



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss B Bongoso Lopo

**Respondent:** ADT Fire and Security plc

**HELD AT:** Manchester

**ON:** 4 April 2022  
(and in chambers on  
22 June 2022)

**BEFORE:** Employment Judge Batten  
C Bowman  
S Moores-Gould

**REPRESENTATION:**

**Claimant:** J Yamba, advocate

**Respondent:** K Barry, Counsel

## RESERVED REMEDY JUDGMENT

The judgment of the Tribunal is that the respondent shall pay the claimant the sum of £36,371.83 comprising:

1. A basic award for unfair dismissal of £885.90.
2. A compensatory award of £25,866.86.
3. An award for injury to feelings in the sum of £9,619.07

## REASONS

1. The remedy hearing followed the Tribunal's judgment on liability for constructive unfair dismissal and unlawful victimisation which was sent to the parties on 6 January 2022. The evidence and submissions on remedy were completed just before 5.00pm on the day of the remedy

hearing, in part due to a number of technical issues which delayed the hearing. Accordingly, the Tribunal met in chambers on a further day, in order to deliberate and reach this judgment on remedy.

2. For the remedy hearing, the Tribunal was provided with a bundle of documents on remedy, comprising 201 pages, to which further documents were added and also 2 lever-arch files of job searches completed by the respondent, running to a further 503 pages.
3. The claimant gave evidence by reference to a written witness statement and was subject to cross-examination by the respondent. Each party made detailed submissions at the end of the evidence.
4. At the outset of the remedy hearing, the claimant's representative confirmed that the claimant considered that it was not appropriate for her to return to work for the respondent, whether by way of reinstatement or re-engagement, and so the Tribunal proceeded to consider compensation.
5. The claimant brought evidence of her earnings with the respondent consisting of her payslips between September 2018 and her resignation on 29 September 2019. These showed a gross annual salary at termination of £9,213.27 or £177.18 gross per week. It was not possible to establish a net weekly figure from the payslips provided because, in the last 12 months of her employment, the claimant's earnings had been subject to various fluctuations, additions and deductions, including occasional overtime worked, sickness absence resulting in occupational sick pay or alternatively statutory sick pay, unpaid time off and also holiday pay. In those circumstances, the Tribunal arrived at a net weekly earnings figure by inputting the claimant's gross salary of £9,213.27 in the tax year 2019 – 2020, into the earnings calculator at <<[www.listentotaxman.com](http://www.listentotaxman.com)>> to produce a net weekly earnings figure of £175.84.
6. The claimant's payslips also showed that the respondent contributed 5% to a pension for the claimant. The Tribunal calculated this to be an amount of £8.86 per week. The claimant also contributed 5% of her salary to the pension and that amount is accounted for within the claimant's gross salary.

*Basic award*

7. The claimant was 31 when her employment terminated and she had 5 completed years' service with the respondent. Her gross weekly pay at the date of termination of her employment was £177.18 per week which, multiplied by 5 years' service, gives a basic award of **£885.90**.

*Compensatory award – loss of earnings*

8. In considering compensation for loss of earnings, the Tribunal identified that the immediate losses period, from termination of employment on 29 September 2019 to the remedy hearing, was a period of 130 weeks. The claimant's loss of net earnings with the respondent over that period were £22,859.20 and the loss of employer's pension contributions was £1,151.80, giving a loss of earnings, for the immediate losses period, of £24,011.00.
9. The claimant told the Tribunal that she had eventually found work, through an agency, in August 2021, as a carer, working flexibly and apparently irregular hours at varying rates of pay. She provided payslips which confirmed that the claimant worked in this role from early August 2021 and was last paid on 4 March 2022. The total net earnings in this role, as shown by the year-to-date figures on the claimant's agency payslip dated 4 March 2022, after statutory deductions, was £3,601.33. That figure is deducted from the losses figure above to give a net loss of earnings, for the period from termination of employment to the remedy hearing, of £20,409.67.
10. In addition, the Tribunal awarded £500 for loss of statutory rights.
11. During the immediate loss period, the claimant had no earnings for almost 2 years. The respondent submitted that the claimant had failed to mitigate her losses and that any compensation awarded should be reduced to reflect the position. The claimant was asked about her efforts to mitigate and she provided evidence of her ongoing mental health issues post-termination of her employment and therapy/counselling which she had undergone. The claimant told the Tribunal that she had made efforts to continue her studies (which she had been undertaking whilst working for the respondent) whilst she was ill, and had eventually changed course, to enrol on a Health and Social Care course at Manchester College, with a view to changing career. She had also studied for and re-taken her GCSE mathematics, albeit unsuccessfully. The claimant had also made some efforts to seek alternative work during the period. In considering the claimant's evidence on mitigation, the Tribunal was mindful of the effect of the COVID-19 pandemic from March 2020 onwards and the significant period(s) of national lockdown which had been instituted during 2020 and 2021 together with Tier 3 restrictions from time to time. The claimant is a single mother and she gave evidence that she sought to continue her studies online, whilst also home-schooling her child under very difficult circumstances, under the COVID regulations and restrictions on movement at the time. In light of all the above, the Tribunal considered that the claimant had demonstrated that she had made appropriate efforts to seek to mitigate her losses in the circumstances, taking account of her ill-health, such that it would not be appropriate to make a reduction in compensation in respect of mitigation.
12. The Tribunal also considered whether to award compensation for future loss to the claimant but was not minded to do so, for the following

reasons. The claimant told the Tribunal that, a few days before the remedy hearing, she had been interviewed and had secured a job as a Teaching Assistant, and that she expected to earn at least equivalent pay to that earned with the respondent, if not slightly more. She was just waiting for the DBS checks to be completed prior to starting work in the very near future. In those circumstances, the Tribunal considered that the claimant had not established that she would suffer future losses of earnings and so the Tribunal declined to make an award in respect of future loss.

13. The claimant had also given evidence that she expected to return to work full-time for the respondent in or around March 2021 and so her losses would have increased at that point. The Tribunal considered but rejected this suggestion. There was no evidence to support the claimant's contention. Nothing had been discussed or agreed between the parties to that end and the Tribunal noted that, in March 2021, with the COVID pandemic still present and a third lockdown, the respondent's staffing needs would have been very different to those when the claimant's employment terminated, such that it was impossible to say what the position would then have been. In any event, the Tribunal also took account of the fact that, when the claimant did return to work in August 2021, she did not start to work full-time and instead chose a role with flexible and occasional working hours that fitted around a number of other commitments that she then had.
14. In light of the above, a compensatory award amounts to £20,909.67 including the amount for loss of statutory rights.

*Injury to feelings*

15. The Tribunal considered it appropriate to make an award for injury to feelings as the claimant had clearly been upset by the respondent's victimisation of her. The Tribunal determined that the award for injury to feelings should be in the upper half of the low band of Vento<sup>1</sup> and that the appropriate figure should be £7,000.00. The Tribunal accepted the respondent's submissions on the matter, to the effect that the claimant had been upset by a number of aspects of the respondent's conduct towards her, over several years, but that the majority of her allegations had not been well-founded. There had been multiple sources of the claimant's distress including outside of work. In those circumstances, the Tribunal considered that the evidence of injury to the claimant's feelings, caused by the victimisation as found by the Tribunal, did not support an award in the middle band of Vento.

*Aggravated damages*

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<sup>1</sup> See *Vento v Chief Constable of West Yorkshire Police* CA [2002] EWCA Civ 1871 – Low band was £900 to £8,800 in 2019.

16. The claimant's advocate submitted that this was a case where an award of aggravated damages should be made. The Tribunal disagreed and declined to make such an award because the claimant had not identified any aggravating features which had increased the impact of the victimisation on her.

*Personal injury*

17. The claimant's advocate also submitted that this was a case where an award for personal injury should be made. The Tribunal disagreed and declined to make such an award. The claimant brought no evidence to support an award for personal injury, beyond injury to feelings, and there was no evidence of a causal link between the claimant's ongoing mental health issues and the victimisation.

*ACAS uplift*

18. In its judgment at paragraphs 35 and 40, the Tribunal has identified occasions when the respondent had unreasonably failed to comply with the ACAS Code of Practice on grievance procedures. Taking account of the absolute value of the uplift and the findings in its judgment, the Tribunal considered that an award of 10% was appropriate in the circumstances of the case. This uplift is applied to the compensatory award and to the award for injury to feelings as follows:

18.1. Compensatory award: £23,000.63

18.2. Injury to feelings award: £7,700.00

*Interest on discrimination awards*

19. Pursuant to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996, section 6(1)(b), interest is awarded on all sums of damages and compensation (excluding injury to feelings) from the mid-point of the date of the act of discrimination complained of and the date on which the Tribunal calculates the award, at the judgment rate of 8%. The Tribunal considered that the unlawful victimisation commenced at the grievance meeting on 9 May 2019. The period from then until the calculation of the award, today, is 162 weeks and the mid-point is therefore at 81 weeks. Accordingly the compensatory award of £23,000.63 is liable to interest of £2,866.23.
20. Pursuant to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996, section 6(1)(a), interest is awarded on injury to feelings awards from the date of the act of discrimination complained of until the date on which the Tribunal calculates the award, at the judgment rate of 8%. The Tribunal considered that the unlawful victimisation commenced at the grievance meeting on 9 May 2019. The period from then until the calculation of the

award, today, is 162 weeks. Accordingly the award for injury to feelings, of £7,700.00, is liable to interest of £1,919.07.

21. The grand totals for each award, including interest, are therefore as follows:

21.1. Compensatory award:      **£25,866.86**

21.2. Injury to feelings award:   **£9,619.07**

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Employment Judge Batten  
22 June 2022

JUDGMENT SENT TO THE PARTIES ON:  
24 June 2022

FOR THE TRIBUNAL OFFICE



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2414642/2019**

Name of case: **Miss B Bongoso Lopo v ADT Fire and Security Plc**

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: 24 June 2022

"the calculation day" is: 25 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.