



EMPLOYMENT TRIBUNALS

Claimant: Sana Knaneh

Respondents: Judith Elkan, Deborah Nissenbaum, Amnon Daniel Smith & Brian Humphreys (Trustees of UK Friends of Bereaved Families Forum)

Heard at: London Central

On: 2 September 2021

Before: Employment Judge H Grewal
Mr R Baber and Ms P Slattery

Representation

Claimant: Ms C Urquhart, Counsel

Respondent: Mr A Griffiths, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that the Respondents are to pay the Claimant compensation in the sum of £19,986.74.

REASONS

1 This was a hearing to determine what compensation should be awarded to the Claimant following the Tribunal's decision that (i) the Respondents had discriminated against the Claimant because of race by paying her £27,000 per annum from 13 August 2018 to 13 March 2020, by refusing to increase her pay during that period and by making any pay rise contingent on her raising sufficient funds and (ii) that Mr Cohen's conduct during the telephone call on 28 June 2019 had amounted to victimisation under section 27 of the Equality Act 2010. The Tribunal found a large

number of other complaints of direct race discrimination, race-related harassment and victimisation not to be well-founded. This decision should be read together the liability judgment in this case.

The Law

2 In awarding compensation for unlawful discrimination “*the correct measure of damage is based on the principle that, as best as money can do it, the applicant must be put in the position that she would have been in but for the unlawful*” discrimination – **Ministry of Defence v Cannock [1994] IRLR 509**.

3 An award for damages may include compensation for injured feelings – section 119(4) of the Equality Act 2010. In **Armitage and Others v Johnson [1997] IRLR 162** Mrs Justice Smith said,

“(1) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor’s conduct should not be allowed to inflate the award.

(2) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could, to use Lord Bingham’s phrase, be seen as the way to untaxed riches.”

4 In **Vento v Chief Constable of West Yorkshire Police[2003] IRLR 103** the Court of Appeal identified three broad bands of compensation for injury to feelings. Mummery LJ identified them as follows,

“(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... 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 in less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.”

5 Since 2017 the Presidents of the Employment Tribunals have issued guidance containing updated Vento bands to reflect inflation. The Guidance provided in respect of claims presented on or after 6 April 2019 was that the bands would 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.

6 Compensatory damages may, and in some cases should, include an element of aggravated damages where, for example, the defendant may have behaved in a high-handed, malicious, insulting or oppressive manner in the committing of the act of discrimination - **Alexander v The Home Office [1988] IRLR 190**.

7 In any case where the Tribunal makes an award for discrimination it is obliged to consider whether it should include interest and may include interest – Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. The rate of interest is 8%. In respect of awards for injury to feelings interest is for the period beginning on the date of the act of discrimination and ending on the date of calculation. In respect of all other kinds of compensation interest is awarded for the period beginning on the mid-point date and ending on the date of calculation.

Compensation for the discrimination in relation to pay

8 It was submitted on behalf of the Claimant that the compensation for the discrimination in relation to pay should be the difference between £27,000 and £42,500 per annum because the Tribunal had found that the Claimant had been “*discriminated against on the basis of her race by being paid less than her Jewish comparator, Ms Taylor, who was paid the equivalent of £42,500* (our emphasis). Although such an approach appears at first blush to be correct, in our view it is not the correct way to approach the matter. We are not dealing here with an equal pay claim under sections 64-70 of the Equality Act 2010 and Ms Taylor was in fact not paid £42,500 per annum.

9 The correct way to approach the issue is to determine what the Claimant would have been paid in the absence of any race discrimination. Ms Taylor did not work five days a week and she was not paid £42,500 per annum. Had she been, the Claimant’s argument would have been more persuasive. We found that the Respondents had discriminated against the Claimant by paying her £27,000 a year to work five days a week when they had paid someone else doing the same work (the comparator) £25,500 to work three days a week eleven years earlier. We did not find that the Respondents discriminated against the Claimant by not paying her £42,500 a year. As we noted in the liability decision it was the difference that was striking and one of the factors that led us to conclude that it was discrimination.

10 In determining what the Claimant would have been paid in the absence of race discrimination, we considered the following factors to be relevant. The Respondent is a small charity with limited means. It had only ever had three people working for it, one of whom was the Claimant. The Claimant was the only one who had worked five days a week. Ms Taylor’s employment had been terminated in January 2014 due to lack of funds in the forthcoming year. At the time the Claimant was appointed the Respondent had been left a legacy and it had decided to use £100,000 of that legacy for the employment of a person in the Claimant’s role. The overhead costs of employing the Claimant (employer’s NI contributions) were limited. Having taken into account all the above factors, we concluded that in the absence of any race discrimination the Claimant would have been paid about £35,000 per annum. To put it another way, had the Claimant been paid £35,000 per annum we would not have concluded that she had been the victim of racial discrimination. We accept that there is no mathematical formula for making that determination. What was required was a recognition that the Claimant who was working five days a week in 2018 needed to be paid significantly more than what Ms Taylor was paid for working three days a week in 2011. An annual salary of £35,000 would have taken that factor into account and been consistent with the funds that were available to the Respondent.

11 The Claimant worked from 13 August 2018 – 16 March 2020 – a period of 1 year 7 months 4 days (1.59 years). The Claimant’s gross loss for that period (based on a

salary of £35,000 p.a.) is £12,720. The net loss (after 20% deduction for tax) is £10,176. The Claimant also claimed a pension loss of £60.77. The total net loss is £10,236.77.

12 We decided that the award should include interest. The period for which interest is awarded is from the mid-point between the act of discrimination and the calculation date to the calculation date. The calculation date is the date on which we calculated the interest – 2 September 2021. We found in the liability decision that the act of discrimination in respect of pay was an act that extended from 13 August 2018 to 11 February 2020. For the purpose of calculating interest we treated the act as having occurred on 12 May 2019 (half-way between 13 August 2018 and 11 February 2020). The mid-point between the act of discrimination (12 May 2019) and the calculation date (2 September 2021) is approximately 5 July 2020. We awarded interest for a period of 1 year 2 months (1.16 years). The rate of interest under the 1996 Regulations is 8%. We calculated the interest as follows:

$$8 \times 1.16 = 9.28$$

$$£10,236.77 \times 9.28\% = £949.97$$

13 The total compensation awarded for loss of earnings due to the discrimination is £11,186.74.

Injury to feelings

13 In considering the award for injury to feelings, it is important to bear in mind that, in addition, to the two complaints that we found to be established (race discrimination in respect of pay and one act of victimisation), the Claimant made twenty-two complaints of racial harassment and another complaint of victimisation which did not succeed. The racial harassment was alleged to have occurred between 3 October 2018 and 23 March 2020. The Claimant perceived those matters to be acts of racial harassment, and any hurt and upset that she felt over that period was caused to a large extent by her perception that all those matters were acts of racial discrimination. It is very difficult to disentangle from that the separate hurt that she felt for the two acts of discrimination that were proven.

14 In her witness statement for the liability hearing the Claimant said that she was “*shocked and very disappointed*” when she discovered what Ms Taylor had been paid, but she did not rush to the conclusion that it was discrimination against her as a Palestinian. She also said that she was “*very sad*” to learn of the differences between her pay and those of her predecessors, and despite her disappointment, she decided to work hard through the year. She later referred to her “*discomfort with being underpaid*”. In relation to Mr Cohen’s call of 28 June 2019 (the act of victimisation) she said, “*Ronnie ... started to put massive pressure on me which felt very odd and very disrespectful*” and “*It made me feel that I am clearly a tool for them, a token Palestinian that is expected to be afraid, apologetic and thankful at all times.*”

15 In respect of the matters which we did not find to be acts of racial harassment the Claimant said, “*Chani’s and Judith’s sidelining was extremely humiliating and demeaning*” (para 46), “*Judith’s response was ... demeaning, humiliating and hostile*” (para 48), “*Judith’s attitude toward me felt demeaning*” (para 52), “*I felt manipulated, side-lined, disrespected and embarrassed*” (para 54), “*I’m belittled, side-lined and*

disrespected again” (para 58), “Judith violated and damaged my reputation of integrity in Palestinian community besides creating an intimidating, hostile and humiliating environment” (para 74), “it felt degrading and even humiliating” (para 94).

16 The Claimant produced a medical report from her doctor’s practice dated 10 March 2021 for the remedy hearing. This shows that in August 2019 the Claimant saw her GP and said that she was under a lot of stress at work from her boss and that she sleeping more than usual but was still feeling very tired. Blood tests showed a low level of iron. In October 2019 and January 2020 the Claimant saw her GP because she had chest pains. Blood tests showed low vitamin D and she was signed off work due to reports of ongoing stress. She was next seen in February and on 4 March 2020 when she reported insomnia, tiredness, low appetite and mood in relation to stress about being bullied at work. She also reported an exacerbation of pre-existing neck pain. She was signed off work for stress and fatigue. Following her dismissal the possibility of trying anti-depressant medication was discussed but the Claimant declined it. In April and May 2020 she contacted her doctor and reported strong headaches. She was diagnosed with eyelid inflammation.

17 As in the Claimant’s witness statement for the liability hearing, it is difficult in her witness statement for the remedy hearing to separate the hurt she felt for the discrimination that we found proved from the hurt she felt for all the acts that she perceived to be racial harassment but we did not find to be racial harassment. We accept that the Claimant felt hurt, belittled and demeaned by the racial discrimination in relation to pay and by Mr Cohen’s attitude during the telephone call on 28 June 2021. The latter was a short one-off act. The former was an act that continued throughout the Claimant’s employment. In August 2019 the Claimant asked for a salary increase to £42,000 on the basis that that was what her skills, knowledge, experience and education merited. The Respondents’ view was that the Claimant’s performance over the year did not merit such an increase. On 2 September 2019 the Claimant first raised the issue that her pay when compared to that of Ms Taylor amounted to race discrimination. The Respondents did not accept that. On 17 October 2019 the Claimant raised a formal grievance about race discrimination in respect of her pay. The grievance was not upheld. The Claimant appealed against the grievance outcome. It was a state of affairs that was allowed to continue rather than different acts of harassment taking place over a long period.

18 It was submitted on behalf of the Claimant that the correct award for injury to feelings was in the upper Vento band, in the sum of £40,000. It was submitted on behalf of the Respondents that the correct award was in the lower Vento band in the region of £1,000 - £1,500. Had the Claimant succeeded on all her complaints of race discrimination, we might well have accepted that an award in the upper band of Vento was appropriate. Having considered all the matters set out (above) we concluded that the appropriate award for the one act of race discrimination and one act of victimisation was at the top end of the lower band of Vento. We decided that instead of awarding interest separately on the award for injury to feelings, we would take that into account in determining the award that we made. We award the Claimant £8,800 for injury to feelings.

19 We did not consider that there were any grounds for including an element for aggravated damages or making the recommendations sought by the Claimant.

Employment Judge Grewal

Date 24 November 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON
26 November 2021

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FOR THE TRIBUNAL OFFICE