



EMPLOYMENT TRIBUNALS

Claimant

Ms C Anderson

v

(1)

**Kelly Marie Limited t/a
Shout Hair**

(2)

Miss K M McClymont

Respondents

Heard at: London Central (CVP)

On: 27 June 2022

Before: Employment Judge Lewis
Ms S Keating
Ms P Slattery

Representation

For the Claimant: Represented herself

For the Respondents: Did not attend

RESERVED JUDGMENT ON REMEDY

The claimant is awarded the sum of **£26,486.16** (£5199.87 loss of earnings + £482.09 interest and £17,550 injury to feelings + £3,254.20 interest). The award is made against the 1st and 2nd respondents jointly and severally.

REASONS

Background

1. The tribunal previously decided that the claimant was dismissed because of something arising from her disability contrary to section 15 of the Equality Act 2010. The dismissal was by the 1st respondent contrary to section 39(2)(c) and the decision to dismiss was taken by the 2nd respondent contrary to section 39(2)(d) of the Equality Act 2010.

2. The claims for disability discrimination during employment prior to dismissal were not upheld. We therefore have to decide the appropriate compensation for the dismissal.
3. The tribunal sent a letter to the parties on 30 April 2022. This explained what the tribunal would have to decide, the need for evidence and made suggestions for how the parties could prepare.
4. Miss McClymont emailed the tribunal on 21 June 2022. She said that she had been unable to attend the last day of the hearing because of the effect on her physical and mental health and she would be unable to attend any further tribunal hearings. We were of course aware that Miss McClymont had not attended the last day of the liability hearing. We had made several suggestions by way of reasonable adjustments to enable her to attend, but in the end, Miss McClymont could not bring us herself to attend. She had wanted us to complete the case so it would no longer be hanging over her.
5. In her letter of 21 June 2022, Miss McClymont made certain points relevant to how much compensation we should award the claimant. We took her points into account and asked the claimant related questions. Unfortunately, Miss McClymont's evidence was vague on the points which we had said in our 30 April 2022 letter we needed to understand.
6. As well as Miss McClymont's letter, we had a written statement from the claimant relating to remedy.
7. The claimant gave us her contract of employment with Croydon College and registration document with Reed. We were not given any other documents by either side relevant to remedy. We still had the documents from the liability hearing, some of which were relevant.

Law

8. Where a claimant succeeds in a claim for discrimination, the tribunal may award compensation for financial loss arising from the discrimination including compensation for injury to feelings. A tribunal may also award interest.
9. The tribunal can also make recommendations, but the claimant did not ask us to make any and we agreed that in the circumstances, there would be little purpose in doing so.
10. The starting point for loss of earnings is the period for which the claimant would have been employed by the previous employer if she had not been subjected to a discriminatory dismissal. For example, if the claimant would have been dismissed at a certain point because of redundancy or closure of the business, then that usually sets a limit to the amount of compensation payable because the claimant would have lost her job then anyway.

11. A claimant should take reasonable steps to mitigate her loss, eg by finding a new job. It is for the employer to prove the claimant did not mitigate her loss.
12. The award for injury to feelings can cover feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, stress, depression and so on. It is hard to measure those feelings in monetary terms, but the tribunal must do its best. Three broad bands of compensation for injury to feelings were suggested in the case of Vento v Chief Constable of West Yorkshire Police (No.2) [2003] IRLR 102, CA. For dismissals in the year beginning 6 April 2019, Presidential Guidance suggested the top band should be £26,300 – £44,000 or more in exceptional cases; the middle band should be £8,800 – £26,300; and the lower band should be £900 - £8,800. These figures include the Simmonds v Castle uplift.
13. If the claimant's injury to her feelings and/or personal injury is caused by a number of different factors, the tribunal can only award compensation for the injury caused by the unlawful discrimination (unless it is indivisible).
14. A tribunal may award interest on its award and must consider whether to do so. Interest on an award for injury to feelings runs from the date of the discrimination until the date of calculation by the tribunal (inclusive). Interest on any financial loss starts on a date midway between the act of discrimination and the calculation date, and ends on the calculation date. The rate of interest is that fixed by section 17 of the Judgments Act 1838. Since July 2013, that has been 8%.

The tribunal's decision

Loss of earnings

15. The claimant was dismissed on 4 March 2020 with 1 week paid in lieu of notice. The first national lockdown started around 23 – 26 March 2020. On 12 April 2020, the claimant took an overdose. The claimant started new employment teaching hairdressing with Croydon College through an agency (Reed) from 7 December 2020, which became permanent from 1 March 2021. She is earning more than when she was employed by the respondents because she is now working full-time. Her loss of earnings therefore stopped on 7 December 2020.
16. We accept that the claimant took reasonable steps to find a new job. She is someone who hates being without a job as working helps maintain her mental health. She also feels it is important that she can support herself and her family. She was unable to get a new job immediately because of her mental ill-health at that time which culminated in her suicide attempt, and because of external lockdowns and restrictions caused by the pandemic. She was on various long-standing mailing lists with agencies

and that was how she obtained the Croydon College job. She had worked for them as a maternity locum in the past, and that helped her get the job.

17. We need to decide what would have happened to the claimant's job with the respondents if she had not been dismissed when she was. Miss McClymont had been intending to sell the salon around that time and she would have made Olivia and the claimant redundant. However, that did not happen because Covid came along.
18. Miss McClymont says that she would not have made the claimant redundant and that she only kept Olivia on, the long-standing employee, to keep the salon open. She says she would not have offered the claimant furlough as she cut all costs not necessary to the business. Miss McClymont says she worked herself in the salon when it was open, having put Olivia on furlough.
19. Unfortunately Miss McClymont does not give us dates when the salon was closed and open through 2020 or when Olivia was put on furlough. She does not say whether anyone else was previously based in the salon and if they were transferred to the other salon. She talks about 'taking steps' to make Olivia redundant in 2021. She does not mention making anyone else redundant at any stage. We do not know if she put anyone in her other salon on furlough. It has not been possible to explore this explanation because Miss McClymont did not attend the tribunal.
20. We have considered the evidence which we do have. We know that Miss McClymont had already issued the claimant with two warnings very shortly before her dismissal (in January and in February 2020), and that Miss McClymont's feelings towards her were becoming increasingly negative. In February 2020, Miss McClymont was having conversations with Ms Davey who was advising that the claimant 'needs sacking', although she was also advising that proper procedures must be followed. The claimant had also gained the strong impression that when the salon was sold, she and Olivia would not be transferred over. We therefore think it is likely that McClymont would at some stage, when the extra difficulties caused by Covid became clear, have taken the opportunity to make the claimant redundant. We do not know exactly when that would have happened. Miss McClymont may have been tempted by the furlough subsidy to keep the claimant on for a while. She did this with Olivia, who was not particularly in favour with her either. On the other hand, Olivia was a longer standing employee and the claimant had not been employed long enough to have unfair dismissal protection or to be entitled to redundancy pay. On balance, we would say that Miss McClymont would have made the claimant redundant with one week's pay in lieu of notice 13 weeks later than she was in fact dismissed. We arrive at the figure of 123 weeks to take account of the contingency that, on the one hand, the claimant may have been dismissed immediately on lockdown, or on the other hand, she may have been retained on furlough for a longer period.

21. The claimant earned £339.99/week net with the respondents. Her loss of earnings caused by the discriminatory dismissal is therefore $13 \times £399.99 = £5199.87$.

Injury to feelings

22. The claimant was shocked at her sudden dismissal, and devastated to lose her job. Although she had had recent difficulties with Miss McClymont, she loved working with everyone else and was happy at work. Work is something which helps with her mental health. When she was dismissed, she felt 'lost'. She had never been dismissed from any job in the past. Although she posted on Facebook that she was relieved, that was because of the stress she had been feeling from Miss McClymont more recently at work. She was relieved because she was having what was later diagnosed as a panic attack that day, the second one in a week.

23. The claimant took an overdose on 12 April 2020. This was the culmination of worsening mental health during her last months at work because of tensions with Miss McClymont; incorrect reporting of her earnings to the authorities which caused severe underpayment of Universal Credit in February 2020 and again on 10 April 2020, and then losing her job.

24. Miss McClymont suggested that the claimant's mental health was affected, as was that of everyone, by the Covid pandemic. We accept the claimant's evidence that Covid was not affecting her mental health at the time of the overdose. She was preoccupied with her finances and work problems. She had not yet realised the full implications of the pandemic. Indeed it was only when she came round in hospital and was not allowed to have visitors that she took the impact of the pandemic on board.

25. Miss McClymont suggested that the claimant's mental health may have been affected by being unable to get hold of drugs during the Covid pandemic. We reject that suggestion. The claimant was not addicted to drugs.

26. Taking all matters into account, we award £17,550 for injury to feelings against the 1st and 2nd respondents, jointly and severally. We have allowed for the fact that non-discriminatory matters, ie relations with Miss McClymont towards the end of her employment and the Universal Credit underpayments contributed heavily to the claimant's decision to take an overdose. The impact of the Universal Credit cuts, both before and after the dismissal, and the claimant's anger with Miss McClymont over these were clearly major factors. We make no award for the injury caused by those aspects.

27. However, the dismissal had a number of other serious effects on the claimant's mental health which we can weigh separately. She lost her self-respect which she derives from her determination to provide for her family and her sense that she is able to hold down a job. She clearly takes pride in never having been dismissed before and always working when she can.

She told the tribunal repeatedly that 'she is not that kind of person' who sits at home not working if she is able to do so. She lost the stability which holding down a job gives to her mental health. She lost the enjoyment and sometimes support of her work colleagues.

28. The claimant suggested that we make an award in the middle Vento band and suggested a figure at the top end. Our award is in the middle of the middle Vento band.

Interest

29. We add interest to our award. Interest on discrimination claims is currently at 8%. For injury to feelings, it runs from the date of discrimination (4 March 2020) until the calculation date (27 June 2022). For past loss of earnings, the award is from the midpoint date until the calculation date. The calculation is as follows:

Loss of earnings

Interest on £5199.87 from midpoint from date discrimination (4 March 2020) to calculation date (27 June 2022)
4 March 2020 – 27 June 2022 = 846 days
8% of £5199.87 = £415.98 p.a.
Divide by 365 for daily rate; multiply by 846 = £964.18
Divide by two for midpoint = £482.09

Injury to feelings

Interest on £17,550 from date of discrimination to calculation date
4 March 2020 – 27 June 2022 = 846 days
8% of £17,550 = £1,404 p,a,
Divide by 365 for daily rate; multiply by 846 = £3,254.20

Total compensation awarded

We make a total award of **£26,486.16** (£5199.87 + £482.09 + £17,550 + £3,254.20). The award is made against the 1st and 2nd respondents jointly and severally.

Employment Judge Lewis
27th June 2022

Sent to the parties on:

.28/06/2022

For the Tribunals Office