



EMPLOYMENT TRIBUNALS

Claimant: Mr P Inem

Respondent: Coventry City Council

Heard at: Birmingham

On: 5/6 April 2022

Before: Employment Judge Broughton
Mr P Wilkinson
Ms R Payne

REPRESENTATION:

Claimant: in person

Respondent: Miss G Carter (Solicitor)

REASONS ON REMEDY

Background

1. The claimant was awarded £7000 (net and inclusive) for injury to feelings at the hearing on 6 April 2022. His claims for other, separate heads of damage failed and were dismissed.
2. The claimant requested written reasons within time although, regrettably, that request was only passed to EJ Broughton on 7 June 2022.
3. We refer to our previous decision and reasons on liability, which we will not repeat here.
4. In summary, however, the claimant had made several allegations of race discrimination and harassment, which all failed. He had also claimed that the extension of his probation period was unfavourable treatment under s.15 Equality Act 2010. That also failed.
5. The claimant had made a number of allegations of a failure to make reasonable adjustments in relation to his dyslexia. Whilst identifying a number of areas where the respondent may have fallen short of best practice, only one, alleged failure to make reasonable adjustments was upheld.

6. That failing related to the failure to provide the claimant with dragon voice recognition software.
7. This adjustment was overlooked when the claimant commenced employment but was authorised as soon as he raised it in December 2019, some 4 months later. We did not accept the claimant's suggestion that he had raised this issue prior to December 2019, let alone on the numerous occasions claimed.
8. Whilst the claimant claimed injury for the failure to provide this software right up to the end of January 2020, we found that the reason this adjustment was not in place sooner was due to the Claimant's failure to follow up with the IT department once the software was approved.
9. As a result, the failing we found, therefore, related to the period up to December 2019 only.

The evidence

10. The claimant gave evidence, as did his partner, of the alleged effects on him of the respondent's acts and omissions.
11. We heard some evidence that was not advanced at the previous hearing which, if true, amounted to, at best, surprising omissions. There was nothing, however, which caused us to revisit our original decision
12. He produced a schedule of loss claiming lost earnings whilst on sick leave with the respondent in the first half of 2020. He also claimed the respondent had made him so unwell that he has been unable to work since.
13. He claimed for injury to feelings and psychiatric injury.
14. The claimant produced medical evidence, including a psychiatric report, in support of his claims.

The issues and legal principles

15. We had to consider the well-established principles of assessing loss, reminding ourselves that awards are generally to be compensatory, rather than punitive. The losses must be caused by the discrimination.
16. In considering causation, we needed to evaluate other potential causes, including the claimant's unsuccessful claims. In addition, we considered what may have happened but for the discrimination.
17. Where different forms of injury are claimed we must have regard to the total injury arising from any discrimination found, whether by moderating separate awards or making a single award factoring in all relevant considerations.
18. Our focus must be on the injury itself as opposed to the discriminatory act or omission.
19. We also considered interest from the date of the alleged discrimination and incorporated this into our award.

Decision

20. One significant difficulty, from the claimant's perspective, was that, even if we were to accept all of the alleged financial and emotional effects claimed, the vast majority of those claimed effects were not, on our findings, caused by the actionable failings of the respondent and, specifically, the failure to provide the dragon software in the first 4 months of the claimant's employment.
21. We accepted that the dragon software would have assisted the claimant in relation to the preparation of the 4 children and family reports produced by him.
22. Notwithstanding the fact that the claimant didn't raise this during his employment until performance concerns were raised with him more formally and then, once it was approved, did not follow up to obtain it, we were prepared to accept that this effect was more than trivial.
23. We are also prepared to accept that there was, potentially, some small knock-on effect of the absent software in relation to the claimant's other tasks and even, perhaps, his general wellbeing, although the latter seemed significantly overstated.
24. The claimant, on his own evaluation, was doing well at his 2 month review (in October 2019) and did not require any further assistance.
25. On his own case, initially at least, it appeared that several of his other complaints, which were not upheld, not least his allegations of race discrimination and harassment, were far more causative of any alleged injury. This appeared confirmed by the contemporaneous records of the claimant's counselling sessions.
26. Moreover, by December 2019, the claimant was still working and the respondent's failure, in relation to the software, was rectified, subject to the claimant taking the necessary next steps.
27. The psychiatric report identified the extension of the claimant's probation on 14 January 2020 as the "index event" which led to the claimant's subsequent alleged injury and losses.
28. We have already found that the extension of the claimant's probation period was, if anything, favourable treatment, the only feasible alternative being dismissal at that stage. In fact, it was only because the respondent acknowledged that OH recommendations had not all been implemented at the outset, that the claimant was not dismissed.
29. As a result, the respondent cannot be liable for the losses that flow therefrom.
30. Any losses / injury that did arise at that stage must, it seems, have arisen from the claimant's inability to accept his failings and the respondent's attempts to support him going forward.
31. Moreover, the absence of the dragon software played no material part in the need to extend the claimant's probation.

32. The respondent had no alternative but to extend the claimant's probation period, given his serious failings and, in any event, it was a proportionate means of achieving a legitimate aim for which they cannot be liable.
33. We had grave reservations about the psychiatric report in any event. There were vast gaps in the medical history. More crucially, it appeared to contain a serious error in the factual matrix and the claimant confirmed the false information was, nonetheless, what he had provided to the psychiatrist.
34. Specifically, the claimant confirmed that he had told the psychiatrist that he had not been told he was missing deadlines until January 2020. Even on his own previous case he had accepted that he was informed in early December 2019 and, on our findings, it was raised several times prior to that, including in writing.
35. That failing alone, potentially undermined the whole report.
36. In any event, we do not accept that the delayed provision of dragon software had any material, ongoing effect on the claimant's mental wellbeing after the middle of December 2019.
37. As a result, we do not accept the claimant's psychiatric injury, if any, nor any consequential financial losses, arose from the respondent's failure to make a reasonable adjustment.
38. We are, therefore, left with consideration of injury to feelings alone.
39. We have considered the Vento bands as uplifted and the parties' representations.
40. The claimant sought £10k, at the lower end of the middle band, albeit that was based on the failure extending to the end of January 2020, as opposed to mid December in accordance with our findings.
41. The respondent, to their credit, took a realistic approach, suggesting a figure of around £5k.
42. That said, we appreciate that we are not bound by those indications and so have considered the claimant's claims that his injury continues and was significantly affected by the respondent's failings. We have also considered that, given the question marks over the claimant's credibility and the fact that he didn't raise the issue of the dragon software for 4 months and didn't action it once approved, this was potentially a case for a zero or very low award.
43. We are satisfied that the significance of the software issue was overstated by the claimant but we, nonetheless, remind ourselves to focus on the alleged injury.
44. The claimant's evidence was that the collective alleged failures of the respondent over the first few months of his employment, of which dragon was but one, did have a significant adverse effect on his wellbeing, including his sleep and home life, albeit he maintained this had no impact on his abilities 1 on 1 with the children in his care.
45. He also suggested that it played some part in his ongoing alleged injury, although we have already found that to be unlikely and / or minor.

46. In light of all of the above, we are prepared to accept a figure slightly above the middle of the lower band of Vento and, taking into account interest of 8% for a period of around 2.5 years, we round the figure up to an all inclusive £7000.

Employment Judge Broughton

Date: 29 June 2022