



EMPLOYMENT TRIBUNALS

Claimant

Mr S Lorenzo

Respondent

Secretary of State for Justice

v

Heard at: Birmingham (by Cloud Video Platform ('CVP'))

On: 6 September 2021

Before: Employment Judge Johnson

Members: Mr P Davis
Ms S Campbell

Appearances

For the Claimant: Mr B Beyzade (counsel)

For the Respondent: Mr E Beaver (counsel)

REMEDY HEARING JUDGMENT

- The respondent shall pay to the claimant compensation for his complaint arising from a failure to make reasonable adjustments contrary to sections 20 & 21 Equality Act 2010 of **£30,537.53 (Thirty Thousand, Five Hundred and Thirty-Seven Pounds Fifty-Three Pence)** and calculated as follows:

Loss of Net Earnings <ol style="list-style-type: none"> Half rate sick pay between September 2018 to February 2019 = £3,230.09 Full sick pay between March 2019 to 3 June 2019 = £4,951.72 Loss of pension contributions for 3 months = £2,000.56 	Subtotal/Total
Subtotal for past losses	£10,187.37
Injury to Feelings <ol style="list-style-type: none"> Injury to feelings = £15,000.00 Interest on injury to feelings award (8% calculated from 1 January 2015 to the date of remedy hearing being 2441 days) = £5,350.14 	
Subtotal for injury to feelings award	£20,350.14

Grand total	£30,537.53
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2. No recoupment is applicable in this case as the claimant's complaints are solely in respect of discrimination in accordance with the Equality Act 2010.
3. For the avoidance of doubt, this judgment only deals with discrimination arising from the claimant's disabilities of ischaemic heart disease, depression and dyslexia and the failure by the respondent to make reasonable adjustments in relation to these impairments. The claimant's more recently diagnosed condition of fibromyalgia has not been considered in this judgment as the diagnosis did not take place until after the respondent's provision of the relevant adjustments in June 2019.

REASONS

Introduction

4. This remedy hearing arose from the Tribunal's judgment dated 7 April 2020 and which followed a hearing which took place in the Birmingham Employment Tribunal on 16, 17, 18, 19, 20 & 23 March 2020.
5. The hearing considered only liability and a list of agreed issues raising complaints of direct discrimination (section 13 Equality Act 2010), a failure to make reasonable adjustments (section 22/21 Equality Act 2010) and detriments arising from a complaint of victimization (section 27 Equality Act 2010).
6. The respondent accepted that the claimant had a disability in accordance with section 6(1) Equality Act 2010 in relation to ischaemic heart disease, depression and dyslexia and that it was aware of this condition at the material time.
7. The claimant succeeded with his complaint of a failure by the respondent to make reasonable adjustments. This was considered in paragraphs 129 to 134 of the liability judgment. It was recognised that the respondent failed to take the steps identified in the list of issues at paragraph 36 (i) and (ii) of the liability judgment at the material time and before the proceedings were commenced on 25 October 2018. However, the Tribunal found that the respondent belatedly provided the necessary steps to allow the claimant to return to work in June 2019 by adapting the claimant's role.
8. There is no need to repeat the details of the judgment on liability any further, other than that the claimant's other complaints were unsuccessful.

Evidence used during the hearing

9. The claimant gave evidence concerning his successful complaint and the impact that the discrimination had upon his claim for injury to feelings. His

evidence was not subject to any cross examination, nor questions from the Tribunal.

10. An agreed hearing bundle was prepared by the parties. It included two updated schedules of loss as well as the original schedule. The lengthy delay in the case reaching the remedy hearing, necessitated two revisions to the schedule. No counter schedule was provided by the respondent. Relevant documentation to be used at the remedy hearing was also included such as wages details, OH reports, GP reports and medical reports from treating hospital doctors.
11. An additional letter from the claimant's GP was provided by the claimant at the beginning of the remedy hearing in relation to the claimant's ongoing health issues and this was added to the remedy hearing bundle.
12. The delay in this case reaching the remedy hearing had been caused by the claimant's ill health and the additional time required to obtain further medical evidence concerning a diagnosis of fibromyalgia. This condition was not considered by the Tribunal at the hearing on liability and for the avoidance of doubt, the Tribunal's decision in this case does not involve any findings concerning the more recently diagnosed condition of fibromyalgia. It is understood that this impairment may be the subject of a civil claim brought against the respondent, as the claimant has since found it necessary to seek early retirement due to ongoing ill health.

The loss of earnings and pension loss claims

13. In terms of the loss of earnings and the pension loss claimed in respect of sickness absence from March 2018 until June 2019, the respondent did not resist these losses. The Tribunal considered the final schedule of loss dated 16 August 2019 and the relevant pay documentation. The claimant lost earnings in respect of his moving from full to half pay while on sick leave following six months absence and his removal from contractual sick pay following twelve months absence. He also lost his relevant pension contributions including the significant employer's contribution during this period.
14. In the absence of any significant submissions from the respondent resisting the claim for loss of earnings and pension loss, the Tribunal made an award reflecting the figures provided in the schedule of loss.

Consideration of the losses which remain in dispute between the parties

Injury to feelings

15. Mr Beavor argued that the injury to feelings award should fall within the middle Vento band, but at the lower level and at £8,600. He was concerned that such an award must compensate the claimant and not punish the respondent and that any award should not amount to a windfall.

16. Mr Beyzade argued that his award should fall within the higher Vento band and be awarded at a level of £25,700 or above.
17. The correct Vento bands as at 2018 were applied as the claim was presented on 25 October 2018.
18. Consideration was given to evidence provided by Mr Lorenzo concerning the upset, worry, anxiety, mental distress, fear, anguish, stress and depression that he suffered as a result of the respondent's failures to make the necessary adjustments. He took things far more badly than might be expected of a typical probation officer in these circumstances, but that was precisely why the adjustments were so necessary. The respondent knew of the disability and following the COT3 which was agreed in the earlier claim settled in November 2014, should have sought to work with him ensure that the necessary adjustments were applied within a short period thereafter.
19. The Tribunal noted that Mr Lorenzo had brought a number of complaints involving different forms of discrimination, (including the particularly serious complaints of direct discrimination and victimisation) but had only succeeded with some of the complaints relating to reasonable adjustments. Nonetheless, the Tribunal considered the context of the claimant's case and noted the significant impact the failures had upon his mental and physical health. These failures to make adjustments prevented his return to work and resulted in his continued absence through ill health from February 2018 until June 2019.
20. The Tribunal recognised that awards in the higher band should normally be reserved for those injury to feelings claims where there has been a lengthy campaign of discrimination or harassment. While Mr Lorenzo was clearly badly affected by the unwillingness of the respondent to make the relevant reasonable adjustments, this arose from management intransigence and unwillingness to take Mr Lorenzo's concerns seriously. He was not the victim of a campaign, rather an absence of action and when action did eventually take place, an absence of empathy. In that respect, the Tribunal felt that this was a case where an award should be made in the middle band of Vento, but at the mid-point of the bracket. Using 2018 figures, £15,000 was therefore felt to be appropriate.

Tax and interest

21. It was understood that the claims relating to wages were as net figures. Accordingly, no further adjustments were required concerning tax such as those relating to grossing up.
22. Interest was added to the complaint for injury to feelings (including aggravated damages) and the appropriate rate of 8% was added to the award from a date when the Tribunal deemed that the reasonable adjustments should have been provided. Taking into account the earlier COT3 in November 2014 and the respondent's awareness of the need to make adjustments, the Tribunal felt that the failure began within a short period after this agreement was made and

1 January 2015 was therefore felt appropriate until the date of the remedy hearing. This amounted to 2441 days and resulted in an interest figure of £5350.14.

Recommendation in accordance with Section 124(3) Equality Act 2010

23. A recommendation formed part of the remedies sought in the claim form and was made by Mr Beyzade. He asked that it be made in respect of the respondent being asked to review its equal opportunities and discrimination policy, especially with regard to reasonable adjustments.
24. Mr Beavor objected and referred to section 124(3) as amended by the Deregulation Act 2015, which required the purpose of the recommendation to be '*...obviating or reducing the adverse effect [on the complainant] of any matter to which the proceedings relate...*' As the claimant has since retired from the respondent and his successful complaint related to reasonable adjustments in his job with the respondent, he submitted that this application could not succeed.
25. Mr Beyzade valiantly argued that this provision could still apply to the claimant's claim as the reassurance of a recommendation, would assist his recovery following his early retirement. However, the Tribunal felt that the provision in section 124(3) was correct, despite Mr Beyzade's reference to the note to the 2010 Act and the claimant had succeeded in a complaint which related to a failure of a duty, which was rectified by June 2019. Moreover, the significance of the injury to feelings award, while not punitive, would nonetheless provide the respondent with a clear indication as to the seriousness of their failure under section 20 and 21 and the need to take their duty to make reasonable adjustments more seriously in the future.

Conclusion

26. Accordingly, the Tribunal determined that remedy should be calculated as set out in the judgment above in the total sum of £30,537.53 in respect of the successful complaint relating to a failure by the respondent to make reasonable adjustments.

Employment Judge Johnson

21 September 2021