



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Stewart

**Respondent:** Concentrix CVG Intelligent Contact Limited

**HELD AT:** Manchester

**ON:**

13 May 2022

**BEFORE:** Employment Judge Slater  
Mr A Egerton (CVP)  
Ms J A Beards (CVP)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms Niaz-Dickinson, counsel

# JUDGMENT

The unanimous judgment of the Tribunal is that the respondent is ordered to pay to the claimant the sum of £19,760 (inclusive of interest) as compensation for the act of direct race discrimination about the issuing of the claimant with a final written warning.

# REASONS

## Introduction

1. This was a remedy hearing following reserved judgment on liability sent to the parties on 7 January 2022 to determine remedy for the complaint of direct race discrimination about the issuing of the claimant with a final written warning.

2. The judge had issued case management orders for the preparation for the remedy hearing, which included orders for the claimant to produce a schedule of loss, disclosure of documents relevant to remedy, the production of a remedy hearing

bundle of documents and witness statements. The respondent provided the Tribunal with a remedy bundle of documents. The claimant failed to comply with the orders and did not provide a schedule of loss or a witness statement. The respondent was not calling witness evidence.

3. The parties and the Tribunal agreed that it was in the interests of justice that we proceed, despite the absence of a schedule of loss and witness statement from the claimant. The judge clarified with the claimant what compensation he was seeking. We had an adjournment to allow Ms Niaz-Dickinson to make a phone call to get instructions about the respondent's position in relation to the financial loss claimed and to obtain copies of some further payslips for the claimant before we started hearing evidence. With the agreement of the respondent, the claimant's evidence in chief was given in answer to open questions from the judge.

### **The compensation claimed**

4. The claimant clarified that he was seeking compensation for financial loss as well as compensation for injury to feelings because of the act of discrimination. The financial loss which the claimant said he had suffered was the difference between sick pay and normal pay for the period 31 January 2020 (when he began the period of sick leave) and 6 October 2020 (the date his dismissal took effect) and loss of commission from the date of the final written warning (11 December 2019) and his dismissal (6 October 2020). The claimant confirmed several times, in answer to questions from the judge, that he was not arguing that financial loss after his dismissal was caused by the act of discrimination. The claimant also claimed compensation for injury to feelings.

### **Facts**

5. We rely on facts found in the reasons for our judgment on liability, which we do not repeat here. References to paragraph numbers are to paragraphs in the reasons for our judgment on liability.

6. We make the following additional findings of fact.

7. The claimant felt absolute rage when he was given the final written warning. He felt work was a nightmare after that because he thought the security guard was continuing to harass him but he could not complain about this. The claimant had the feeling, following the final written warning, that he could be dismissed for anything. He described feeling as if he was walking on egg shells. He thought, (and we subsequently found that he was correct) that the warning was an act of race discrimination. He feared, because of this experience, that the company could again act in a discriminatory manner, so almost anything he could do could lead to his dismissal. He thought that being sacked would not have been as bad as attending work every day, worrying about what might happen.

8. The claimant frankly told us that he had a propensity to forthright and violent reaction and he had to rein this in in the face of what he regarded as provocation e.g. what he considered to be continuing discriminatory behaviour by the security guard, causing him additional stress.

9. The claimant was not fully fit when he returned to work after his operation. Stress made his intestinal problems worse, increasing the need for use of the toilet. Concern about possible further disciplinary action leading to dismissal caused the claimant to feel he could not spend more than the normal allowed time of 6 minutes for a toilet break, although this caused him discomfort.

10. We dealt, at paragraphs 39-41, with the events immediately before the claimant started sick leave on 31 January 2020. Based on evidence in the claimant's witness statement for the hearing on liability, we also find that, shortly before these events, Benjamin Pinkney had what he described at the end of a talk with the claimant as a "recorded discussion" about a "system error". The claimant felt this was unjustified since Mr Pinkney could have checked the recording of the call and seen that the system was in error in that the name of the customer showing on the system was not the same as the name given by the customer on the call, and Mr Pinkney did not record the claimant's explanation in what he wrote and asked the claimant to sign (the claimant refusing to do so). The claimant feared that this could be used as a reason to sack him, given he already had a final written warning.

11. In paragraph 40 we set out findings of fact about the claimant being approached by the disciplinary manager, being asked why he was not at work the day before and trying to have a meeting with the claimant. The claimant said that the only way he would have the meeting was if it was recorded but the manager stopped talking whenever the claimant tried to record the meeting. Following the discriminatory final written warning, the claimant distrusted the respondent. He was angry because he felt that the disciplinary manager, Sal, who is black, was allowing himself to be used by the respondent to cover up racism.

12. The claimant attended work in the period between the final written warning on 11 December 2019 and starting sick leave on 31 January 2020. We accept that this was difficult for the claimant, but he felt he had to continue working for financial reasons. Following events at the end of January, he did not feel he could carry on and saw his GP, who certified his absence as due to stress.

13. The claimant was absent from work from 31 January 2020 for reasons recorded as being "stress at work". The sick notes do not record absence because of ongoing consequences of the operation. The claimant had worked for a number of months after his return from work after the operation, before starting sick leave due to stress at work. His sickness absence continued to be certified as by reason of stress up to and including 31 August 2020. There were no fit notes providing reasons for absence after 31 August 2020.

14. We accept the claimant's evidence that he suffered from nausea, problems with eating and sleeping due to stress. He lost a considerable amount of weight. He did not take anti-depressants because he was concerned about the possibility of getting addicted to them. The claimant rarely left his bedroom, other than to go to the bathroom or kitchen. Simple things like shopping became a chore. The claimant's mental state had an adverse impact on his family; his daughters were worried about him to the extent that they were calling his sisters to try to get help.

15. As previously noted (paragraph 51), Gemma Brennan who, together with Matthew Green, conducted the grievance hearing, had been involved in the issue of the final written warning, advising Lee Diggle on the issue of the final written warning.

16. The claimant asserted that he was entitled to £400 commission per month and that he did not receive this commission because of the final written warning, after the warning was issued on 11 December 2019.

17. The outcome letter issuing the final written warning, dated 11 December 2019 (p.137 of Liability Hearing bundle) quoted the respondent's commission structure as stating: "You will be removed from all areas of the commission scheme if any disciplinary action is taken against you during the month." The respondent accepted that it had deducted commission of £26.83 because of the final written warning and would be liable to pay that as part of compensation for the discriminatory act (p.170 of Liability Hearing bundle). The claimant thought considerably more had been deducted.

18. The respondent produced payslips for 2018 showing commission paid to the claimant that year. The claimant refused to accept that these were the payments received, since he had not seen the payslips before. However, as previously noted (paragraph 71), the claimant could have accessed his payslips by logging into Workday. We find that the payslips produced by the respondent are authentic documents and accurately reflect payments made to the claimant. The claimant has not provided any other documentary evidence e.g. bank statements, to show that he received commission payments other than the amounts shown on the payslips.

19. We consider the payslips for 2018 give a more accurate indication of the level of commission the claimant received when working normally than those for 2019, since the claimant was on long term sick leave due to his operation between February and November 2019. We find that references on the payslips to "bonus (staff)" are references to commission. These payslips show the following payments of commission at roughly monthly intervals:

19.1.18	£206.35
2.3.18	£16.36
29.3.18	£49.37
27.4.18	£17.37
25.5.18	£3.56
22.6.18	£4.98
31.8.18	47.82
26.10.18	5.98
23.11.18	£52.53
21.12.18	£214

20. We find, based on these 10 payments, that the claimant received an average of £61.90 per month (which we round up to £62 per month) in commission during 2018. There is no evidence, other than the claimant's assertion, that he earned commission of £300 to £400 per month.

21. The claimant's gross weekly pay was £372 per week based on working 40 hours per week at £9.30 per hour. The Statutory Sick Pay the claimant received during certificated sickness absence was £94.25 per week.

## Submissions

22. Ms Niaz-Dickinson and the claimant made oral submissions.

23. Ms Niaz-Dickinson submitted on behalf of the respondent that the payslips correctly showed commission paid; the claimant was not paid commission of £400 per month. She submitted that he had not proved any deduction of commission other than £26.85 after the final written warning. She submitted that there was no direct causal link between the final written warning and the claimant's sickness absence: he had already had a period of long term sick leave; he did not immediately go off sick after the final written warning; his own evidence was that he went off sick because of Sal's attempt to sack him.

24. In relation to injury to feelings, Ms Niaz-Dickinson submitted that injury should fall in the lower *Vento* band, being a single act of discrimination. Ms Niaz-Dickinson referred us to a number of awards referred to in Harvey. Ms Niaz-Dickinson submitted that there were other issues e.g. relating to the security guard who was not employed by the respondent, following the final written warning, which caused the claimant concern. She submitted that the Tribunal needed to ensure that the injury to feelings award was focused on injury caused by the final written warning.

25. The claimant made submissions relating to the facts which we do not seek to summarise.

## Law

26. Section 124(6) of the Equality Act 2010 provides that the amount of compensation which may be awarded for a breach of the Equality Act in relation to work is "the amount which could be awarded by a county court...under section 119". Section 119 provides that the county court has power to grant any remedy which could be granted by the High Court in proceedings in tort and section 119(4) provides: "an award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)". The aim of damages in tort is to put the claimant in the position they would have been in, had the act of discrimination not occurred. Compensation (with the possible exception of exemplary damages which may be relevant in rare cases) is to compensate for loss caused by the act of discrimination. There is no limit on compensation for discrimination.

27. In relation to compensation for injury to feeling, we have regard to the guidelines in *Vento v Chief Constable of West Yorkshire Police (no.2)* [2003] IRLR 102. We note, in particular, the guidance that awards are compensatory and not punitive. *Vento* sets out the bands that we must consider. These were amended by subsequent case law. The Presidents of the Employment Tribunals in England and Wales and Scotland issued joint guidance in September 2017 to update the *Vento* bands to take account of inflation and to incorporate an uplift in accordance with the *Simmons v Castle* [2012] EWCA Civ 1039 and 1288 CA authority.

28. The claimant's claim was presented on 29 April 2020. The relevant updated *Vento* bands are, therefore, those which appear in the Third Addendum to the Presidential Guidance. These are: lower band £900- £9,000 (less serious cases); middle band

£9000 - £27,000 (cases that do not merit an award in the upper band); and upper band £27,000- £45,000 (the most serious cases). In the most exceptional cases, the award can exceed £45,000.

29. Interest is normally payable on awards of compensation for discrimination. This is currently at the rate of 8%. Interest on compensation for injury to feelings normally runs from the date of the act of discrimination until the calculation date; interest on financial loss normally runs from the mid-point between the act of discrimination and the calculation date.

## **Conclusions**

### Injury to feelings

30. The claimant had the feeling, following the final written warning, that he could be dismissed for anything. He felt as if he was walking on egg shells. He thought, (and we subsequently found that he was correct) that the warning was an act of race discrimination. He feared, because of this experience, that the company could again act in a discriminatory manner, so almost anything he could do could lead to his dismissal. We consider this meant he suffered a level of stress, following the written warning, which was greater than if there had been no element of racism in the warning. He frankly told us that he had a propensity to forthright and violent reaction and he had to rein this in in the face of what he regarded as provocation e.g. what he considered to be continuing discriminatory behaviour by the security guard, causing him additional stress.

31. The claimant was not fully fit when he returned to work after his operation. Concern about possible further disciplinary action leading to dismissal caused the claimant to feel he could not spend more than the normal allowed time of 6 minutes for a toilet break, although this caused him discomfort.

32. The claimant was absent from work from 31 January 2020 because of “stress at work”. The events of the last few days before the claimant started sick leave caused the claimant more stress than would have been the case had he not already had a final written warning, because the claimant feared that the respondent would again act in a racially discriminatory way, taking disciplinary action without proper grounds, which could lead to his dismissal. We conclude that the final written warning was a material factor in the stress which led him to start sick leave on 31 January 2020.

33. The discriminatory final written warning had repercussions for the handling of the claimant’s grievance, with the same HR person, Gemma Brennan, involved in both. A chance to repair trust, and reduce the continuing impact on the claimant of the discriminatory final written warning, by the handling of the grievance was lost. The claimant continued to suffer the impact of the discriminatory act.

34. The claimant suffered from nausea, problems with eating, leading to a considerable loss in weight, and sleeping due to stress and his mental state had an adverse impact on his family.

35. We conclude, having regard to all these factors, that the injury to feelings caused to the claimant by reason of the discriminatory final written warning falls either at the

top end of the lower *Vento* band, or the bottom of the middle band. The final written warning was a one-off event. However, it was an event which had a very serious impact on the claimant with long term effects. We conclude that an award of £9000 (the border between the lower and middle band at the time of presentation of the claim) is appropriate. In making this award, we have focused on the injury caused by the final written warning and not by things which were not the subject of our finding of unlawful discrimination.

36. No reason has been put forward by the respondent as to why interest at the normal rate and for the normal period, beginning with the act of discrimination, should not be awarded. We conclude that interest on the compensation for injury to feelings should be awarded at 8% for the period from the date of the act of discrimination, 11 December 2019, until the calculation date, 13 May 2022. This is a period of 885 days so the interest calculation is as follows:

$$885/365 \times 8/100 \times £9000 = £1745.75$$

We round this up to £1746.

#### Financial loss

37. As previously noted, the claimant is not claiming that financial loss following his dismissal is attributable to the act of discrimination.

38. The financial loss claimed by the claimant is for lost commission for the period from 11 December 2019 until 6 October 2020 and for the difference between sick pay and normal pay for the period 31 January 2020 to 6 October 2020.

#### *Commission*

39. The respondent deducted £26.83 commission because of the claimant's final written warning. The respondent would not have suffered this loss had it not been for the act of discrimination, so the Tribunal includes this amount in the calculation of financial loss. It appears to us likely that this deduction was the only deduction made prior to the start of the claimant's sick leave.

40. We conclude that the final written warning was a material factor in the claimant's sickness absence for stress. We conclude that the claimant should be compensated for loss of commission in the period 31 January 2020 to 31 August 2020, the period for which his absence was certified to be because of stress. We are not satisfied that loss of commission in the period 1 September to 6 October 2020 (the date of dismissal) is attributable to the act of discrimination since there is no medical evidence that the claimant's continued absence after 31 August 2020 was due to stress and that the final written warning was a material factor in that continued absence.

41. We found that, in 2018, the claimant earned an average of £61.90 per month commission, which we round up to £62 per month. We conclude, using this average, that, in the period February to August 2020, the claimant would have earned £434 (7 x £62) commission, had he not been on sick leave. We conclude that the claimant should be compensated for this loss.

42. The total lost commission to be included in financial loss attributable to the act of discrimination is, therefore, £26.83 + £434 = £460.83.

*The difference between sick pay and full pay*

43. The claimant was on sick leave certified to be because of stress in the period 31 January 2020 to 31 August 2020. As set out above, we conclude that the final written warning was a material factor in the claimant's sickness absence for stress. We conclude that the claimant should be compensated for the difference between normal pay and sick pay in that period. For the reasons given in relation to commission, we do not consider that compensation should be awarded for the period after 31 August 2020.

44. The difference between gross weekly pay (£372) and sick pay (£94.25) is £277.75 gross. We should award the net difference i.e. after tax and national insurance contributions are deducted. We do not have the precise net figures to do this calculation. However, we consider that taking this figure down to £260 per week is likely to be approximately correct. There are 30 weeks in the relevant period.  $30 \times £260 = £7,800$ .

*Total financial loss and interest calculation*

45. The total financial loss to be included in the award of compensation is as follows:

Lost commission:	£460.83
Difference between sick pay and full pay:	<u>£7,800</u>
Total	£8,260.83

We round this up to £8,261.

46. No reason has been put forward by the respondent as to why interest at the normal rate and for the normal period, beginning with the mid point between the act of discrimination and the calculation date, should not be awarded. We conclude that interest on the compensation for financial loss should be awarded at 8% for the period from the midpoint between the date of the act of discrimination, 11 December 2019, and the calculation date, 13 May 2022. This is a period of 416 days so the interest calculation is as follows:

$$416/365 \times 8/100 \times £8261 = £753$$



**The total award including interest**

47. The total award, including interest, is as follows:

Injury to feelings	£9000
Interest on injury to feelings	£1746
Financial loss	£8261
Interest on financial loss	<u>£753</u>
<b>Total award</b>	<b>£19,760</b>

Employment Judge Slater  
Date: 31 May 2022

RESERVED JUDGMENT & REASONS  
SENT TO THE PARTIES ON 7 JUNE 2022

FOR THE TRIBUNAL OFFICE

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## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2403945/2020**

Name of case: **Mr C Stewart** v **Concentrix CVG Intelligent Contact Ltd**

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 judgment day" is: 7 June 2022

"the calculation day" is: 8 June 2022

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

Mr S Artingstall  
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/publications/employment-tribunal-hearings-judgment-guide-t426](http://www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426)

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.