EMPLOYMENT TRIBUNALS

Claimant: Mr Philip Bialick

Respondent: NNE Law Limited

Heard at: Manchester On:15,16,17 December 2021

Before: Employment Judge Leach, Mr A Egerton, Mr P Stowe

REPRESENTATION:

Claimant: In person
Respondent: Mr Nazokkar, Director

JUDGMENT having been sent to the parties on 30 December 2021 and written reasons having been requested by both parties in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This case concerns the respondent's decision to dismiss the claimant because he did not attend work when instructed to do so on 9 April 2020.

2. The claimant had booked that day as a holiday, but the respondent said the claimant was required to attend work. In the 2-week period immediately before this day, the claimant had been absent from work because of illness and the need to self-isolate (due to the risk of spreading coronavirus). The respondent's practice is that its case handler employees are not allowed to be away from their office for more than two weeks and, applying that practice, they required the claimant's attendance even though it was a pre-booked holiday.

3. The claimant is Jewish; the 9 April 2020 was a Jewish high holiday, one of the days in the feast of Passover on which work is forbidden. The claimant did not return to work on that day and was dismissed.

The Hearing

4. The hearing took place remotely, by CVP. There were no connection issues. We are satisfied that a fair hearing took place.

5. The parties confirmed their agreement that the list of issues identified at the preliminary hearing on 3 December 2020 remained appropriate.

6. The parties had not agreed a paginated bundle of documents and we instructed them to do so and to forward a copy of an agreed, paginated bundle by early afternoon on day one. We started to hear evidence that afternoon.

7. The claimant represented himself and called no witnesses. The respondent was represented by Mr Nazokkar who also gave evidence, having supplied a witness statement. Mr Elahwal, a solicitor employed by the respondent, also appeared as a witness for the respondent.

8. We had time to consider and provide our judgment on the morning of 17 December 2021. We then considered and decided on remedy that afternoon.

The issues

9. These were identified at the preliminary hearing (case management) on 3 December 2020 and repeated below:-

1.1 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:

1.1.1 Requirement to cancel leave following sickness absence or be dismissed.

1.2 Did the respondent apply the PCP to the claimant?

1.3 Did the respondent apply the PCP to persons with whom the claimant does not share the characteristic or would it have done so?

1.4 Did the PCP put persons with whom the claimant shares the characteristic, at a particular disadvantage when compared with persons with whom the claimant does not share the characteristic, in that they would be dismissed if they observed the Jewish holiday?

1.5 Did the PCP put the claimant at that disadvantage?

1.6 Was the PCP a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

1.6.1 Meeting client needs during the pandemic.

1.7 The Tribunal will decide in particular:

1.7.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;

1.7.2 could something less discriminatory have been done instead;

1.7.3 how should the needs of the claimant and the respondent be balanced?

Remedy

1.8 What financial losses has the discrimination caused the claimant?

1.9 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

1.10 If not, for what period of loss should the claimant be compensated?

1.11 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

10. A complaint of unlawful deductions from wages was not pursued and that complaint has been dismissed on withdrawal by the Claimant.

Findings of Fact

The respondent and its premises

11. The respondent is a legal business (a law firm) specialising in personal injury and other civil claims. It is a small employer with (at the relevant time) seven or so employees operating from its Manchester office. Mr Nazokkar is a director and the most senior person there. Mr Nazokkar's brother is also involved in running the business. Both parties have referred to the brother by his first name, Arson and we adopt that to distinguish him from the director Mr Nazokkar who gave evidence at the hearing.

12. The respondent operates from an office in Spinningfields in Manchester. This is a small office comprising one room. The respondent rents the office space from a well-known provider of serviced offices, Regus.

13. We have seen pictures of the office. It is apparent from these that there are six desks in the room, situated closely together (we would estimate an occupant of one desk would be about two feet apart from the occupant of a neighbouring desk). We would describe the working arrangements as cramped. From the pictures there does not appear to be a window although we also accept that the window may have been out of the picture.

14. Each desk in the office has a computer. At the relevant time (March and April 2020) the respondent had IT systems in place, but it only allowed limited numbers of people to access systems from home or other remote location. It may have changed that more recently but that was the position as we find it during the period of the claimant's employment with the respondent.

The claimant's employment with the respondent

15. The claimant is a Litigation Executive. He has many years of experience in handling civil claims, particularly personal injury claims. His employment with the respondent started on 1 January 2020; however, he had known and worked with Mr Nazokkar and his brother Arson in previous years whilst working with other law firms.

16. At paragraph 16 of his witness statement Mr Nazokkar says *"it is noteworthy that the claimant did not have a great attendance record having had unauthorised leave without notifying me"*. Mr Nazokkar told us that this was a reference to events on and from 23 March 2020 which we detail below. Although Mr Nazokkar also hinted at previous poor attendance by the claimant in terms of lateness, no evidence was provided of this (other than this unspecific indication from Mr Nazokkar himself) and the claimant strongly denied it. However, as Mr Nazokkar accepted, it is not relevant to the issues in this case.

17. We find that, until the events from 23 March 2020 the claimant's employment with the respondent had started well and the claimant was up and running with case handling and fee earning activities. The claimant was experienced at his work and we accept his evidence that he was well organised in his work and was on top of it.

The claimant's religious belief

18. The claimant is Jewish. He is a part of a Jewish family and was brought up in the Orthodox Jewish faith. His faith requires him to observe Jewish holidays. One of these is Passover, the holiday relevant to this claim and which the claimant observes strictly. The claimant also strictly observes Rosh Hashanah (Jewish new year) and Yom Kippur (day of atonement). Observing Jewish holidays means doing no work on some of the holidays, Passover is an eight-day holiday and in accordance with the claimant's faith, on some of these days (but not all of the days) no work is permitted.

19. On 12 February 2020 the claimant requested time off for annual leave. His contractual holiday entitlement matched the minimum statutory entitlement which is 5.6 weeks under the Working Time Regulations 1998. He requested time off over the period of the Passover holidays. He booked 7 to 9 April and 14 to 17 April 2020). We note here that in 2020 Passover coincided with the Easter Bank Holidays. The 10 April 2020 was Good Friday and 13 April 2020 was Easter Monday. These bank holidays formed part of the claimant's statutory entitlement to annual leave and he was obliged to take leave on those days. Accordingly, the total number of annual leave days being taken in this period was 9.

20. When booking the annual leave in February 2020, the claimant did not tell his employer that these dates were required in order for him to observe a religious holiday; he simply asked for the time off as annual leave and was granted it. Mr Nazokkar informed us that the respondent's policy was not to enquire what the reasons for a holiday were when an employee makes a holiday request. We accept that.

Events from 19 March 2020 to the termination of employment.

21. From mid-March 2020 the country was moving towards the first lockdown due to the Covid 19 pandemic. The claimant continued to attend the respondent's office on all days up to and including 23 March 2020. Whilst the claimant continued to attend the office up to this date, he was aware from travelling into Manchester City Centre that businesses in the city were closing down quickly and the centre was becoming something of (in his words) "a ghost town."

22. Like many people at the time the claimant became increasingly anxious about the situation and the messages from Government. From 19 March 2020 the claimant and respondent had been trying to arrange for the claimant to access the respondent's IT systems from his home. We have seen "What's App" messages between the claimant and Arson confirming this.

23. On 22 March 2020 the claimant told the respondent that he was concerned about attending work, *"don't really want to go outside"* he said in a What's App message on that date. The claimant told us (and we accept) that this concern and his reluctance to leave home for non-essential reasons was, in part at least, driven by information from the Government. Although the claimant had expressed this concern, Arson replied to the claimant to say that he was still needed in work and therefore the claimant attended.

24. On 23 March 2020 the claimant returned home from work and, like most of the country, heard the Prime Minister's message that evening. Rather than considering the parties recollections of the Prime Minister's message on this day, we noted that the Prime Minister's speeches relating to the pandemic are publicly available on the Government's website and the script of the speech on 23 March 2020 was introduced as evidence with the consent of the parties.

25. The claimant told us that he heard in very clear terms that people were required to stay at home and not go out unless it was essential.

26. We note that the Prime Minister's message on 23 March 2020 included the following

> *"because the critical thing we must do is stop the disease spreading between households and that is why people will only be allowed to leave their home for the following very limited purposes; shopping for basic necessities as infrequently as possible, one form of exercise a day for example a run, walk or cycle, alone or with members of your household, any medical need to provide care or to help a vulnerable person and travelling to and from work but only where this is absolutely necessary and cannot be done from home. That's all, these are the only reasons you should leave your home".*

27. The message also included the following:

> *"if you don't follow the rules the Police will have the power to enforce them including through fines and dispersing gatherings".*

28. The next morning was the 24 March 2020. The claimant did not attend the office that morning. Arson messaged him at 9.21 *"why are you not in today"* and the claimant replied *"we have been ordered not to go out or we will get fined have you not seen the news".*

29. Arson replied to the claimant's message: *"your fine for work everyone's here, no fine for going to work"* and the claimant's response was "*that's not what the government are saying"* and *"if you set my PC up and can get all my statements up to date I am the most up to date anyway, I did all this week's directions yesterday just need remote access"*.

30. Arson replied at 13:43 *"I appreciate your concern mate, but you haven't even asked us if you can work from home and just haven't turned up. In any event our router doesn't have the capacity to allow everyone work remotely, it's not set up as an alternate way of working even Sophie keeps losing access, the government guideline allows travel for work, since the Courts are not closed for work our line of work is considered essential and we can't just close".*

31. The claimant replied: "*I am sorry I am scared, and I don't know what to do other than follow what the government is saying, they say everyone must be two metres apart".*

32. Pausing here, we note the following:

    a. the respondent is a small employer

    b. like many employers large and small it was required to react to a rapidly changing situation,

    c. Even so, the respondent had obligations to its staff including to offer a safe working environment,

    d. the clear message received was to work from home where possible; instead the respondent appeared to be taking no steps towards this or,

in the alternative, providing a safe place of work, instead requiring its employees to attend the offices as have been described above.

33. We have no criticism of the claimant's behaviour in this period other than to note that he could have been the first to make contact on 24 March 2020 to inform his employer that he felt unable to safely attend the workplace. Importantly however, employer and employee were in touch with each other at the start of that working day in order to discuss the rapidly changing situation.

34. Later, on 24 March 2020, the claimant sent a message to the respondent in response to being told that the Courts were not closed, and their line of work was considered as essential. Further attempts were then made to allow the claimant to connect remotely.

35. Even though the claimant was very concerned at the time about the dangers of the pandemic and the risks involved in leaving his home, he did as the respondent instructed and went into work on 25 and 26 March 2020 working in the conditions described. He did so because he was worried about losing his job. No social distancing was possible in the respondent's office (the respondent did not dispute this). We accept the claimant's evidence that the Government's instructions by that stage were, when it was essential to be in a workplace, to be 2 metres apart from colleagues.

36. On 26 March 2020, after he returned home from work, the claimant felt ill. That evening he contacted the NHS and was instructed by them to stay at home. He informed the respondent early on 27 March 2020. Later that day (at 16.42) he sent a copy of an Isolation Note which had been issued to him (copy at page 85) which instructed him to isolate up to and including 1 April 2020.

37. On 1 April 2020 the respondent contacted the claimant and asked if he would be attending the office on 2 April. The claimant had by then been provided with a second Isolation Note covering the period up to 8 April 2020 which he sent to the respondent at 08.44 on 2 April 2020.

38. The claimant's annual leave that he had booked in February 2020 was then due to start (the first day being 7 April 2020 – see 15 above). Of the days the claimant had booked, the 8 and 9 April 2020 were particularly important as those were the high days holidays of Passover on which he was not permitted to work. The claimant expected to take his annual leave entitlement even though he had been self-isolating. We have no criticism of the claimant for making this assumption and he did not attend work on 7 or 8 April 2020.

39. On 3 April 2020 the respondent wrote to the claimant, but the claimant did not receive this letter until 8 April 2020. It was a letter sent by 2nd class post. It was not sent by email or other method. There were no WhatsApp messages sent by the respondent to the claimant during this period.

40. The terms of the letter are at page 27:-

"We write further in relation to the unauthorised absence

You failed to show up for work on 24 /03/2020 without any notice. You failed to adhere to the correct company policy and procedure in relation to requesting time off.

You have been off work since 30/03/202 due to self diagnosed flu like symptoms and it seems that your second isolation period will be ending on 08/04/2020 , however we note that you have time booked off from 07/04 to 17/04. Due to company policy and our time sensitive nature of work we can no longer authorise this due to this resulting in your time away from the office permitted and the recent Covid 19 Epidemic causing staffing issues.

We look forward to your return to work on 09/04/2020. If anything changes please email us on ….."

41. In relation to this letter we note:-

    a. The claimant had not failed to adhere to company policy and procedure when making his request in February 2020 for time off in April 2020.

    b. The date when the claimant was alleged to have failed to adhere correct procedures was on 24 March 2020 – the circumstances of which are set out above.

    c. The claimant was not aware of the company policy or practice of insisting on no more than 2 weeks away from the office.

    d. As noted above, although the letter invited a response by email, it was sent to the claimant by second class post – received on 8 April 2020.

42. Whilst the respondent had instructed the claimant to return to work on 9 April 2020 this was a huge issue for him. His religious belief meant that he was not permitted to work that day. He was also very concerned about his health and the pandemic,

43. As soon as the claimant received the letter which on 8 April 2020 he replied by email.

Dear Ali

I write further to your letter I have received today.

Thank you for enquiring over my health and I do continue to suffer with a bad chest and cough so I am staying in isolation at home, as advised by the NHS

The holiday I booked was for a religious Jewish festival. Passover which starts today. I hope you will continue to honour this.

I will be back in the office when my health allows for it as I don't want to [put] you or any of my colleagues at risk.

I thank you for your assistance during this worrying time.

44. The claimant explained that he was even breaking his religious observance on 8 April 2020 by being required to reply to the respondent's letter which he did not want to do but decided he needed to so that he could ask that his religious observance be respected.

45. The respondent received the claimant's reply and decided to dismiss him without further contact or discussion. The dismissal letter is dated 9 April 2020

> *"Dear Philip we write further to our previous correspondence over email on 8/04/20. As you have decided to not come in, we are left with no alternative but to end your employment contract with NNE Law Ltd.*
>
> *You will be sent your P45 in the post shortly. We wish you all the best.*

The PCP, or provision, criterion or practice.

46. The respondent has a practice of requiring its employees not to be away from the office for more than two weeks, that practice means that even where an employee has a holiday booked and agreed, the respondent will require the employee to cancel the holiday if the employee has been unable to attend the office in the previous two weeks. Mr Nazokkar's evidence is that this is (and was at the relevant time) a practice of the respondent and that it was applied to all employees regardless of faith.

47. The respondent's witness, Mr Elahwal, also told us that he had been instructed to cancel or return early from holidays thus providing further evidence that this was indeed a practice in place at the respondent's workplace.

48. The claimant was not aware that this was a practice of the respondent.

Contractual Terms

49. The respondent's case is that the following contractual terms are relevant to the circumstances of this case.

    a. The respondent notes the claimant was in a probationary period and in accordance with Clause 1 of the contract at page 36, could end the claimant's employment by providing a week's notice.

    b. clause 2.2.of the contract states *"you may be required to undertake other duties from time to time as we may reasonably require".* This clause, so says the respondent, entitles it to instruct the claimant (and other employees with the same contractual term) to cancel holiday with little notice.

50. We also note at clause 6.2 and 6.3 (page 37) which provides as follows:

"6.2 You are entitled to 20 days paid holiday during each holiday year on a pro rata basis. In addition, you are entitled to take the usual public holidays in England and Wales.

6.3 You shall give at least 2 weeks' notice of any proposed holiday dates longer than 1 day and these must be agreed by the Manager in writing in advance. At least 1 weeks' notice for proposed holiday dates for 1 day or less is required. No more than 10 working days holiday may be taken at any one time unless prior consent is obtained from the Manager. We may require you to take (or not to take) holiday on particular dates, including during your notice period.

The Law

51. The definition of indirect discrimination is set out at Section 19 of the Equality Act 2010 (EqA):-

> (1) *"A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purpose of subsection (1) a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if A applies or would apply it to persons with whom B does not share the characteristic. It puts or would put persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, it puts or would put B at that disadvantage and A cannot show it to be a proportionate means of achieving a legitimate aim.*

52. There are therefore four conditions set out in Section 19(2) and all four must be met in order for a claim to be successful.

53. **Homer -v- Chief Constable of West Yorkshire Police** [**2012] UKSC 15** is a Supreme Court decision in which Baroness Hale noted as follows *"the law of indirect discrimination is an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality worked to the comparative disadvantage of people with a protected characteristic*"

54. We noted and referred the parties to chapter 4 of the Equality and Human Rights Commissions Code of Practice on Employment 2011.

55. We are required to apply the burden of proof provisions under Section 136 of the EqA. As for what each party has to prove in an indirect discrimination complaint, we are guided by the Judgment of the Employment Appeal Tribunal in **Dzieziak -v- Future Electronics UKEAT 0271/11** (at paragraph 42). A claimant needs to establish first a PCP, secondly that this disadvantaged the relevant group generally, (so, in this case the relevant case is people who observe the Jewish faith) and thirdly, that this disadvantage to the general group created a particular disadvantage to the claimant. Where a claimant is able to

establish these things then the burden is on the employer to justify the PCP as a proportionate means of achieving a legitimate aim.

56. Moving then to the point of justification; unlike direct discrimination there is a potential defence to an indirect discrimination claim where an employer can show that the application of the PCP was a proportionate means of achieving a legitimate aim. We noted and referred the parties again to the Equality and Human Rights Code on Employment, particularly paragraphs 4.29 and 4.31.

57. Operational needs are often relied on to justify indirect discrimination in a wide range of circumstances. They are frequently cited in connection with an employer's refusal to allow time off for religious observance. Having an apparently sound business reason for denying an employee the right to time off is not enough in itself. The employer must also consider whether the reasons for insisting on attendance are strong enough to justify a discriminatory impact. Even if the aim is a legitimate one the means of achieving it must be proportionate, deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise.

Analysis and Conclusions

58. In this section we first note what this case is <u>not</u> about; it is not a complaint of being subjected to a detriment because of health and safety reasons as set out at Section 44 of the Employment Rights Act 1996; it is not a complaint that there was a breach of the Working Time Regulations 1998 specifically the right to take annual leave under Regulation 13 or for that matter whether the employer has or has not complied with the terms of Regulation 15(2) where an employer can, subject to good reasons and due advance notice, require an employee not to take leave on certain dates. Neither party put forward any complaints or arguments in relation to these statutory provisions.

59. The members of the Tribunal are unanimous in their conclusions below.

<u>Did the respondent have the PCP of a requirement to cancel leave following sickness absence or be dismissed?</u>

60. Yes, it did. The respondent admitted that it had a practice that an employee was not allowed to be absent from the office for more than fourteen days. Where an employee had been absent from the office due to sickness or other reason and was then due to take holiday that employee would be instructed to return to the office or face disciplinary action or dismissal; in other words, to cancel their holiday.

<u>Did the respondent apply the PCP to the claimant?</u>

61. Yes, it did. As explained in our findings of fact, there was no dispute about that.

<u>Did the respondent apply the PCP to persons with whom the claimant does not share the characteristic or would it have done so?</u>

62. Yes. The respondent admitted that it did or that it would have done so. Mr Nazokkar gave evidence that he would have applied the same practice to any

employee whether they had a different faith to the claimant or no faith. Mr Elahwal also gave evidence that he too had been instructed to return from or cancel annual leave,

If so, did the PCP put persons with whom the claimant shares the characteristic at a particular disadvantage when compared with persons with whom the claimant does not share the characteristic?

63. We find it did.

64. The working calendar observes public holidays which recognise and respect Christian festivals, (notably Easter and Christmas). These are referred to at clause 6.2 of the contract of employment as "the usual public holidays."

65. Where Jewish employees wish to take holidays to enable religious observance, they need to book holidays from their unfixed statutory and/or contractual entitlement. Those holidays do not always occur when the workplace is otherwise closed. Further, observance by persons who share the same religious belief as the claimant, do not merely require them to recognise a particular religious festival by for example, attendance at a religious ceremony. They are prohibited from working at all on certain high holidays. The practice of cancelling holidays booked for that purpose or to face dismissal therefore requires Jewish employees to choose whether to work when they are not permitted to work or be dismissed. That places Jewish employees whose faith requires they do not work on certain days, at a particular disadvantage when instructed to cancel annual leave.

Did the PCP put the claimant at that disadvantage?

66. The claimant was instructed to attend work on a Jewish holiday when he was not permitted to work because of his Jewish faith. His faith was not the only matter impacting his attendance but it was a significant matter. His faith prohibited his attendance, regardless of other circumstances relating to the Covid-19 pandemic and his health.

Was the PCP a proportionate means of achieving a legitimate aim?

67. The respondent submitted its aims were meeting client needs during the Covid-19 pandemic. We accept that the requirement of meeting client needs is a legitimate aim; However, there was no evidence before us that those client needs were not being met.

68. The respondent did not provide any instance of, for example, a court deadline or hearing that was missed or nearly missed as a result of the claimant's absence. We accepted the claimant's evidence that he was well organised and up to date.

69. Further and in any event there are less discriminatory ways of meeting the legitimate aim, for example sharing work calendars with colleagues, applying for postponements or extensions of time or even the step that the respondent noted on its response form it had to take as a last resort following the claimant's dismissal; engaging a locum.

70. For these reasons we find that the respondent's objective justification defence failed.

Remedy

71. The claimant applied for compensation. This remedy is available, under section 124 of the Equality Act 2010 which we set out below.

> *1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1)*
>
> [Note; this includes a finding under section 19 – indirect discrimination].
>
> *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 complainant;*
> *(c) make an appropriate recommendation.*
>
> *3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect [on the complainant] of any matter to which the proceedings relate …*
>
> *4) Subsection (5) applies if the tribunal—*
> *(a) finds that a contravention is established by virtue of section 19, but*
> *(b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant.*
>
> *5) It must not make an order under subsection (2)(b) unless it first considers whether to act under subsection (2)(a) or (c).*
>
> *6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court or the sheriff under section 119.*
>
> *7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation …, the tribunal may—*
> *(a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid;*
> *(b) if no such order was made, make one.*

72. Before considering whether to make an award of compensation, we considered section 124(4) of the Equality Act 2010 and whether that was applicable, particularly given the options of a declaration or recommendation in place of, or in addition to, an award of compensation.

73. We note the provisions in relation to recommendations at section 124(3) of the Equality Act 2010, and that an appropriate recommendation has to be one which has the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate. The claimant in this case was dismissed and therefore any recommendation in relation to this respondent employer will not have that purpose. A declaration is effectively our finding of discrimination and provides no remedy to the claimant, beyond any assurance that finding may give. It does not remedy the summary dismissal that he was subject to.

74. We considered the word "intention" at section 124(4). We are not satisfied that the PCP was not applied with the intention of discriminating against the claimant. We are not so satisfied for these reasons:-

    a. the claimant informed Mr Nazokkar, prior to dismissal, that his holiday had been booked for the purpose of observing Passover.

    b. Mr Nazokkar has not provided evidence that he was unaware of the importance of Passover and that on certain days, work is prohibited.

    c. Either Mr Nazokkar knew this or could easily have found it out (for example by engaging in discussion with the claimant) but he chose not to; deciding instead to summarily dismiss the claimant without any further contact.

75. We also note that an award of compensation can be made even where a Tribunal is satisfied that there was no intention to discriminate as long as the Tribunal first considers making a declaration and recommendation (which we did). Our decision is that this is an indirect discrimination case where an award of compensation is appropriate.

76. We have considered compensation in three parts:

    (1) loss of income;

    (2) injury to feelings; and

    (3) interest.

77. We had understood, through discussions between the parties, that agreement had been reached on the extent of the claimant's loss of income. Following that discussion but before we gave Judgment, the claimant corrected the position. It had been understood that the claimant's loss of income ended on 30 June 2020. The claimant then provided a letter from his new employer to show that his employment actually started on 6 July 2020 and therefore his loss continued up to 5 July 2020 rather than 30 June 2020. Because that letter was provided before we reached our decision and before we provided judgment to the parties then we decided that it was appropriate to take that into account. The net loss of income between 17 April and the 5 July 2020 amounts to £5,404.32.

78. Moving to the second part, injury to feelings. The parties were unable to reach agreement on an appropriate injury to feelings award. For the claimant, he had

already provided evidence in his witness statement that was largely unchallenged. We accept that the dismissal had a devastating impact on him and that he was affected mentally and emotionally. We accept that the claimant was dismissed by Mr Nazokkar, who is the most senior person at the respondent, but also in the past had been a workplace friend and colleague of the claimant.

79. Whilst we accept that the discrimination had an adverse mental and emotional impact on the claimant, we also note that there was no medical evidence and also, fortunately, that the claimant was able to find and begin other employment relatively soon afterwards. We have taken this into account in reaching our decision.

80. Mr Nazokkar asked us to take into account that this was a one-off act and was COVID related.

81. Our role is to compensate the claimant for injury to feelings, not to punish the respondent. We have considered whether the fact that it was a one-off act meant that it was not applied with the intention of discriminating against the claimant, but we have already noted our finding in relation to the letter of 8 April 2020 and the knowledge that the respondent had from that letter.

82. We also accept that the commencement of the pandemic was a challenging situation. Such situations require employers to behave responsibly and with appropriate understanding towards employees. We do not therefore agree with Mr Nazokkar that we should be sympathetic towards the respondent on the basis that the overall circumstances (which is what we understood his submission to be) were COVID related. We also note that he did not seek to introduce the circumstances of the pandemic as a justification defence to the complaint of discrimination.

83. As for taking into account that this was a one-off act, the effect of the discriminatory treatment was to dismiss the claimant without notice or pay in lieu of notice. Whilst it was a one-off act it was a serious one, effectively the most serious sanction an employer could impose on an employee for refusing to attend work on Passover high holiday.

84. Taking all of those matters into account our decision is that the award for injury to feelings should be in the middle of the mid-range of the Vento band (having regard to the latest Presidential update). That puts the award at £18,000.

85. Finally, we must apply interest. Our calculation on interest is as follows:

    (1) As far as an injury to feelings award is concerned, interest at the rate of 8% from the discriminatory act complained of and found – that is a period of 20 months and amounts to £2,400.

    (2) Interest on loss of earnings – we have taken the mid-point for the loss of earnings calculation and that makes a calculation of £675.54.

86. The total amount therefore is as follows:

Injury to feelings	£18,000.00
Loss of income	£5,404.32
Interest on injury to feelings award	£2,400.00
Interest on the loss of earnings	£675.54
Total award	**£26,479.86**

87. We order the respondent to pay to the claimant compensation of **£26,479.86.**

Employment Judge Leach
10 February 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
15 February 2022

FOR THE TRIBUNAL OFFICE

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