



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. W Reith  
**Respondent:** Heaton Products Limited (In Creditors Voluntary Liquidation)  
**Heard at:** Nottingham  
**On:** 13<sup>th</sup> October 2021 (In Chambers)  
**Before:** Employment Judge Heap (sitting alone)

## JUDGMENT

1. The Respondent subjected the Claimant to unlawful disability discrimination.
2. The Respondent is Ordered to pay to the Claimant the total sum of **£16,383.15** made up as follows:

Loss of earnings (including interest)	<b>£ 5,901.73</b>
Injury to feelings (including interest)	<b>£10,481.42</b>

## REASONS

### Background

1. This hearing followed on from a Preliminary hearing which I heard on 9<sup>th</sup> February 2021. I converted that hearing from a Remedy hearing which had been listed following the Respondent not having entered a valid ET3 Response because it had not been presented in a prescribed form. It was therefore rejected and since that time the Respondent entered into creditors voluntary liquidation. On 26<sup>th</sup> May 2020 the appointed insolvency practitioner informed the Tribunal that he did not intend to seek to defend the claim.
2. The reason for converting the original Remedy hearing to a Preliminary hearing was because the Claimant told me that he wanted to add a further Respondent to the claim. That was an individual director of the Respondent company.

3. It was a far from straightforward application and accordingly I gave the Claimant a period of time to confirm if he was making that application or not and, if so, the substantive basis of it and the evidence in support. I gave the Claimant until 9<sup>th</sup> March 2021 to deal with that.
4. The Claimant did not comply with those Orders and so I made an Unless Order on 12<sup>th</sup> April 2021 to the effect that unless he made his application by 19<sup>th</sup> April 2021 the Tribunal would only proceed with a claim against the Respondent company and issue a Judgment under Rule 26 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. That was because no liability Judgment had previously been issued before the listing of the Remedy hearing. I have dealt with a separate liability Judgment under Rule 26 today.
5. On 19<sup>th</sup> April 2021 the Claimant was notified that a Judgment would be issued against the existing Respondent because he had not complied with the Unless Order. Unfortunately, there then appears to have been an administrative oversight because the file was not referred to me until 9<sup>th</sup> October 2021. I sincerely apologise to the parties on behalf of the Tribunal for that delay.
6. I had agreed with the Claimant that I had sufficient information to enable me to deal with the question of remedy from the Preliminary hearing and that no further hearing was necessary.

### **The claim**

7. It was identified on the last occasion that the Claimant suffers from both a heart condition and post-traumatic stress disorder (“PTSD”) and that those conditions were the disabilities on which he relied. The claim advanced by the Claimant fell into three separate complaints which were as follows:
  - (a) That the fact that the Claimant had PTSD was not kept confidential by the Respondent and became a source of gossip in the workplace. That would amount to a complaint of harassment contrary to Section 26 Equality Act 2010;
  - (b) That he was dismissed by the Respondent because he was not able to drive a large Range Rover van, lift and carry heavy products and “run around” generally because of his heart condition. That is a complaint of discrimination arising from disability contrary to Section 15 Equality Act 2010; and
  - (c) That the Respondent made him drive a Range Rover van rather than getting him a smaller vehicle as they promised. He could not drive the van safely because of his heart condition and that is a complaint of a failure to make reasonable adjustments.
8. In terms of compensation, the Claimant seeks loss of earnings of 3 months which he says was agreed with the Respondent as part of a failed settlement agreement and compensation for injury to feelings in the sum of £18,250.00.

**THE HEARING**

9. As indicated above, I have considered this matter on the papers as there was no need to hold a further hearing as I had agreed with the Claimant on the last occasion and the Respondent had not attended the Remedy hearing in all events.

**THE LAW**

10. Section 124 Equality Act 2010 deals with the ability of the Tribunal to make Orders where a complaint or complaints of unlawful discrimination have been made out. The relevant parts of Section 124 provide as follows:

**124 Remedies: general**

*(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).*

*(2) The tribunal may—*

*(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;*

*(b) order the respondent to pay compensation to the complainant;*

*(c) make an appropriate recommendation.*

.....

*(6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court or the sheriff under section 119.”*

11. An Order for compensation under Section 124 Equality Act 2010 can include compensation for injury to feelings. Guidance given in **Vento** identified three bands into which compensation for injury to feelings might fall. In respect of that guidance the Court of Appeal in **Vento** said this:

*“Employment Tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.*

*i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.*

*ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.*

*iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.*

*There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case.”*

12. The **Vento** bands have been revisited and the second addendum to the joint Presidential Guidance which was issued on 5<sup>th</sup> September 2017 is applicable to this claim<sup>1</sup> and the relevant part says this:

*“In respect of claims presented on or after 6<sup>th</sup> April 2019, the Vento bands shall be as follows: a lower band of £900 to £8,800 (less serious cases); a middle band of £8,800 to £26,300 (cases that do not merit an award in the upper band); and an upper band of £26,300 to £44,000 (the most serious cases), with the most exceptional cases capable of exceeding £44,000.”*

13. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (“The Regulations”) provide for interest to be awarded in respect of both financial and non-pecuniary loss flowing from acts of discrimination. The relevant provision for our purposes is Regulation 6 which provides as follows:

*(1) Subject to the following paragraphs of this regulation—*

*(a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation;*

*(b) in the case of all other sums of damages or compensation (other than any sum referred to in regulation 5 and all arrears of remuneration, interest shall be for the period beginning on the mid-point date and ending on the day of calculation.*

*(2) Where any payment has been made before the day of calculation to the complainant by or on behalf of the respondent in respect of the subject matter of the award, interest in respect of that part of the award covered by the payment shall be calculated as if the references in paragraph (1), and in the definition of “mid-point date” in regulation 4, to the day of calculation were to the date on which the payment was made.*

*(3) 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”.*

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<sup>1</sup> The claim having been presented by way of a Claim Form received by the Employment Tribunal on 8<sup>th</sup> December 2019.

## **FINDINGS OF FACT**

14. The Claimant commenced employment with the Respondent on 14<sup>th</sup> May 2019 and his employment ended with his dismissal on 16<sup>th</sup> September 2019. He was employed therefore for a period of just over 4 months. He was employed as a Sales Development Manager at a salary of £36,500.00 per annum. His weekly net rate of pay was £545.35.
15. The Claimant obtained alternative employment by 25<sup>th</sup> November 2019. I understand that there was no continuing loss of earnings after that date.
16. I accept that the Claimant's dismissal distressed him considerably. Particularly, he suffered more than a dozen nightmares about what had happened in the workplace and he described the stress that his treatment by the Respondent had caused him. He suffered upset at personal details of his medical condition being disclosed and becoming the subject of gossip within the workplace and he encountered difficulties and upset about being expected to deliver heavy goods to places such as Essex in an unsuitable vehicle. He felt that there was no consideration for his medical conditions and described the position at the Respondent as a "horrible set up". His written representations describe the "terrible damage" to his mental health and it was plain in February 2021 at the Preliminary hearing that the Claimant did continue to be impacted by the events in question.
17. However, there is also the impact of other events on the Claimant which I need to take into account. He already suffered from PTSD as a result of other traumatic but unconnected issues and also had other significant issues with the Respondent, including a director attending at his home which caused significant distress. Those are not matters which were claimed as acts of discrimination.

## **CONCLUSIONS**

### **Injury to feelings**

18. I deal firstly with the question of injury to feelings. It is without doubt that the Claimant has been badly affected by the acts of discrimination that he complained of. His mental health has been affected and he has suffered from stress, anxiety and nightmares.
19. I also take into account that the acts of discrimination put the Claimant at risk in regard to the driving of a heavy vehicle. In addition, he did of course suffer a discriminatory dismissal which is a serious matter and which impacted the Claimant considerably.
20. However, I must look at that against the background of a relatively brief spell of employment during and after which there were other events which also took their toll on the Claimant. That was not least the visit to his home which I have described above.

21. Taking into account the relevant Presidential Guidance and the figures reflected within that for the middle band I am satisfied that the Claimant's injury to feelings award should fall towards the lower part of the middle band of **Vento**. I consider the £18,250.00 claimed to be too high – particularly in view of the relatively short period of employment - and instead consider an award of £9,000.00 is appropriate to compensate the Claimant for the impact that the acts of discrimination perpetrated by the Respondent had upon him.
22. I add to that sum interest over the period of 751 days from the 16<sup>th</sup> September 2019 to the date of this determination on remedy. That is at a rate of 8% per annum and equates to the sum of £1,481.42.

Total for injury to feelings and interest: **£10,481.42**

Loss of earnings

23. The sum that the Claimant has claimed appears to relate not to actual financial loss but for a period that he had agreed via an unsuccessful settlement discussion with the Respondent. His actual financial losses are between the date of termination of his employment on 16<sup>th</sup> September 2019 and his having obtained new employment on 25<sup>th</sup> November 2019. That is a period of ten weeks at a net loss of £545.35 per week. That equates to financial loss arising from a discriminatory dismissal of £5,453.50.
24. I add to that interest from the midpoint of the act of discrimination to the hearing today equating to 375 days at a rate of 8% per annum which is in the sum of £448.23.

Total for injury to feelings and interest: **£5,901.73**

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Employment Judge Heap

Date: 13<sup>th</sup> October 2021

JUDGMENT SENT TO THE PARTIES ON

14 October 2021

FOR THE TRIBUNAL OFFICE

Note:

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