



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

MS MUNA ABDI

v

DELTEC INTERNATIONAL COURIER LIMITED

Heard at: Watford

On: 8 June 2021

**Before:** Employment Judge Skehan

**Members:** Ms Kendrick

Mr Hoey (By CVP)

## Appearances

**For the Claimant:** No attendance

**For the Respondent:** Ms Bell, Counsel

## JUDGMENT

1. The claimant's claim for unlawful harassment on the grounds of sex, race and religious belief contrary to the Equality Act 2010 was successful to the extent as set out within our Liability Judgment in this matter. The respondent must pay to the claimant the **total sum of £24,945.72** within 13 days of the date of this judgment.
2. The above sum is calculated on the basis of
  - 2.1 £20,000, injury to feeling;
  - 2.2 £3612.05, interest on the injury to feeling award;
  - 2.3 £1198.16 financial losses including expenses;
  - 2.4 £135.51 interest on financial losses

## REASONS

1. An oral judgment with reasons was provided following the hearing on 8 June 2021. These written reasons are provided as the claimant was not in attendance at that hearing.
2. At the commencement of the remedy hearing on it was noted that the claimant had been informed of the date of the remedy hearing. She had submitted a long email of 6 June 2021. This email was unclear but reiterated her upset at her treatment by the respondent and indicated that she did not plan to attend the hearing. Neither the tribunal nor the respondent had telephone contact details for the claimant. The respondent made an application for the claimant's claim to be struck out on the basis of

her non-attendance. Taking the entirety of the circumstances into account, the tribunal declined to strike out the claimant's claim and considered it in line with the overriding objective to proceed to deal with the issue of remedy in the claimant's absence.

The unlawful harassment.

3. We made an award for injury to feeling in respect of the three separate allegations being the discussion described as vile by the claimant between the claimant and her colleagues that included the statement that, 'the majority of crimes in England are made by black people.' and the WhatsApp group discussions seen by the claimant on 10/08/2018 and 14/08/2018.
4. The WhatsApp conversations were lengthy conversations but the below extracts gives a flavour of the content:
  - 4.1 [Tyrel] 'Fucking immigrants'.... [Oliver] 'smell like fucking chucked tikka' [Oliver]'Fucking cunts, lot of them' [Tyrel] 'FUCKING YES, FUCKING SUFFER, YOU LITTLE POSTBOX', [Brandon] 'Bruv whats her problem, Come we bang her' .....'bruv someone shut this terrorist up before I get vexed, bmt ill rip her head scarf off, ill swing them both mums.' The WhatsApp conversation is littered with smiling and laughing emojis and emojis of women wearing the hijab.
  - 4.2 On 14/08/2018 the group's icon had been changed to a black hijab display picture. The name was now 'ALHAMDULLAH'. A further exchange within the What's App group happened on this day including the comments, '[Oliver] 'Mums, that was so funny... How has he gonna and said allaham, then paused' [Tyrel] 'ALLAHUMMMMDILILAAHH' [Oliver] 'had me in stitches' [Simon] 'Man fucked up [laughing emojis] ' [Brandon] 'smiley faces & hijab emojis' [Oliver] OMG of the funniest things omg .. Muna, Looooool'...

The evidence

5. We were provided with a witness statement from the claimant giving evidence on her own behalf. As the claimant did not attend the hearing, she did not present herself for cross-examination on her witness statement and this has affected the weight placed upon the claimant's evidence. We heard evidence from Mr Cunningham on behalf of the respondent. Mr Cunningham gave evidence under oath. His witness statement was accepted as evidence-in-chief. Mr Cunningham was not cross-examined. The tribunal also took into account the claimant's email of 6 June 2021 together with the documentation referred to during the liability hearing and that contained within the tribunal bundle, together with the findings set out within our liability judgement.
6. The claimant says within her witness statement that she has been severely affected by the unlawful and discriminatory conduct mentally, physically and emotionally and gives details of her upset. Mr Cummings has set out within his witness statement a detailed breakdown of the hours worked by the claimant between November 2017 and September 2018. He calculates her average weekly hours of 17.1 hours. This equates to a gross weekly salary

of £149.63 with a net figure of £148.62. He says that in the event the claimant had not resigned, there was a very good chance that the respondent may have taken steps to address ongoing concerns in relation to the claimant's for attendance and timekeeping. This has been discussed with her prior to the unlawful harassment. Further, even if the claimant had not resigned when she did, there was a good chance that the claimant's personal responsibilities including her caring responsibilities and study commitments would have caused her resignation in any event.

Personal injury

7. The claimant has sought to pursue a claim for personal injury. We have considered a potential claim for:

7.1 Temporomandibular dysfunction (TMD). The generic information provided by the claimant tells us that TMD describes a variety of conditions which affect the jaw joints and muscles. It is very common. Many people have some sign of TMD but only a small number suffer pain. We were provided with medical evidence by way of a letter from consultant oral surgeon Mr Obaseki of August 2019 confirming that the claimant does have some degree of TMD, 'the cause of which is not apparent'. This letter records that the claimant has complained of pain for about three years. We conclude that the claimants TMD first became apparent in or around 2016 and therefore pre-existed the unlawful harassment. There is no evidence to show the cause of the claimants TMD and there is nothing within the medical evidence to support a finding that the claimants TMD can be attributed in any way to the unlawful harassment. For the avoidance of doubt, we note the generic information confirms that stress is a possible cause of TMD however, we do not consider this generic information sufficient to create any link between the claimant's condition and the unlawful action.

7.2 Anxiety/panic attacks. The claimant has provided some of her GP records and we are unable to see any reference to anxiety or panic attacks within those GP records. It can be seen that the claimant attended her GP in September 2019 with an injury and in October 2019 with a fever. The tribunal has noted a letter from the claimant's GP dated 25 November 2019 that states, 'this letter has been written at the request of the patient to confirm her medical conditions', and includes the statement, 'She suffered an unfortunate incident at work a year ago and since that time, she developed symptoms of low mood, anxiety and panic attacks. She has been given details of the local psychological therapy service for which she will make contact to help manage her symptoms.' In the absence of any further medical information and the failure of the claimant to attend the tribunal, while we accept that the claimant has been upset by the unlawful harassment, we conclude that the claimant has not shown on the balance of probability that she has suffered an identifiable personal injury relating to any aspect of her mental health.

- 7.3 For the above reasons, the claimant's claim for personal injury is unsuccessful and dismissed. For the sake of completeness, we note that the need for medical evidence to support any personal injury claim was stressed to the claimant both during the case management stage of the hearing and by this tribunal at the conclusion of the liability hearing.

Injury to feeling

8. Our liability finding covers three distinct findings of harassment, close together in time and on the separate grounds of sex, race and religion. We conclude that the different forms of discrimination arise from the same discriminatory acts over a short period of time, and it is appropriate for the tribunal to assess the effect on injury to feelings on a composite basis. This claim was presented on 3 September 2019 and under the Presidential Guidance the relevant *Vento* bands, taking account of inflation, are as follows: lower band, £900-£8600; middle band £8600-£25,700; and upper band £25,700-£42,900.
9. We find on the balance of probability that the claimant was very upset by the unlawful harassment:
- 9.1 The claimant was the sole black, hijab wearing member of staff within this group and the unlawful harassment was felt by the claimant, whether intentional or not, as an expression of hate for her religion, ethnic origin and gender. The What'sApp discussion included in the claimant's immediate line manager.
- 9.2 Objectively, the unlawful harassment can be seen to be hate filled and, as it was seen by the claimant, likely to be upsetting.
- 9.3 While we have accepted a high level of upset on the claimant's part, we are obliged to place less weight on the extremes of the claimant's evidence within her witness statement as she has chosen not to attend the tribunal and submit to cross examination. We have cross referenced the available witness evidence produced by the claimant with the available documentation and refer to our findings above in relation allegations of personal injury.
- 9.4 The respondent dealt with the grievance in a way whereby the end result was that the claimant had continued interaction with some of those responsible for the unlawful harassment causing further upset.
10. We have also taken into account that while this was a serious set of events and not a one-off incident, the unlawful harassment is relatively contained in time, occurring between 10 and 14 August 2018. Further, when examining the sequence of events and the claimant's actions following the unlawful harassment, we note that the claimant chose to complain to the respondent about other matters on 11 August 2018 relating to the theft of a mobile phone and inadequacy of pay without mentioning the unlawful harassment that had occurred on 10 August 2018.
11. We consider, taking the entirety of the available evidence into account, that the appropriate composite award the injury to feelings on this matter is

£20,000 and we consider that this falls within the higher end of the middle *Vento* band.

12. The interest payable on the injury to feeling award of £20,000 is calculated at £3612.05. This is calculated at 8% from 10 August 2018 to 11 November 2020 (824 days). The tribunal has, on the application of the respondent exercised its discretion to limit interest to the date of the liability hearing, being 11 November 2020. Remedy could have been dealt with following the liability judgment given at this time. There was sufficient judicial time and the respondent was ready to proceed. The remedy hearing was adjourned only to provide further time for the claimant to prepare for the remedy hearing. We consider that serious injustice would be caused to the respondent by calculation of interest during a time where the delay was caused solely to accommodate the claimant, in circumstances where the claimant has chosen not to attend the final hearing in any event.

#### Financial loss

44. We have carefully considered the claimant's evidence within her witness statement together with her letter of resignation and the other documentation available. We conclude, on the balance of probability that:
  - 44.1 The unlawful harassment experienced by the claimant between 10 and 14 August 2017 was a material factor in the claimant's decision to resign on 1 September 2018 and her resignation can be directly attributable to the unlawful harassment she experienced. The unlawful harassment constitutes a breach of the implied term of trust and confidence on the respondent's part.
  - 44.2 The claimant's relationship with the respondent was however also strained for reasons not connected with the unlawful harassment. These other issues included the tension between the claimant's working hours and her outside responsibilities in relation to her study and her caring responsibilities for her family; the claimant's stated unhappiness with her rate of pay; the claimant's personal circumstances and the grief associated with the passing of her grandmother; the respondent's concerns in relation to the claimant's regular absence due to outside responsibilities and the claimant's persistent issues with timekeeping.
  - 44.3 We consider it likely, on the balance of probability that had the claimant not experienced the unlawful harassment, she would have left her employment in any event by a period of 12 weeks. We have therefore limited the claimant's award for loss of earnings to a period of 12 weeks.
45. The tribunal has accepted the evidence of Mr Cunningham in respect of the claimant's gross and net average earnings. We calculate the financial loss as:
  - 45.1 £148.62 (weekly net pay) x 12 = £1783.44.
  - 45.2 The claimant received the sum of £554.19 in respect of universal credit during this 12 week period. The claimant also had alternative

earnings from JD sports of £117 during this time. These sums have been deducted (£1783.44 - £554.19 -£117 = £1112.25

- 45.3 The claimant's pension loss is calculated as £149.63 x 2% x 12 weeks, giving a total of £35.91.
  - 45.4 We note that the claimant has produced documentation showing that she made efforts to mitigate her loss during this period and no deductions are made from the claimant financial loss on that basis.
  - 45.5 The claimant, within her schedule of loss, has claimed substantial expenses. However no supporting receipts are provided. We can see no basis for awarding expenses in relation to normal household expenses. We consider it more likely than not that the claimant incurred travelling expenses as she has claimed and in the absence of supporting documentation from the claimant, we limit our award for travelling expenses to £50.
  - 45.6 The interest on the claimant's financial losses is calculated as £135.51, being 8% from the midpoint (516 days) between 1 September 2018 to 8 June 2021.
46. The total award made by this tribunal is £24,945.72, the calculation basis of which was agreed by the respondent during the hearing is:
- 46.1 £20,000, injury to feeling
  - 46.2 £3612.05, interest on the injury to feeling award
  - 46.3 £1148.16 financial losses
  - 46.4 £50 expenses
  - 46.5 £135.51 interest on financial losses

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Employment Judge Skehan

Date: .....22 June 2021.....

Sent to the parties on: ...28 June 2021..  
THY

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For the Tribunal Office