



EMPLOYMENT TRIBUNALS

Claimant:
Ms C Robinson

Respondent:
Mind
Monmouthshire
Ltd

Heard at: **Wales CVP** **On: 7th February 2022**

Before: **Employment Judge A Frazer**
Tribunal Member Mrs L Thomas
Tribunal Member Mrs J Beard

Representation:
Claimant:
Mr M Puar of
Counsel

Respondent:
Mr P Maratos
(Consultant)

REASONS

(Pursuant to a request under Rule 62(3) of the Rules of Procedure)

1. The Claimant succeeded in her claims of victimisation, failure to make reasonable adjustments and automatically unfair dismissal (PIDA) under s.103A ERA 1996. She was (constructively) dismissed on 7th December 2017. Our reasons in full are as set out in our judgment on liability dated 7th May 2020.
2. The questions that we were asked to consider and determine for the purposes of this hearing were as follows:
 - 2.1 The amount of an injury to feelings award
 - 2.2 The period of Loss of earnings Period 3 and 4 on the Schedule of Loss
 - 2.3 The amount of any interest

2.4 Whether an ACAS uplift should be payable and if so, how much.

3. The following amounts on the Schedule of Loss were agreed:

Basic award £593.69

Loss of earnings Period 1 £6, 363.84

Loss of earnings Period 2 £1, 583.15

Expenses £336.88

Loss of statutory rights £500

Findings

Injury to feelings

1. We heard submissions from both representatives as to the quantity of the injury to feelings award.
2. Mr Maratos submitted that the award should fall within the lower mid band. It was submitted that Respondent did its best. It was not a lengthy campaign of harassment. The objective was not to punish the Respondent. Much of the case had fallen away.
3. Mr Puar submitted that this was a serious case where a number of adverse findings were made and this was not a one-off. He reminded us of the findings in our judgment and the fact that in March 2017 the Claimant had had symptoms of dissociation and suicidal thoughts and that this was causative from her work environment. The dismissal affected her life in that she gave up her accommodation and lived in her van.
4. We determined that the award should fall within the lower end of the upper band and we considered that £30,000 was an appropriate award. Our reasons are that the Respondent's conduct from the point of the victimisation to the act of dismissal spanned a lengthy period of time. Following on from our findings concerning the Claimant making a protected act and the conduct that ensued, the Claimant suffered a relapse in March 2017 of her mental health condition. We found that essentially this was an issue that management ought to have seized upon and dealt with robustly. The Claimant having suffered her relapse, the Respondent put her through a grievance procedure unnecessarily and failed to make any reasonable adjustments contrary to the OH report. It was a management issue that was effectively deflected back onto the Claimant. This culminated in a constructive dismissal where the Claimant was not spoken to regarding voluntary work she was doing outside of the Respondent, which affected the relationship of trust and confidence. In all the circumstances we felt £30,000 was an appropriate award. We noted as well

the destabilising effects the dismissal had on the Claimant and her attempts to recover her wellbeing.

Mitigation

5. Mr Maratos submitted that the Claimant ought to have mitigated her loss by the summer of 2018 as she had secured equivalent or near equivalent employment. We did not agree. We found that the Claimant had done all that she reasonably could have done to look for alternative employment. She was not one hundred per cent and was able to work for a period of time in the summer/ Autumn of 2018 but then had a relapse. She secured casual work until finding a more permanent job with the NHS when she secured her PIN number. She was diligent in her efforts to look for work and mitigated so far as her health would allow.
6. The Claimant resigned on 7th December 2017. She was living in her van for a period of time. In April 2018 she moved to the Lake District in order to gain task focused work and to assist her own recovery. She enjoys hill walking and wanted to be out in nature as a means of recovering her health. She found employment with the National Trust for a short period of time. This was a permanent position but while it was 25 hours a week she was required to work long hours, up to eleven or twelve hours a day and this meant she was unable to cope with the job. She then found short term employment with Borrowdale YHA and worked there until November 2018. From November 2018 she became unwell again and was unemployed. She returned to South Wales. She found some ad hoc work in March 2019 but the disclosure process affected her health again. She registered at a friend's address and was able then to claim universal credit for a period. She registered as a guest patient with her old GP who knew her medical history well. In September to October 2019 she found some casual work at the Stonegate pub. In April 2020 she registered as a bank staff with NHS Professionals as a Band 2 healthcare assistant. After the first wave of COVID her services were not required and she found work at the Flamingo Café. Eventually she was able to obtain her nursing PIN and as a consequence was able to fully mitigate her loss from 7th September 2020.
7. We therefore award the Claimant's losses as per the schedule for periods 3 and 4 save that we noted from the witness statement that the Claimant said that she did a period of self-employed work for which she received £2, 750 and we wondered if this needed to be accounted for.

ACAS Uplift

8. For the Claimant the breaches were put as follows:
 - 8.1 Not recognising the Claimant had a right to appeal initial grievance decision;
 - 8.2 The individual dealing with the appeal wasn't an appropriate person.
 - 8.3 Failure to deal with grievance as it turned into a capability issue.

9. We make no award under this head. The Claimant put in a grievance. She was not given a right of appeal straight away but did eventually have one. There was no unreasonable delay. We did not make findings that Mr Bland was not impartial or not the appropriate person. We could not see that the employer had breached paragraphs 32 to 45 of the Code. We had regard to the broader notions of fairness at paragraph 1 to 4. We had regard to the investigation particularly of the appeal and noted that while we made findings that facts had not been established there was some attempt to investigate so we did not consider it appropriate to make a finding that there had been a breach of the code.

Interest and Grossing Up

10. Having reached our conclusions on injury to feelings and the appropriate period for loss of earnings we deferred to the parties for agreement as to interest and grossing up. The calculations are set out as follows.

Interest on the injury to feelings award

Interest on the injury to feelings award was agreed and calculated as follows.

Injury to feelings interest 15th August 2016 (date of first act) to 7th February 2022

Amount **£30, 000**

1637 days at 8 per cent = **£10, 763. 83**

Interest on the loss of earnings award

Loss of earnings periods 1 and 2 **£7, 946. 99**

Loss of earnings periods 3 and 4 **£33, 856. 21**

41, 803.20

Interest was **£7, 499. 37**. (818 days was calculated as the midpoint.)

Total interest on ITF and loss of earnings was therefore £18, 263. 20

Grossing up calculation

£91, 496.97 – 30, 000

= 61, 496.97

Personal allowance
£12, 570

£14, 000 to be taxed at 20 per cent = 2, 800

£47, 496. 97 to be taxed at 40 per cent = 18, 998.78

Total for grossing up is **£21, 798.78**

Total award is therefore

£91, 496.97 + £21, 798.78 **113, 295.75**

(Add in **2, 361. 75** to loss of earnings which had been deducted from Schedule of Loss so that recoupment can be certified)

TOTAL AWARD IS 115, 657.50

Employment Judge A Frazer
Dated: 10th March 2022

REASONS SENT TO THE PARTIES ON 16 March 2022

FOR THE SECRETARY OF EMPLOYMENT
TRIBUNALS Mr N Roche