined during cross-examination.

43. We were conscious of course that the Claimant was not a direct party to the conversation on 29 April 2019, but it was clear to us that he was unhappy about it when it was reported to him and that it was the cause of some distress. As noted above, whilst he said in his statement that he thought nothing further about it, this was essentially to manage the situation in a way that would minimise concern for his wife. It came very early in the period of the Claimant's absence and hospitalisation, and as he said he was only just coming to terms with his condition and treatment himself, when he found out that someone senior within the Respondent had elicited information about it. For the reasons already given, the subsequent text messages between Ms Heanes and Mrs Hardy in no way diminish the force of the Claimant's evidence in this regard.

44. The Claimant found it hurtful that the Respondent's priority when it decided not to pay him on 24 May 2019 was that he had not provided some form of medical note, rather than his welfare. He could not believe that it wanted a note from someone lying in a hospital bed. We concluded that the Claimant's evidence in this respect was wholly understandable. We noted that at the time of both pre-dismissal acts of discrimination, the Claimant was seriously unwell in hospital, having undergone serious surgery on two occasions.

45. As to dismissal, we accepted the Respondent's case that the Claimant could not have been hurt by the scores he was given in the redundancy selection matrix because they were not available to him at the time of the act of discrimination, even though he made clear to us that he was dismayed by them when they came to his attention. That said, we rejected Mr Munro's submission that in determining the Claimant's injury to feelings related to his dismissal, we should only take account of what he experienced at the dismissal meeting itself, related to which he essentially submitted that Mr Payne and Ms Heanes conducted it professionally. We were fully entitled, and required, to consider the wider impact of dismissal on the Claimant, not just what he felt within the confines of a short meeting.

46. The Claimant knew, because he said in unchallenged evidence that he told his wife, that his absence had counted against him in the decision to dismiss him. That was unsurprisingly hurtful in the context in which that decision was made.

We were struck by the Claimant's evidence that he was ready to go back to work, had got his life in order again and was looking forward to the opportunity for some normality. The discriminatory dismissal took that away from him.

47. We also noted his evidence that he had worked all of his adult life, and in particular that he was dismissed for something wholly outside of his control, namely his serious medical condition. Redundancy is of itself a neutral reason for dismissal, but this was not a case of a procedural errors that made the dismissal unfair. This is a case in which the dismissal was significantly influenced by the Claimant's sickness absence, which arose in consequence of his disability.

48. Dismissal is a significant act of discrimination and has significant consequences – the Claimant described to us for example the embarrassment of having to borrow money from friends and family. We note too that the Claimant saw his GP within days of his dismissal. As a result, he was referred for counselling (although it was not possible for this to start until early 2020), was prescribed anti-depressant medication and was signed off work for 3 months.

49. We were amply satisfied in the light of the above, that the Claimant had demonstrated that the Respondent's acts of discrimination, particularly the discriminatory dismissal, had a significant impact on him. As noted above, Mr Munro submitted that whatever the Claimant described, it was at least in part due to historic stress; he also suggested it was a carryover from the Claimant's medical condition and treatment that had led to him being in hospital. We rejected those submissions for the following reasons:

49.1. the medical evidence referring to stress to which we were taken by Mr Munro dated from significantly before the acts of discrimination, the latest being December 2016;

49.2. as for the Claimant's more recent medical history, we were in no doubt that what the Claimant experienced in early 2019 will have had an adverse impact on his feelings and general sense of wellbeing;

49.3. as Mr Small pointed out however, the Claimant went to his GP on 13 September 2019 and was prescribed anti-depressant medication – this was only a few days after his dismissal and is strongly suggestive therefore of the impact of the circumstances of the dismissal rather than any other cause;

49.4. in any event, it was plain to us that the Claimant was, and is, a resilient individual – as already noted, he was ready to return to work, having made a quick recovery, such that as early as July he was asking about working full time.

The evidence very much suggested to us that what the Claimant described can, indeed can only, be properly ascribed to the impact of how he had been treated by the Respondent, rather than any historic, or more recent, medical cause.

50. In summary, we noted that this was not a case of a single act of discrimination, whilst on the other hand it was not a sustained series of such acts and they did take place over a relatively short period. That said, where a dismissal is involved, which will very often, if not always, be one of the most serious acts of discrimination, we could not agree with Mr Munro that the lower band was the right place within which to position the award for injury to feelings.

The two pre-dismissal acts of discrimination were clearly less serious than the dismissal itself, but they were not trivial. The Claimant was in a very difficult situation and, as we have said, it was hardly surprising that what happened had the impact he described to us.

51. Deciding on an appropriate award for injury to feelings is not an exact science, but taking into account everything set out above, an award in the middle part of the middle **Vento** band seemed to us to be the right level of compensation, namely £17,500. Apportioning that between discrimination before termination of employment and discrimination at termination of employment is also not an exact science, but it is necessary not least because of the different tax treatment that applies to the awards within those two categories. Both representatives accepted that this was necessary. In our view, a split of approximately one-third for the injury to feelings arising from pre-dismissal discrimination and two-thirds for the injury to feelings arising from dismissal was appropriate. In round figures, we settled on £5,000 and £12,500 respectively.

52. As noted above, the representatives agreed that interest on the injury to feelings award should be calculated on the normal basis. We agreed that there was no serious injustice for the Respondent in doing so, given the small difference had we calculated it separately on two separate amounts. The interest due on this award was therefore 688/365 x £17,500 x 0.08 = £2,638.90.

53. The total award for injury to feelings was therefore £20,138.90. Apportioning a third of the interest to the pre-termination discrimination gave £879.63, making the total amount attributable to that discrimination £5,879.63. The remainder, being compensation for injury to feelings flowing from the discriminatory dismissal, totalled £14,259.27

54. The overall total compensation which the Respondent was ordered to pay to the Claimant was therefore £12,088.66 plus £20,138.90, namely £32,227.56. As we attributed £5,879.63 to the injury to feelings award for pre-termination discrimination, the balance attributed to financial loss and the injury to feelings award for dismissal was less than £30,000 and so grossing up did not arise. We note again in this regard that the payment in lieu of notice was taxed at source. Payment of the amount so ordered was due within 14 days of the Judgment dated 18 March 2021.

Note: This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V - video. It was not practicable to hold a face-to-face hearing because of the COVID-19 pandemic.

Employment Judge Faulkner

Date: 19 April 2021

Note

All judgments and written reasons for the judgments (if provided) are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the parties in a case.