



# EMPLOYMENT TRIBUNALS

**Claimant:** A

**Respondents:** 1. B  
2. Salford Royal NHS Foundation Trust

**Heard at:** Manchester

**On:** 23-25 November 2020  
27-30 April 2021  
28 July 2021 (in chambers)

**Before:** Employment Judge Ainscough  
Ms L Hopley (via CVP)

## REPRESENTATION:

**Claimant:** Mr C Kennedy, Counsel

**Respondents:** Ms A Smith, Counsel

# JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. In accordance with section 124 of the Equality Act 2010 the first respondent is ordered to pay the claimant compensation of £10,000 and interest of £1683.28.
2. In accordance with section 124 of the Equality Act 2010 the second respondent is ordered to pay the claimant compensation of £9,627.65 and interest of £1248.95.

# REASONS

## Introduction

1. The claimant was successful with his claim for discrimination. Judgment was given to the parties on 30 April 2021 and the parties subsequently gave evidence and made submissions on the issue of remedy. In particular, the Tribunal heard evidence from the claimant as to his losses. The Tribunal also considered the Schedule of Loss submitted by the claimant.

2. Prior to the evidence the claimant confirmed that personal injury was no longer pursued as a separate award to injury to feelings.

### Relevant Legal Principles

3. If a discrimination complaint is well-founded, remedy is determined by section 124 of the Equality Act 2010, which states:

“(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 in which the proceedings relate; and

(b) order the respondent to pay compensation to the complainant.

4. Subsection 6 states:

“The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which may be awarded by the County Court or the Sheriff under section 119.”

5. Section 119 of the Equality Act 2010 determines that:

“An award of damages can include compensation for injury to feelings.”

6. In the case of **Komeng v Creative Support Limited UKEAT/0275/18/JOJ**, the Employment Appeal Tribunal confirmed that any injury to feelings award must focus on the injury suffered by the claimant and not the Tribunal’s view of the gravity of the acts performed by the respondent.

7. In the case of **Prison Service v Johnson [1997] IRLR 162**, the Employment Appeal Tribunal set out general principles to assist Tribunals in assessing injury to feelings awards. Those principles are as follows:

(1) Injury to feelings award should be compensatory and just to both parties. Such awards cannot punish the discriminator.

(2) Awards should not be too low that they would diminish the respect of the antidiscrimination legislation. Equally they should be restrained so as not to be excessive.

(3) Such awards should be similar to those awarded in personal injury cases.

(4) Tribunals are advised to take into account the value of the sum in everyday life.

(5) Tribunals need to consider the public respect for the level of awards made.

8. The case of **Vento v The Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102** in the Court of Appeal determined that:

“Injury to feelings awards can compensate for feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.”

9. The Court of Appeal also gave guidance on the bands of compensation that can be awarded for such injury to feelings as follows:

- (a) A top band for the most serious cases where there has been a lengthy campaign of harassment on the ground of sex or race;
- (b) The middle band, to be used for serious cases which do not merit an award in the highest band; and
- (c) The lowest band for less serious cases where there has been a one-off act of discrimination.

10. Following subsequent case law the President of the Employment Tribunal has issued Presidential Guidance on the applicable values to each band which at the time the claimant issued his claim were as follows:

- Upper band - £26,300 to £44,000
- Middle band - £8,800 to £26,300
- Lower band - £900 to £8,800

11. The value of any award in a particular banding will be calculated in accordance with the date on which the claim form was issued.

12. Interest can be awarded on compensation for discrimination, including injury to feelings. Regulation 6(1)(a) of the Industrial Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 provides that interest accrues from the date of the discrimination and ends on the date the Tribunal calculates compensation.

13. Where a past financial loss is awarded as part of that discriminatory compensation, the interest will accrue from a mid point between the date of discrimination and the date of calculation.

### **Relevant Findings of Fact**

14. On the night of the incident on Friday, 21 June 2019 the claimant recalls that he was hurting and felt like he was the butt of a joke. The following day when the claimant reported the matter to his line manager, the claimant's mother had to take over the call because he was too distressed to continue. The claimant recalls that he had not been to bed the previous evening.

15. On his return to work as a Patient Facilitator on 23 June 2019, the claimant said he felt sick and had a panic attack and this was the reason he had to go home early. The claimant was absent from work on sick leave from 24 June 2019 until 17 March 2020.

16. The claimant subsequently attended counselling, but it was not until January 2020 that he sought medication from his GP.

17. The claimant was able to engage in the investigatory meeting, report the matter to the police and attend the disciplinary hearing, but was unable to return to work until March 2020 because of his concerns about working with the first respondent. The claimant sought assurances from the second respondent about his return to work but was subsequently told if he did not return to work his contract would be terminated.

18. The GP records state that the claimant was already sensitive in the groin area because of a lump.

19. In January 2020 the claimant began medication and was threatened with termination of his employment. On 4 February 2020 the claimant changed his medication.

20. The claimant stopped counselling after the fourth session and on 17 March 2020 returned to work on a different ward in his previous role as a Patient Facilitator. During the claimant's absence there had been a reorganisation which meant there was more emphasis on the use of computers in this role. As a result, the claimant struggled to perform in this role and in 2021, requested a transfer back to his previous role of Patient Transport Operative. The claimant said he was unable to cope with the use of computers and that had always been the case regardless of the incident that occurred in June 2019.

21. The claimant's average monthly wage was £1,783.20. The claimant's contract of employment set out that once employed continuously for 4-5 years, sick pay was five months' full pay and five months' half pay.

## **Submissions**

### Respondent's Submissions

22. The respondent submitted that the claimant should not be compensated for a drop in wages that only occurred in 2021 when he transferred back to Patient Transport Operative.

23. The respondent agreed that the date of victimisation was 12 September 2019, and the second respondent is liable for losses that flow from this date. The respondent submitted that the change in the role in 2021 was not caused either by the harassment or the victimisation. It is the respondent's case that the claimant struggled with his role on returning to work and therefore asked to move back to his previous position.

24. The respondent submitted that the GP records do not help the Tribunal because they simply record what was said by the claimant to the GP. The respondent asks the Tribunal to note that the first time the claimant received medication was January 2020. The respondent asks the Tribunal to focus on the fact that the claimant was able to enjoy the gym and felt well and supported. It is the respondent's case that the claimant is exaggerating the evidence: he only had

four sessions of counselling and then chose to stop and was able to return to work quickly after the initial incident in June 2019.

25. The respondent submitted that the injury to feelings award should be at the lower end of the scale because this was a one-off incident that occurred on one night and the decision not to move was a one-off decision.

26. The respondent's representative gave various examples of case law which included cases where there was sexual conduct on multiple occasions and sought to distinguish this case from those. It was the respondent's representative's submission that any injury to feelings award should be at the top end of the lower band or the bottom of the middle band.

### Claimant's Submissions

27. The claimant's representative pointed out that the respondent had not submitted a counter schedule and that the Tribunal had made a finding that the claimant was reduced to half pay during his sickness absence.

28. It was submitted that the claimant was signed off work following the actions of the first respondent on 21 June 2019. The claimant submitted it was the subsequent actions of the second respondent that compounded his upset because he did not feel safe at work. The claimant submitted that but for the harassment he was able to cope with the job of Patient Facilitator.

29. The claimant's representative submitted that in light of the medical records the injury to feelings award should be in the middle band. It is submitted on behalf of the claimant that any award for injury to feelings should be in the upper end of the middle band, but it is accepted that this was not a top band case.

30. It is submitted that the claimant has suffered significantly, that he now requires medication and still requires treatment. It was submitted on behalf of the claimant that during evidence he was tearful and anxious and distressed. It was also submitted that the incident in June 2019 had a guttural effect on him and despite going onto half pay he was unable to return to work.

31. The claimant submitted that the Judicial Studies Board Guidelines was persuasive of the bandings that should be used. It was submitted that the victimisation had an impact on the claimant's injury to feelings, though it was conceded that the majority of injury to feelings were caused by the first respondent.

32. The claimant's representative contended that the pecuniary loss has been calculated on the basis of payslips that were not before the Tribunal but that it would be just and equitable to make an award for pecuniary loss in accordance with the Schedule of Loss.

### **Discussion and Conclusions**

#### Injury to Feelings – First Respondent

33. The Tribunal notes that prior to the incident on 21 June 2019 the claimant was already sensitive in his groin area and therefore the first respondent's assault was

particularly impactful on this claimant. Under cross examination the claimant said that he was in immense pain after it had happened. The Tribunal understands and accepts the claimant's sensitivity in that area and how touching without consent would upset the claimant.

34. The Tribunal notes that the claimant did not receive medication for his depression until January 2020. The Tribunal takes the view that this does not prove that the claimant was not suffering from that condition prior to the use of medication, but rather was trying to cope. The claimant did stop counselling after the fourth session because he said it was not helping as he was constantly revisiting the incident.

35. The Tribunal understands that the claimant returned in his Patient Facilitator role on 17 March 2020. However, it was the claimant's evidence that on return he was required to use more computers than he had prior to the incident in June 2019. This was the reason, the Tribunal finds, for the claimant's move back to his role as a Patient Transport Operative. The Tribunal does not find that the harassment and/or victimisation caused the move. The Tribunal determines that injury to feelings as a result of the harassment on 21 June 2019 ended on 17 March 2020 when he went back to work.

36. The Tribunal has considered the cases of:

- **G v E (Case No 2900377/2008)** unreported: touching over a two week period (£2,500);
- **AM v GF & Balfour Beatty Rail Ltd (Case No 3300089/2010)** unreported: one off act (£4,500);
- **Grbin v Planet Organic Ltd (Case No 2205249/06)** unreported: effect on life fearful, happened over two days (£5,500);
- **Allison v Nationwide Security and Harewood (Case No 3301874/07)** unreported: conduct over five months, from an older respondent who was more senior to the claimant (£9,000);
- **Yamaguchi v Orlean Investment Services Ltd and Kotronias (Case No 2201404/05)** unreported: impact of harassment over six months (£12,000);
- **AA Solicitors Limited Trading (t/a AA Solicitors) v Majid (UKEAT/0217/15)**: up to 40 acts of harassment (£14,000).

37. The parties agreed that this is not a top band case and the Tribunal has cognisance of the **Vento** guidance. The Tribunal feels that this case is similar to that of Grbin, which at the time that award was made was at the lower end of the middle band of **Vento**. Whilst there has been a one-off act the claimant has been affected for a longer period of time.

38. The Tribunal rejects the claimant's submissions that this is a top quarter of the middle band and does not find the case comparable with the AA case.

39. The Tribunal is mindful of the fact that the claimant was a junior employee and the first respondent was a senior employee, and that the claimant already had sensitivity in that area. Whilst it occurred on one night there were two separate acts of assault. The Tribunal concludes that the injury to feelings award should fall in the middle band. The Tribunal is concerned the first respondent's more senior status was a significant factor for the first respondent prior to the harassment. The Tribunal therefore awards compensation for injury to feelings of £10,000.

#### Injury to Feelings – Second Respondent

40. The injury to feelings caused by the act of victimisation began on 12 September 2019 when the second respondent chose not to move the first respondent. During the course of the disciplinary investigation, the claimant was unaware of how the respondent had chosen to deal with the matter. The claimant was aware of that he had been supported by Gina Huxley and the first respondent was under investigation. It was only after the claimant was told that the first respondent would not be moved that he suffered injury to feelings.

41. The Tribunal considers that this was a one-off event but with recurring consequences. It is clear that the claimant's illness deteriorated between January-February 2020. The failure to move impacted on the claimant because of the lack of transparency from the respondent. The claimant was not provided with reasons for the disciplinary outcome. The claimant's upset was compounded when the respondent threatened the claimant with termination of his employment.

42. The claimant's injury to feelings ended on 17 March 2020 when he was able to return to work on a different ward to the first respondent.

43. It is the conclusion of the Tribunal that the impact of the victimisation on the claimant is within the lower band. The Tribunal considered the case of **Witt v New Quay Honey Farm Limited and another (Case No: 1602264/2019)** unreported and notes that £6,000 was awarded in a comparable case. However, in this case, the Human Resources department were responsible for the act of victimisation and deliberately minimised the claimant's complaint. As a result, the Tribunal awards £7,000 for injury to feelings.

#### Pecuniary Loss – Second Respondent

44. The claimant was off sick for a period of nine months from 24 June 2019 until 17 March 2020. The claimant's contract confirmed that he should have received five months' full pay and five months' half pay.

45. The Tribunal was disappointed that the claimant's representatives were unable to produce evidence as to the claimant's actual losses. However, the Tribunal does not believe the claimant should be penalised for his representatives' failure to set out his case more clearly.

46. The Tribunal did make a finding that the claimant would have been reduced to half pay, and there clearly seems to be some evidence of a reduction in pay from the figures calculated by his representatives, who had sight of the payslips.

47. Therefore, the Tribunal concludes that it would be just and equitable to reimburse the claimant for the half pay he suffered for a period of 3½ months prior to his return to work on 17 March 2020. The claimant's gross pay on average was £1,783.20; a net figure of £1,507.23. The claimant will have been in receipt of half of this amount for the 3½ months prior to his return to work, and therefore the Tribunal awards £2,637.65 in compensation for loss of wages.

#### Interest

48. For the awards for injury to feelings, the Tribunal has awarded interest at the rate of 8% from the respective dates of 21 June 2019 and 12 September 2019 up until the date of this calculation, 28 July 2021.

49. Interest on the award payable by the first respondent has been calculated from 21 June 2019 to the date of this Judgment, 28 July 2021. The number of days between those two dates is 768 days. The interest rate is currently 8% and therefore the interest payable by the first respondent is £1,683.28.

50. The interest payable by the second respondent is calculated in accordance with the discriminatory act on 12 September 2019 and the date of this calculation, 28 July 2021. The number of days between those two dates is 685 days. The interest to be paid by the second respondent at the rate of 8% is £1,050.95.

51. The Tribunal has awarded interest on the pecuniary loss from a mid point between 12 September 2019 to 17 March 2020. The interest to be paid by the second respondent on the loss of wages incurred by the act of victimisation is £198.

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Employment Judge Ainscough

Date: 5 October 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

DATE: 2 February 2022

FOR THE TRIBUNAL OFFICE

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**NOTICE****THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990**

**Tribunal case number: 2414572/2019**

**Claimant: A**

**Respondents: 3. B**  
**4. Salford Royal NHS Foundation Trust**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 2 February 2022

"the calculation day" is: 3 February 2022

"the stipulated rate of interest" is: **8%**

MR P Guilfoyle  
For the Employment Tribunal Office

## INTEREST ON TRIBUNAL AWARDS

### **GUIDANCE NOTE**

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at [www.gov.uk/government/collections/employment-tribunal-forms](http://www.gov.uk/government/collections/employment-tribunal-forms)

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.