



EMPLOYMENT TRIBUNALS

Claimant: Mr T Cox

Respondent: Lancashire County Council

Heard at: Manchester (by CVP)

On: 1 October 2021

Before: Employment Judge Dunlop
Mr J Ostrowski
Ms A Berkley-Hill

REPRESENTATION:

Claimant: Mr R Askey (counsel)

Respondent: Mr K Ali (counsel)

JUDGMENT on remedy having been sent to the parties on 7 October 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

WRITTEN REASONS

1. This Judgment should be read alongside the tribunal's reserved Judgment on liability, sent to the parties on 21 July 2021. At the remedy hearing, the Tribunal had regard to additional witness evidence from Mr Cox and from Mr Hill on behalf of the respondent. We are also grateful to both counsel for providing full written submissions.

Failure to make reasonable adjustments

2. The Tribunal upheld the claimant's complaint that the respondent had failed to make reasonable adjustments in part. Specifically, the respondent failed to make reasonable adjustments to its policy regarding employees being accompanied to disciplinary meetings in respect of the meeting scheduled for 6 March 2019 and (up to the 28 March 2019) in respect of the meeting scheduled for 1 April 2019. The circumstances surrounding this failure are fully set out in the Tribunal's liability Judgment.

3. The parties agreed that this claim gave rise to no financial loss (subject to one 'special damages' claim discussed further below) but that there ought to be an injury to feelings award that the Tribunal had to determine in line with the well-established principles in this area.

4. We considered the relevant 'Vento' bands in force at the time of the presentation of these claims. The bands were £900-£8,600 (less serious cases), £8,600-£25,700 (cases that do not merit an award in the upper band) and £25,700-£42,900 (the most serious cases) at the time the first claim was presented (relating to failures in respect of the meeting scheduled for 6 March) and had slightly increased to £900-£8,800, £8,800-£26,300 and £26,300-£44,000 at the time the second claim was presented (relating to failures in respect of the meeting scheduled for 1 April).

5. Both parties identified 'comparator' cases i.e. other tribunal decisions in which injury to feelings awards had been made which were in line with their submissions as to what would be appropriate in this case. Whilst it was useful to the Tribunal to consider these as a snapshot of the 'landscape' of such decisions, it is not helpful to try to make too close a comparison with particular cases based on a bare summary of the facts. Also, as first instance decisions they were not binding on us. For these reasons we do not discuss those cases in these written reasons, but we repeat the thanks I gave to the advocates in the Tribunal's oral Judgment for providing them.

6. Mr Ali submitted that the appropriate award in respect of both failures was in the middle of the lower band, and suggested a figure of £5,000. Mr Askey submitted that two separate awards should be made, at the high end of the lower band, or alternatively an award in the middle band encompassing both incidences. He proposed a total figure of £16,000.

7. In this case we had to carefully hold in mind that we were *not* compensating Mr Cox for. This included: the distress caused by the launching of disciplinary proceedings; the distress caused by not getting an assessment of his medical condition, and any other background matters which did not form part of the Tribunal's findings of discrimination.

8. Mr Ali submitted that the discrete failures regarding who would accompany Mr Cox at meetings would have a minimal impact against the broader circumstances of the case. That might have been the case for many employees, but we consider that Mr Askey is correct in submitting that we must look at the actual effect on Mr Cox, and if that is more pronounced than it would be in other employees then so be it – the respondent must take their 'victim' as they find him.

9. We are satisfied that both of these failures had a significant detrimental effect on Mr Cox. This is clear from his evidence (supported by Mrs Cox's evidence) of his feelings at that time and since, but also from his contemporaneous emails which show how deeply concerned he was about the issue of who was allowed to accompany him at the meetings.

10. We consider that the injury was exacerbated by the fact that Mr Cox had researched his legal rights and was (entirely legitimately) asking the respondent to engage with the question of reasonable adjustments as well as the mechanism set out by s.10 Employment Relations Act 1999 but that the respondent refused to engage with these points. It is striking that (unlike the vast majority of employees) Mr Cox commenced ET proceedings during the disciplinary process and the single matter complained about in his initial claim was the respondent's failure to allow him to be accompanied by the person of his choice. Whilst this allegation may be a 'makeweight' in some Tribunal claims, it has always been at the heart of this case, and that in itself is demonstrative of the level of impact these failings had on Mr Cox.

11. A primary point put forward by Mr Ali in support of a lower award the fact that the disciplinary meetings did not ultimately take place. We accept that this must reduce the injury to feelings suffered by Mr Cox to some extent, but actually find this was very limited. In each case, the lateness of the postponement meant that much of the damage had been done. Further, the fact that the first hearing was postponed led to a repetition of the same stressful process with the second hearing.

12. Taking all these matters into account, we did not consider that it would be appropriate to make a separate award for the two failures and to 'tot them up', but we do accept that the second incident exacerbated the first incident. Taking them together, the period over which the failure was 'live' and on-going was a number of weeks. In those circumstances we do not accept Mr Ali's submission that this is a 'less serious case' which can be properly compensated by an award in the lower band.

13. Taking into account the submission of both parties, we concluded that the appropriate award sits in the middle Vento band, but very much at the lower end of that middle band. We therefore made an award of £10,000 for injury to feelings.

Special damages

14. Mr Askey sought to recover the money that Mr Cox had spent on a private psychiatric report for the purposes of the disciplinary process. We were satisfied that there could be no award of compensation in respect of Mr Cox's payment for that report. That might have been a proper head of damages in another claim, but here the decision to obtain and pay for that report was made before the failure to make reasonable adjustments had actually taken place. As that was the only discrimination claim which succeeded, the need to get the report cannot properly be said to have resulted from the unlawful discrimination that the Tribunal is compensating Mr Cox for on the specific facts of this case.

Section 10 Employment Relations Act 1999 claim

15. Mr Cox succeeded in his statutory complaint that the respondent had failed to allow him to postpone the disciplinary hearings to allow him to be accompanied by the representative of his choice. This related to the same meetings as the failure to make reasonable adjustments claim.

16. Under section 11, a successful claimant “shall” be awarded compensation of an amount “not exceeding” two weeks’ pay.

17. There appears to be no authority about what the appropriate award is in circumstances where the meeting has not taken place. Mr Askey pointed to the stress, anxiety and concern of Mr Cox in anticipating he would have to attend the meetings without the support that he needed as justifying an award of the full two weeks’ pay in each case. If this was a freestanding section 10 claim, we would have had to consider that quite carefully. However, in the circumstances of this case we consider that that stress, anxiety and concern has been fully and properly accounted for in our considerations around the injury to feelings award. To award more, the Tribunal considers, would amount to a double recovery, and we therefore make only a nominal award for the claim under section 10. We awarded £5 for each occasion and no interest is payable in respect of that separate award.

Interest

18. As noted in the Judgment, interest payment was calculated, as agreed by the parties, as being simple interest of 8% over 31 months. This gave rise to a sum of £2,066.67.

Employment Judge Dunlop
Date: 26 November 2021

WRITTEN REASONS SENT TO THE PARTIES ON
29 November 2021

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