



EMPLOYMENT TRIBUNALS

Claimant: Mr R Brown

Respondent: BT Plc

Heard: Via Cloud Video Platform in the Midlands (East) Region

On: 8 November 2021

Before: Employment Judge Ayre, sitting with members
Ms R Wills
Mrs C Hatcliff

Representatives:

Claimant: In person

Respondent: Ms A Jervis, advocate

REMEDY JUDGMENT

The unanimous judgment of the Tribunal is that the Respondent must pay to the claimant the sum of £19,159.79 by way of compensation for unlawful disability discrimination, pursuant to section 124 of the Equality Act 2010.

REASONS

Introduction

1. In a judgment sent to the parties on 13 October 2021 (“**the Liability Judgment**”) the Tribunal found unanimously that the respondent discriminated against the claimant by:
 - a. Not allowing him to work from home or from Bedford or Milton Keynes upon his return to work in February 2020;
 - b. Removing him from his role as Acting Manager on 4 March 2020; and
 - c. Ceasing to pay him his acting up allowance on his return to work in February 2020.

2. The case was listed for a remedy hearing on 8 November. We were provided with the following documents;
 - a. A remedy hearing bundle prepared by the claimant and running to four pages;
 - b. The respondent's counter schedule of loss;
 - c. An occupational health report dated 15 August 2021;
 - d. An email and a letter regarding the claimant's sick pay entitlement; and
 - e. Skeleton arguments on behalf of the respondent.
3. We heard evidence from the claimant and submissions from both parties.

Findings of fact

4. We adopt the findings of fact made in the Liability Judgment and make the following further findings of fact.
5. The claimant is still employed by the respondent and is currently off work on long term sickness absence following a series of strokes he suffered in March 2021. He does not yet know when he will be well enough to return to work but wishes to do so. The claimant is happy to continue his employment with the respondent.
6. The claimant returned to work following his previous period of sickness absence on 18th February 2020. He remained at work until 22 March 2021 when he became unwell again, having suffered a series of strokes.
7. Whilst he was at work and performing the duties of Acting Manager, the claimant received an acting up allowance of £47.88 a week. This allowance is not payable during periods of sickness absence.
8. The claimant raised a grievance about the matters which are the subject of this claim. He contacted Ms G Kennedy informally on 8 March 2020 and raised a formal grievance on 7 April. The grievance hearing did not take place until 18 June, more than two months after he raised the grievance. There was then a further delay until 10 August when the claimant was sent the grievance outcome.
9. The claimant appealed against the grievance outcome on 16th August 2020 and there was then a further two month delay before the appeal hearing took place on 16 October. The appeal outcome was not sent to the claimant until 4 January 2021.
10. It took the respondent almost ten months to deal with the claimant's grievance from the time he initially raised concerns with Ms Kennedy, to sending the claimant the grievance outcome. The formal part of the grievance took nine months. There was delay on the respondent's part at every stage of the grievance process. As a result the claimant felt that his grievance was not taken seriously by either the grievance or the appeal hearer, and he described

himself as having to 'endure' the grievance process. The respondent is a very large employer with a dedicated HR team. No good reason was provided for the delay.

11. The claimant issued his claim on 5 June 2020
12. We accept the claimant's evidence that the impact of the discrimination upon him has been substantial and long lasting, and that it has caused him considerable stress, anxiety and worry. More than 18 months after the acts of discrimination the claimant is still suffering as a result. The discrimination has had a big impact on his life and he has been overwhelmed by what has happened.
13. He feels, with good reason, that he has been demoted by the respondent from a role that he had carried out for four years. He has suffered a significant degree of hurt, distress and humiliation as a result of the discrimination and feels unwanted by the employer he has worked with for many years.

The Law

General principles

14. Section 124 of the Equality Act 2010 applies where a Tribunal finds that an employer has discriminated against an employee and provides that:

"(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 claimant;*
- (c) Make an appropriate recommendation... "*

Injury to feelings awards

15. Compensation for discrimination can include compensation for injury to feelings, which should be compensatory rather than punitive. In *Vento v Chief Constable of West Yorkshire Police (No 2)* 2003 IRLR 102 the Court of Appeal gave guidance to Tribunals on how to decide the amount of an award for injury to feelings. It established three bands of awards for injury to feelings : the lower band, which applies to less serious cases, such as where there has been an isolated act of discrimination, and which ranged, at the time, from £500 to £5,000; the middle band, for more serious cases of discrimination and which, at the time, ranged from £5,000 to £15,000; and the upper band which applies to the most serious cases, for example where there has been a prolonged campaign of discrimination and which ranged from £15,000 to £25,000.
16. The awards for each of the three bands were subsequently increased in *Da'Bell v NHSPCC* 2010 IRLR 19 and they have more recently been updated

in *De Souza v Vinci Construction (UK) Ltd* 2018 ICR 433 to take account of inflation and the decision in *Simmons v Castle* 2012 EWCA CIV 1288.

17. The Presidents of the Employment Tribunals in England & Wales and in Scotland have issued guidance on changes to the Vento bands. The relevant guidance in this case is the Third Addendum to the Presidential Guidance originally issued on 5 September 2017, which was issued on 27 March 2020 and which applies to claims presented on or after 6 April 2020. The Vento bands set out in this guidance are: a lower band of £900 to £9,000; a middle band of £9,000 to £27,000 and an upper band of £27,000 to £45,000.
18. The Tribunal has considerable flexibility within each of the three bands to award compensation for injury to feelings which it considers to be just and reasonable in the circumstances.

Interest

19. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (“**the Regulations**”) contain the rules governing interest on awards of compensation for discrimination.

20. Regulation 2(1) of the Regulations states as follows:

“Where, at any time after the commencement of these Regulations, an employment tribunal makes an award under the relevant legislation –

- (a) It may, subject to the following provisions of these Regulations, include interest on the sums awarded; and*
- (b) It shall consider whether to do so, without the need for any application by a party in the proceedings. “*

21. If the parties do not agree the amount of interest that is payable, as is the case in this claim, then interest is calculated in accordance with Regulation 3 of the Regulations:

“(1) Interest shall be calculated as simple interest which accrues from day to day.

(2) Subject to paragraph (3), the rate of interest to be applied shall be, in England and Wales, the rate fixed, for the time being, by section 17 of the Judgments Act 1838...

(3) Where the rate of interest in paragraph (2) has varied during a period for which interest is to be calculated, the tribunal may, if it so desires in the interests of simplicity, apply such median or average of those rates as seems to it appropriate.

22. The current rate of interest, which has applied throughout the relevant period, is 8%.

23. Regulation 4 (Calculation of interest) provides that:

“(1) In this regulation and regulations 5 and 6, “day of calculation” means the day on which the amount of interest is calculated by the tribunal.

(2) In regulation 6 “mid-point date” means the day which falls half-way through the period mentioned in paragraph (3) or, where the number of days in that period is even, the first day of the second half of that period.

(3) The period referred to in paragraph (2) is the period beginning on the date, in the case of an award under the 1970 Act, of the contravention and, in other cases, of the act of discrimination complained of, and ending on the day of calculation.”

24. Under regulation 6(1), interest on awards for injury to feelings “*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*” and interest on all other compensation “*shall be for the period beginning on the mid-point date and ending on the day of calculation.*”

Uplift for failure to comply with ACAS Code

25. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (“**TULRCA**”) gives Employment Tribunals the power to increase or decrease the amount of an award to a successful claimant in certain circumstances. It states that:

“(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that –

- a. The claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,*
- b. The employer has failed to comply with that Code in relation to that matter, and*
- c. That failure was unreasonable,*

The Employment Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.”

Conclusions

Loss of acting up allowance

26. The claimant returned to work on 18th February 2020. He was back at work for a total of 56.4 weeks until 22 March 2021, when he became unable to work due to ill health.
27. It would, in our view, be appropriate to award him compensation for the loss of the acting up allowance for the period from 18th February 2020 to 22nd March

2021. He would not have received the allowance after the 22nd March 2021 as it was not payable whilst he was off sick. The cause of the claimant's financial losses since 22nd March 2021 is his illness, and not the unlawful discrimination by the respondent. Accordingly no loss of earnings is awarded from 22nd March onwards.

28. We have decided not to make an award of loss of future earnings, because it is not at all clear when the claimant will be fit enough to return to work, so making such an award would involve too great a degree of speculation.
29. The respondent argued that the loss of earnings should end in June 2020, when it says the role of Acting Manager ceased to exist. That argument is not consistent with the finding of facts made by the Tribunal in the Liability Judgment, namely that the decision to remove the claimant from the role of Acting Manager was taken in September 2019 and communicated to the claimant in March 2020. The work that the claimant had carried out as Acting Manager continued to be performed.
30. The claimant suggested that it was the discrimination which caused his strokes and subsequent ill health. Whilst we accept that it is possible that the discrimination experienced by the claimant did contribute to his ill health, there is no medical evidence before us which would enable us to make such a finding.
31. We therefore award the claimant 56.4 weeks' loss of acting up allowance at £47.88 a week. This gives a gross loss of £2,700.43, to which we have applied a deduction of 20% for tax, leaving a net loss of **£2,160.35**.

Injury to feelings

32. In making the award for injury to feelings we have taken into account the fact that there were three acts of discrimination within a relatively short period of time, in February and March 2020. We have reminded ourselves that there is no need for medical evidence before an award of injury to feelings can be made, that any award should be compensatory rather than punitive, and that no account should be taken of the size of the employer.
33. We accept the claimant's evidence that the impact of the discrimination upon him has been substantial and long lasting, and that it has caused him considerable stress, anxiety and worry. It is clear to us that stress, anxiety and worry are not, as Ms Jervis suggested, merely words, but that they are the very real experiences of the claimant.
34. More than 18 months after the acts of discrimination the claimant is still suffering as a result. The discrimination has had a big impact on his life and he has been overwhelmed by what has happened.
35. He feels, with good reason, that he has been demoted by the respondent from a role that he had carried out for four years. He has suffered a significant

degree of hurt, distress and humiliation as a result of the discrimination and feels unwanted by the employer he has worked with for many years.

36. In these circumstances an award in the middle band of Vento would be appropriate. It cannot be said that the acts of discrimination were minor or a one off, rather there were three separate acts, albeit over a relatively short period of time. We consider that an award in the middle band of Vento is appropriate and award the claimant **£12,000** for injury to feelings.

Uplift under section 207A of TULR(C)A

37. It took the respondent approximately nine months to deal with the grievance. We find that the respondent breached a number of provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures in the way in which it dealt with the grievance:

- a. Paragraph 33: "Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received." It took the respondent more than two months in this case. That is an unreasonable delay.
- b. Paragraph 40: "Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay..." It was almost two months after the grievance meeting that the outcome was communicated to the claimant. That is an unreasonable delay.
- c. Paragraph 42: "Appeals should be heard without unreasonable delay..." The appeal hearing did not take place until two months after the claimant appealed. That is an unreasonable delay.
- d. Paragraph 45: "The outcome of the appeal should be communicated to the employee in writing without unreasonable delay." The appeal outcome was not communicated to the claimant until more than two and a half months after the appeal hearing. That is an unreasonable delay.

38. There was, in our view, no good reason provided by the respondent for the delays in dealing with the grievance process. The respondent is a large company with considerable resources and a dedicated HR department. Its delays gave the claimant the impression that his grievance and appeal were not being taken seriously and caused him additional stress and anxiety.

39. We therefore find that it would be appropriate to increase the award to the claimant by 20% in accordance with section 207A of TULRCA. The award of £12,000 injury to feelings is therefore increased by 20% to **£14,400** and the award for financial loss is increased by 20% to **£2,592.42**.

Interest

40. Interest on the award for injury to feelings runs from the date of discrimination to the date upon which the Tribunal calculates the amount of interest (“**the Calculation Date**”). The date of the first act of discrimination was 18th February 2020. The Calculation Date is 8 November 2021. The period between the two dates is 630 days. The interest rate is 8%.

41. We have calculated interest on the injury to feelings award as follows:

$$630 \times 0.08 \times 1/365 \times \pounds 14,400 = \pounds 1,988.39$$

42. Interest on the award of loss of earnings runs from the mid-point between the date of the act of discrimination and the Calculation Date, which is 315 days. We have calculated interest on the loss of earnings award as follows:

$$315 \times 0.08 \times 1/365 \times 2,592.42 = \pounds 178.98$$

Total award

43. The total award payable to the claimant is as follows:

Injury to feelings : £14,400
Interest on injury to feelings award: £1,988.39
Loss of earnings: £2,592.42
Interest on loss of earnings award: £178.98

Total award: £19,159.79

44. The respondent is therefore ordered to pay the claimant the sum of £19,159.79 by way of compensation for unlawful discrimination. As the total award of compensation is less than £30,000 it is not necessary for us to gross up the award.

Employment Judge Ayre
3 December 2021

Sent to the parties on:

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For the Tribunal Office:

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