



## **EMPLOYMENT TRIBUNALS**

**Claimant:** Ms M Usai  
**Respondent:** G4S Secure Solutions (UK) Ltd  
**Heard at:** Via CVP **On:** 5 May 2021  
**Before:** Employment Judge Wright  
Mr G Henderson

**Representation:**

**Claimant:** Mr K Bhatt - solicitor  
**Respondent:** Mrs M Pimenta - solicitor

## **RESERVED JUDGMENT ON REMEDY**

It is the unanimous judgment of the Tribunal that the claimant is awarded the gross sum of £15,000 in respect of injury to feelings, plus interest calculated to be £2,959. No award for aggravated damages is made. The claimant's costs application fails and is dismissed.

The Tribunal also makes a recommendation under s. 124 of the Equality Act 2010 (EQA) that the respondent provides by 1 December 2021 training on equal opportunities to all staff and that the training is repeated and updated regularly and is provided at least annually thereafter.

## **REASONS**

1. Following the presentation of two claims on 11 March 2018 and 7 October 2018 the liability hearing commenced on 7 October 2019 over several days. That hearing was listed to determine liability and remedy. For reasons of panel availability, the Judgment was not promulgated until February 2020.

2. The claimant was successful on one allegation of sexual harassment in that on 21/10/2017 Mr Bandel 'made inappropriate and unwelcome touching trying to hug and kiss' her.
3. Unfortunately and through no fault of the parties (although the respondent had applied for a postponement) the original remedy hearing listed for 22/6/2020 was postponed due to the Covid-19 pandemic. Further hearings listed for September 2020 and February 2021 were also postponed.
4. This hearing was not problem free. It was listed as a CVP hearing and one panel member was unable to participate. The parties were not aware of this until after the start of the hearing. They agreed in writing for the Tribunal to continue as a panel of two.
5. There were technical problems with the claimant's connection, for example, she was for a period locked out of the hearing.
6. Despite those problems, the hearing proceeded and Judgment was reserved.
7. The Tribunal hearing evidence from the claimant. No witness evidence was proffered by the respondent. The Tribunal had before it an unsatisfactory bundle in several parts, as however there was limited reference to the bundle, it was able to manage. The Tribunal had written and heard oral closing submissions.
8. The claimant's position at the hearing is that she now seeks an award of injury to feelings of £30,000 and aggravated damages of £15,000, in addition to an Acas uplift and interest. She also seeks a recommendation.
9. The claimant says her feeling were injured to the extent set out in her witness statement, skeleton argument and position statement to the extent that they fall within the lower part of the upper band of Vento<sup>1</sup>.
10. The respondent's position is that over the passage of time, the claimant has increased the sums claimed, without explanation. Furthermore, there was one single act of sexual harassment (the other claims were not well-founded) and an award for injury to feelings should be in the range of £1,500 to £3,000.
11. The Tribunal made the following findings.
12. There was no medical evidence provided by the claimant, save for one letter dated 16/9/2020 from a Psychological Wellbeing Practitioner which read:

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<sup>1</sup> Vento v Chief Constable of West Yorkshire Police (No 2) [2003] ICR 318

'I am writing to confirm that Miss Usai is receiving one-to-one 'guided' cognitive behavioural therapy. Unfortunately, I am unable to provide the content of these sessions as they are confidential.'

13. The claimant said that initially, she had not wanted to undergo any form of counselling or CBT, however her GP persuaded her and then the referral took time. She said that when the sessions ended, she wanted to continue with them, but she could not afford to do so privately.
14. The claimant referred to other physical symptoms, such as insomnia. There was however no medical evidence in respect of this. Equally, there was no independent evidence to explain the delay between the incident, the Tribunal's Judgment being promulgated and the referral to counselling.
15. The respondent has been clear for some time that the claimant should provide medical evidence and indeed mentioned (although did not follow up) a further postponement of this hearing in order for that to be obtained by the claimant.
16. The incident was a one-off act, of an unwelcomed 'hug' which the claimant complained of when she next spoke to her manager. The Tribunal does not intend to 'second-guess' the impact the incident had upon the claimant, it does however, lack in particular, medical evidence.
17. The claimant remains employed by the respondent and it is an unattractive argument to say that as a result of that, the impact the incident had upon the claimant was somehow lesser than the claimant says, otherwise she would have resigned. Had the claimant left the respondent's employ, the respondent would be facing an additional claim for loss of wages.
18. At the substantive liability hearing, the claimant made reference to not having had an apology from the respondent. She repeated that statement unprompted at this hearing and said that an apology would have made a difference and that the respondent still had not apologised. Mrs Pimenta was asked about that point and she said she could not answer as she did not know the position. The Tribunal therefore finds there was no apology from the respondent.
19. As the Tribunal did not hear any evidence from the respondent, it does not know what steps, if any, the respondent took upon receiving the Tribunal's Judgment and finding that it was vicariously liable for an act of sexual harassment.
20. At the liability hearing, the Tribunal was told that there had been complaints from female members of the public regarding some of the claimant's colleagues. In addition, other members of staff had overheard sexist comments being made.

21. There was no evidence that the respondent had taken any steps to address these matters upon receipt of the liability Judgment. For example, there was no evidence it had reviewed or revisited any form of equal opportunity training in this male dominated environment.
22. The respondent has had over a year since it received the Tribunal's Judgment to make some attempt to mitigate the impact of the findings upon the claimant.
23. S. 124 EQA states that the amount of compensation which may be awarded for discrimination corresponds to the amount which could be awarded by a County Court in England and Wales or a Sheriff in Scotland. S. 119 EQA provides that an award of damages may include compensation for injured feelings. In Prison Service & Ors v Johnson [1997] ICR 275, the EAT summarised the general principles that underlie awards for injury to feelings and they have been considered.
24. Three bands of injury to feelings awards were set out by the Court of Appeal in Vento v Chief Constable of West Yorkshire Police (No 2) [2003] ICR 318. The injury to a claimant's feelings are subjectively, rather than objectively measurable and encompass:

'subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise...Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms.'
25. It is the effects of the wrong are the measure, not the wrong itself. In Komeng v Creative Support Limited UKEAT/0275/18 the EAT emphasised the importance of focusing on the actual injury suffered by the claimant and not the gravity of the acts of the respondent. It is accepted an injury to feelings award is not punitive, but should compensate the claimant.
26. The Presidential Guidance for Employment Tribunal Awards for Injury to Feelings and Psychiatric Injury (and subsequent annual updates) provides further guidance.
27. The Tribunal finds that this is a mid-Vento band case. It was not a more serious case, where there has been a lengthy campaign of discriminatory harassment which has a profound effect on the victim.
28. The Tribunal was referred to various authorities and to first instance decisions. Understandably, each party referred to decisions which awarded either a high or low sum for injury to feelings.

29. The Tribunal finds the appropriate sum to award is £15,000. The Tribunal hopes that the claimant can use some of this award to fund private therapy.
30. The Tribunal declines to make an award for aggravated damages as it finds there were no extraneous aggravating factors. It finds a separate award of aggravated damages would result in double recovery for the claimant.
31. Similarly, the Tribunal declines to increase the injury to feelings award under S. 207A of the Trade Union and Labour Relations (Consolidation) Act 1992. There was no particular criticism of the process the respondent followed by the Tribunal.
32. Interest is awarded at the court fund rate of 8% from the date of the incident (21/10/2017) to the date a remedy hearing *should* have been held. The Tribunal notes that remedy should have been addressed at the liability hearing in October 2019. The Tribunal finds that in 'normal' circumstances, a one-day remedy hearing would have been listed approximately six months after the liability hearing and so it limits the period of compensation to 7/4/2020. The interest calculation is therefore:  
  
$$21/10/2017 \text{ to } 7/4/2020 = 900 \text{ days at } 8\%$$
$$£15,000 \times 8\% = £1,200 / 365 \times 900 = £2,959$$
33. Interest is therefore awarded in the sum of £2,959.
34. A recommendation was made, in very general terms and with a generous time limit for compliance. The respondent is urged to learn lessons not only from the incident which was found to be an unlawful act of discrimination, but also at its conduct which followed and the criticisms set out above.
35. At the conclusion of the hearing, the claimant made a costs application in the sum of £750 + vat in respect of Mr Bhatt's costs of attending this remedy hearing. The basis of the application was that settlement offers had been unreasonably rejected by the respondent. The respondent objected to the costs application and to the timing of it. Without prejudice save as to costs correspondence was provided.
36. The Tribunal did not consider the costs application until it had determined remedy and it did not consider any without prejudice correspondence in this regard until it had completed its deliberations on remedy.
37. The Tribunal declines to make a costs award in the claimant's favour. Irrespective of any offers made, it was clear upon reviewing the relevant schedules of loss that the parties were very far apart in terms of how they

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have valued the injury to feelings award. The claimant contended it was in the upper Vento band and the claimant the lower. For the reasons set out above, the Tribunal found the award to be around the mid-point of the middle band. The threshold for making a costs award was not met and there was no unreasonable (et cetera) conduct by the respondent in rejecting the claimant's settlement offer(s) when the parties were so far apart.

7 May 2021

**Employment Judge Wright**