



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Knox

**Respondent:** Chief Constable of Merseyside Police

## JUDGMENT

The claimant's application for reconsideration of the remedy judgment is refused.

## REASONS

1. By a judgment sent to the parties on 18 May 2021, the tribunal determined the claimant's remedy for a single act of unlawful harassment in October 2017. The claimant sought damages for injury to feelings, personal injuries, financial losses and loss of congenial employment, together with an award of aggravated damages. Of these heads of damages, the only one that succeeded was the award of damages for injury to feelings. Under that heading, the respondent was ordered to pay the claimant damages of £10,000 plus interest.
2. Written reasons for the remedy judgment were signed on 18 August 2021 and sent to the parties on 4 November 2021.
3. The claimant has applied for reconsideration of the remedy judgment.
4. The claimant's application set out numerous grounds for reconsideration. I summarise them here:

### *Injury to feelings*

- 4.1. The award of damages failed to take into account the claimant's remedy statement about the effect of the harassment on his depression.
- 4.2. The tribunal failed to take into account the case of *Otshudi v. Base Childrenswear* UKEAT/0267/18/JOJ
- 4.3. The tribunal failed to take into account the evidence in the bundle from pages 443 to 471 dealing with the escalation in the claimant's symptoms, difference in communication and effect on daily life

### *Aggravated damages*

4.4. The tribunal failed to take into account the respondent's knowledge of the claimant's vulnerability

4.5. The tribunal failed to take into account the respondent's failure to resolve the claimant's complaints internally or through ACAS

*Stigma damages*

4.6. The tribunal should have awarded damages to the claimant for the disadvantage faced by the claimant on the open labour market

*Expenses*

4.7. The tribunal should have awarded the claimant's expenses set out in his schedule of loss.

**Relevant law**

5. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment "where it is necessary in the interests of justice to do so".
6. Rule 71 sets out the procedure for reconsideration applications.
7. By rule 72(1), "An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked... the application shall be refused..."
8. The overriding objective of the 2013 Rules is to enable the tribunal to deal with cases fairly and justly. By rule 2, dealing with cases fairly and justly includes putting the parties on an equal footing, avoiding delay, saving expense, and dealing with cases in ways that are proportionate to the complexity and importance of the issues.

**Procedural approach**

9. This case was heard by me and two non-legal members on 25 and 26 April 2022 to deal with other disputed matters. By the start of the hearing, there had not yet been a rule 72(1) consideration of the reconsideration application. With the parties' agreement, I conducted the rule 72(1) review on 25 April 2022 in the absence of the non-legal members. On 26 April 2022, I informed the parties orally what my decision was going to be. I also explained briefly why I had come to my conclusion. I also indicated that the formal decision would be communicated to them in writing with reasons.
10. The purpose of alerting the parties to decision in this way was so that they could concentrate on the matters for determination at that hearing. Had I decided that there should be a reconsideration hearing, it might have been possible for that hearing to take place on 26 April 2022.

**Conclusions**

11. Having examined each of the reconsideration grounds, I have come to the conclusion that the application should be dismissed. None of the grounds raises any reasonable prospect of the remedy judgment being varied or revoked. I deal with each one in turn.

*Remedy statement*

12. As recorded in paragraph 13 of the reasons, we did read the claimant's remedy statement. That was only part of the evidence about the effect of the harassment

on the claimant's health. We drew on a variety of other sources including the claimant's oral evidence, his original witness statement, the medical records, and what the claimant told various consultant psychiatrists over time. The reasons explain how we evaluated those sources and the evidence as a whole.

*Otshudi*

13. We were aware of the Employment Appeal Tribunal's decision in *Otshudi*. (The decision was appealed to the Court of Appeal, but not in relation to awards for injury to feelings). The legal principles to be derived from that decision are:

13.1. When assessing damages for injury to feelings caused by an isolated act of discrimination, the tribunal must consider the effect of the discrimination on the claimant;

13.2. The fact that there was only one incident is not of itself determinative of the level of damages; and

13.3. Accordingly there is no rule that awards of compensation for an isolated act must fall within the lower *Vento* band.

14. The written reasons explain our findings about how the harassment affected the claimant. Following *Otshudi*, we found that the effect on the claimant justified an award of damages above the lower *Vento* band.

*Evidence in the bundle*

15. The written reasons (especially paragraphs 30-32 and 34 to 48) set out our findings based on the contemporaneous material in the bundle. This included the GP records and internal e-mails appearing in pages 443 to 471.

*Aggravated damages – knowledge of vulnerability*

16. Sgt McKenzie knew that the claimant was vulnerable. We were aware of that. We took it into account in deciding that the October 2017 e-mail amounted to harassment. Paragraph 210.4 of the reasons for the reserved liability judgment explain how it factored into our decision-making. We were also aware of it when we decided not to award aggravated damages. As we explained in paragraph 95 of the remedy judgment reasons, we did not think that the respondent's conduct fell into one of the categories that would justify such an award.

*Aggravated damages – failure to resolve internally*

17. We did not specifically consider this argument when reaching our conclusion on aggravated damages. In my view it has no reasonable prospect of success. The respondent dealt with the claimant's grievance about the harassment and provided an outcome. The Chief Constable did not settle any of the harassment complaints, but was not obliged to do so. Its defence of the harassment complaint went no further than was reasonably necessary to put forward its case. Most of the harassment complaints failed.

*Stigma damages*

18. Paragraph 83 of the reasons explains why we did not make any award of damages for the stigma of having brought a claim. The reconsideration application does not raise any new arguments on this issue.

*Expenses*

19. I looked again at the expenses set out in the claimant's schedule of loss. They are all a consequence of the claimant being too unwell to work. As the reasons explain, that was not caused by the harassment.

20. For the same reasons I also consider that there is no reasonable prospect of the judgment being varied or revoked.

**Disposal**

21. The application for reconsideration is therefore dismissed. The remedy judgment stands.

Employment Judge Horne  
27 April 2022

SENT TO THE PARTIES ON

10 May 2022

FOR THE TRIBUNAL OFFICE