EMPLOYMENT TRIBUNALS

Claimant: **Mrs D Ledkova**

Respondent: **Traiana Limited**

Heard at: **East London Hearing Centre (by Cloud Video Platform)**

On: **23 November 2021**

Before: **Employment Judge Burgher**
Members: **Ms J Henry**
Mr M Rowe

Appearances

For the Claimant: **In person**
For the Respondent: **Ms Bayoumi (Counsel)**

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

REMEDY JUDGMENT

1 The Respondent is ordered to pay the Claimant the sum of £12597.83 in respect of her successful claims. This consists of:

1.1 Injury to feelings award £11000
1.2 8 % interest on injury to feelings award £1597.83 (663 days at £2.41 per day).

2 In order to benefit the Claimant's continued employment the Tribunal makes a recommendation that the Respondent implements its discrimination and grievance processes in an unrestricted manner in future.

3 The Respondent's application for costs is refused.

REASONS

Issues

1. At the start of the hearing the remedy issues were identified as injury to feelings and financial loss consequent to her appraisal rating. The Claimant was informed that no award could be made for loss of earnings in view of the Tribunal not upholding her complaints in relation to non appointment to other job roles.

2. During her submissions the Claimant sought recommendations of her not being required to report to individuals who had previously line managed her.

Evidence

3. The Claimant gave evidence on her own behalf. She gave evidence under oath and was subject to cross examination.

4. The Respondent initially intended to call Ms Lucy Chowdhury but decided in view of the limited remedy issues that her evidence was not necessary.

Facts

5. The Tribunal find the following relevant facts from the evidence

6. The Claimant was upset when she discovered she was reporting to Mr Jefferies and sought to immediately resolve this with Mr McKenzie, then informally through HR and then formally through the Respondent's grievance procedure. The Claimant's upset could have been abated had there been swift resolution of her concerns about line management and team allocation but this did not occur.

7. Whilst the Claimant describes herself as a 'tough cookie' we accept that by having to forcefully progress her concerns about maternity discrimination, and it not being admitted or apologised for, created further upset to her and a stressful working environment. Having said that we have had to separate the evident upset the Claimant continues to have about not being appointed for global roles; her misplaced perceptions regarding the fault of others; and not achieving the dismissal of Mr McKenzie, from any injury to feelings award that we make. The Claimant did not establish her case in this regard and on the Tribunal's findings the dismissal of Mr McKenzie would not have been appropriate.

8. In respect of any claim for increased bonus the Claimant has not established that she would have had an increase if she had a different appraisal outcome and therefore she is not entitled to any sum in this regard.

Law

9. The Tribunal had regard to the Presidential Guidance on Injury to feelings as

follows:

> "In respect of claims presented on or after 6 April 2020, the Vento bands shall be as follows: a lower band of £900 to £9,000 (less serious cases); a middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band); and an upper band of £27,000 to £45,000 (the most serious cases), with the most exceptional cases capable of exceeding £45,000."

10. The Claimant claims an award in the middle of the Vento guidelines assessed at £2500. The Respondent submits any award should be at the lower end of the lower Vento guidelines assessed at £2500.

Conclusions

11. We consider this case falls within the low end of the Vento mid band. The maternity discrimination was not a one off action, the decision was made during maternity leave without her input, the Claimant was not aware of the decisions taken during her maternity leave and had to pursue a lengthy internal process in order to seek resolution of what she considered to be unfair discriminatory treatment. In these circumstances we consider that the appropriate award for injury to feelings is £11,000.

12. The Claimant is entitled to interest on £11,000 at the rate of 8% pa. This equates to £2.41 per day. The period of interest calculation is 663 days from 30 January 2020 to 23 November 2021. Total interest is therefore £1597.83.

13. The Respondent is therefore ordered to pay the Claimant the total sum of **£12597.83** in respect of her successful claims.

Recommendation

14. Following legal advice, the Respondent in this case restricted full consideration of the Claimant's grievance in so far as it amounted to maternity discrimination.

15. In order to benefit the Claimant's continued employment, the Tribunal makes a recommendation that the Respondent implements its discrimination and grievance processes in an unrestricted manner in future.

16. The Claimant's requests for recommendations about who she should be line managed by in future is refused. There is no basis, on the Tribunal's findings, for such a recommendation to be made.

Costs

17. Following delivering judgment on remedy Ms Bayomi applied for costs on behalf of the Respondent. Ms Bayomi submitted that the Claimant was unreasonable in the conduct of the litigation. The Respondent's costs exceeded £64,000. The Tribunal was invited to read a 26 page bundle of without prejudice correspondence following which submissions were made.

18. The application was made pursuant to rule 76 of the 2013 Employment Tribunal rules which states:

76.—(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

*(a)a party (or that party's representative) has acted vexatiously, abusively, disruptively or **otherwise unreasonably** in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or*

(b)any claim or response had no reasonable prospect of success.

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

19. The Tribunal was referred to the case of Power v Panasonic UK Ltd [2004] UKEAT 0439 under the previous Tribunal rules where costs were awarded against a successful discrimination claimant who was found to have unreasonably refused a settlement offer put forward by the Respondent.

20. The Tribunal also has regard to the structured approach set out in the case of Millan v Capsticks Solicitors LLP & Others UKEAT/0093/14/RN where the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3 stage exercise at paragraphs 52:

"There are thus three stages to the process of determining upon a costs order in a particular amount. First, the tribunal must be of the opinion that the paying party has behaved in a manner referred to in Rule 40(3); but if of that opinion, does not have to make a costs order. It has still to decide whether, as a second stage, it is "appropriate" to do so. In reaching that decision it may take account of the ability of the paying party to pay. Having decided that there should be a costs order in some amount, the third stage is to determine what that amount should be. Here, covered by Rule 41, the tribunal has the option of ordering the paying party to pay an amount to be determined by way of detailed assessment in a county court."

21. The Respondent contended that the without prejudice correspondence clearly demonstrated an unreasonable approach by the Claimant to litigation. The Respondent was making concerted efforts to settle, in view of the fact that the Claimant is an existing employee and was prepared to consider non financial remedies. However, a fundamental condition set by the Claimant was for 4 individuals to be dismissed. The Respondent was not prepared to, or properly able to, meet that condition and clearly outlined to the Claimant why.

22. The Claimant responded that she sought justice and brought the claim to achieve this. However, she was unable to sensibly explain to the Tribunal why she sought the dismissal of a number of, objectively blameless, individuals as a precondition of settlement.

23. When considering the costs application the Tribunal therefore considered the following issues:

1. Has the putative paying party behaved in the manner proscribed by the rules?
2. If so, it must then exercise its discretion as to whether or not it is appropriate to make a costs order, (it may take into account ability to pay in making that decision).
3. If it decides that a costs order should be made, it must decide what amount should be paid or whether the matter should be referred for assessment, (again the Tribunal may take into account the paying party's ability to pay).

24. It is clear from the without prejudice correspondence that the Respondent was making concerted efforts to try and avoid a full tribunal hearing, initially offering the full financial value of the sum claimed by the Claimant, and nearly twice the amount that the Claimant has now been awarded. Whilst the financial without prejudice offers were on a commercial basis to avoid incurring consequent legal costs there were also offers for non financial outcomes.

25. The Respondent's without prejudice letter of 14 May 2021 proposed an agenda for a meeting to include:

> 1. Your proposals for improving the experience of women returning to work after maternity leave;
>
> 2. Financial compensation to be paid by the Respondent;
>
> 3. Non-financial remedies (for example, you mentioned in your letter that you wanted an apology from the Respondent for the treatment you experienced)
>
> Please note that any disciplinary action against the employees of Traiana or the wider CME Group would not be open for discussion at the meeting. As we have explained previously, and as you agreed in your letter of 30 April 2021, it would not be appropriate to discuss disciplinary matters as part of settlement discussions in relation to your claim.

26. Therefore, an apology and an admission could have been discussed at a settlement meeting as part of non-financial remedies. What the Respondent was not prepared to do was entertain the possibility of discussing the dismissal of 4 named individuals. The Claimant maintained her position that she sought justice and that she was "not going to tolerate colleagues acting with impunity. Impunity means "exemption from punishment or loss or escape from fines".

27. The Respondent offered to make a contribution for the Claimant to secure legal advice. The Claimant responded that she had taken legal advice before submitting her claim and did not need legal advice going forward.

28. In these circumstances the Tribunal conclude that the Claimant adopted an unreasonable, misguided, and uncooperative approach to settlement discussions. Had she acted reasonably we conclude that it is likely that this matter would have settled and the Tribunal hearing would have been avoided.

29. The Claimant has demonstrated a total lack of awareness of the impact of her misplaced perceptions on others relating to their alleged conduct towards her. The majority of the Claimant's 10 allegations were dismissed by the Tribunal. She established 3 specific allegations of motiveless maternity discrimination. Therefore on the Tribunal's findings it would not have necessarily been appropriate for Mr McKenzie to be dismissed for gross misconduct as unreasonably demanded by the Claimant. Further, there was no basis whatsoever to dismiss the 3 other individuals the Claimant wanted to be sacked. Even now, following the Tribunal judgment on liability, the Claimant has failed to reflect and maintains an immutable negative attitude towards a number of blameless individuals employed by the Respondent. Such an attitude, if maintained is unlikely to found a tenable future working relationship.

30. Having said that, the Claimant was properly entitled to proceed with a Tribunal hearing complaint to seek a public declaration of maternity discrimination. She has done this. However, she could undoubtedly have achieved far more internally through positive settlement discussions and through working relationship mediation than the outcome she has been able to secure from this Tribunal.

31. In the circumstances, whilst the Claimant has acted unreasonably, we do not exercise our discretion to award costs. The Respondent's application for costs is refused.

32. Given our finding that the Claimant has acted unreasonably we indicated that any claim made by her for a preparation time order was unlikely to succeed. The Claimant did not proceed to make such an application.

Employment Judge Burgher
Date: 24 November 2021