



EMPLOYMENT TRIBUNALS

Claimant: Miss R Sahin

Respondent: Tower Hamlets GP Care Group CIC

Heard at: East London Hearing Centre

On: 17 June 2022 and
In Chambers on 27 June 2022

Before: Employment Judge C Lewis

Members: Ms J Clarke
Mr ML Wood

Representation:

For the Claimant: Mr Robin Pickard (FRU)

For the Respondent: Mark Stephens (Counsel)

REMEDY JUDGMENT

The unanimous judgment of the Employment Tribunal is that the Claimant should be awarded the following amounts:

Financial loss

1. Loss of earnings in the sum of £41,242.67
2. Loss of pension contributions in the sum of £242.00
3. The total award for financial losses is £41,484.67, plus the uplift of 15% =
£47,707.37

Injury to feelings

4. The Tribunal awards the sum of £20,000.00 in respect of the Claimant's injury to feelings, including psychiatric injury.
5. After the uplift of 15% the award is **£23,000.00**

Personal injury

6. The Tribunal has made a separate award in the sum of £15,000 for personal injury to reflect the exacerbation of the Claimant's pre-existing conditions.
7. After the uplift of 15% the award is **£17,250.00**

Uplift for failing to follow the ACAS Code.

8. The Tribunal awards an uplift of 15% in respect of the Respondent's unreasonable failure to follow the ACAS code.

Interest

Interest on financial loss

1. Interest on the Claimant's financial losses is awarded in the sum of **£7039.58** calculated as follows:

Interest from the midpoint of 21 October 2018 to 27 June 2022, 673 days x £47,707.37 (financial loss following 15% uplift) x 8% (£3816.59 per annum, divided by 365) =£10.46 per day. 673 x £10.46 = £7039.58

Interest of injury to feelings

2. Interest is awarded on injury to feelings from 13 August 2018 to 27 June 2022, being 1406 days, on the sum of £23,000 (£20,000 injury to feelings awarded + 15% uplift) X 8%= £1,840 per annum: divided by 365 = £5.04 per day, giving a total of **£7,086.24**

Interest on personal injury award

3. The sum of £15,000 + uplift at 15% = £17,250 x 8% = £1,380 per annum, divided by 365 = £3.78 per day. Interest is awarded from the midpoint (a personal injury award falling within the definition of "other payments" under the Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996. The midpoint between 13 August 2018 and 27 June 2022 falls on day 703. 703 x £3.78 = **£2,657.34**

Grant total award

4. The grand total award after uplift and with interest, payable by the Respondent to the Claimant forthwith, is the sum of **£104,740.53**.

REASONS

1 This Remedy hearing was listed following a Reserved Judgment with Reasons on liability which was sent to the parties on the 24 January 2022. Neither party sought to go behind our findings set out in the liability which was at pages 1-43 of the Remedy hearing bundle.

2 The Remedy hearing bundle included the Claimant's impact statement, schedule of loss, updated schedule of loss, the Respondent's counter schedule of loss, evidence in respect of the Claimant's effort to find alternative work and subsequent job offers, further medical evidence dating from between 2011 to the end of 2019, an updated witness statement from the Claimant, a witness statement from Nicholas Percival on behalf on the Respondent, extracts from Harvey in respect of awards suggested to be comparable, an Occupational Health report dated 2 January 2019 produced in connection with the Claimant's conditional job offer in November 2018 from St Mungo's as a Community Bridge Builder. The Respondent also provided a copy of an Employment Tribunal decision in the case of *Chris v Iceland Foods Limited* from April 2012 which it submitted was a comparable case. The Tribunal read the Claimant's witness statement prepared for the remedy hearing and reread her original statement which dealt with remedy from paragraph 137 onwards, Mr Percival's statement prepared for the remedy hearing, the respective schedules and counter schedules of loss and the OH report **from Dr Easmon [pp.82-84]** before hearing from the witnesses. We were taken to a number of other documents during the evidence.

3 The Claimant and Mr Percival both gave evidence and were cross examined. The parties' submissions concluded at 4pm and there was insufficient time to deliberate and deliver a decision on the 17 June 2022. The Tribunal was able to find a date in Chambers on the 27 June on which we concluded our deliberation and reached this unanimous decision.

Medical evidence

4 The bundle contained extracts from medical notes and a number of medical reports. The Claimant placed particular reliance on the pre-employment occupational health report obtained by the Respondent on the 17 July 2018 [page 58 and 59 of the bundle] and the subsequent report produced by Dr Easmon on the 9 October 2018, [page 82-84] which was provided to the Respondent. Dr Easmon is a Consultant in Occupational Medicine employed by the Respondent's occupational health advisor. The Claimant's letter of resignation was also in the bundle [page 85-87] in it she makes reference to the allegations of disability discrimination and their impact on her health and disabilities.

5 Dr Easmon's report produced for the Respondent during the Claimant's employment states as follows [page 82-83],

'Rafealia has decided to resign from her post. She has found the line management situation untenable for her health. As you know she has multiple medical conditions but it seems to me if she had been managed appropriately these would not have caused significant problems....

Re 3: the work related stress is NOT caused by the patients but her line management..."

the recommendation at the end of the report is as follows,

“I would strongly recommend an exit interview with Rafaelia, yourself, HR and ideally a representative for her. You need to be aware that the line management issue and the associated grievance clearly led to deterioration in Rafaelia physical and mental health. Her physical health was affected with exacerbations of her postural tachycardia, Connective tissue disease and epilepsy.”

6 The Respondent submitted that we should not make any award for personal injury on the basis that the Claimant had not instructed an expert to provide a specific report specially on the impact of the discrimination on her health. No such independent expert was instructed by either party. We note that the Respondent did not at any time, either prior to or at the start of the remedy hearing make an application for a joint medical report, or seek a postponement to allow for this, or seek permission to instruct its own medical expert. In addition to the report from Dr Easmon, who was the Respondent’s occupational health doctor at the time, we have been provided with the Claimant’s medical records from her GP between 2011 and 2019, letters from numerous treating medical specialists, including specialist nurses, physiotherapist, and specialist consultants in a number of disciplines [see pages 143- 246 of the bundle].

7 Having carefully considered the matter, we are satisfied we are able to reach a conclusion based on the evidence that is before us. We note the absence of any application for an independent expert to be instructed. We also note that the expertise of the Claimant’s treating consultants and specialists has not been called into question.

8 In the Claimant’s updated witness statement, she repeats her evidence [paragraph 13] that she chose to resign her employment with the Respondent because of the impact that their treatment of her was having on her health; she outlines [at paragraphs 14 – 21] the impact on her POTS and EDS, and [at paragraphs 22 -24] the impact on her epilepsy. We find that this description of the Claimant’s worsening condition is consistent with the evidence that we accepted at the liability hearing in respect of the impact of the Respondent’s behaviour on the Claimant’s health and on her pre-existing conditions. We also find that the description given by the Claimant in her updated witness statement of the worsening impact on these conditions is consistent with the medical evidence before us in the remedy bundle. We accept the Claimant’s evidence in respect of the symptoms of her pre-existing conditions of POTS, EDS and epilepsy worsening due to the stress she experienced as a result of the Respondent’s discriminatory treatment. We also accept the Claimant’s evidence in respect of the change in the type of epileptic seizures she was experiencing from September 2018 onwards; we find this is consistent with her fit notes submitted to the Respondent in October 2018 and with the related entries in her GP records and physiotherapy notes [for instance at page 222 of the physiotherapy notes], in which the physiotherapist records that on the 30 October 2018, the Claimant reported that her pain had increased a lot recently, she has left her work and was going to through the Tribunal as she feels like they [the Respondent] abused her epilepsy and EDS against her in the workplace. She reported the stress and pain coupled with poor sleep increased her seizures.

9 We accept the Claimant’s evidence. We found the Claimant’s evidence to be credible and are satisfied that it is consistent with the medical evidence. It is also consistent with her evidence in her original witness statement as to the impact on her health and her ability to manage her conditions. We accept that the effects of the discriminatory treatment on her

health also affected her ability to take up alternative work after she left the Respondent's employment.

10 We had accepted the content of the Claimant's resignation letter and the reason for her resignation in the liability judgment, in which we also found that Dr Easmon's recommendation and report was clear, that he was satisfied that it was stress of dealing with the Claimant's manager and how she was treated and not the normal stresses of the job which had affected her health. We are satisfied that the Respondent's approach to the medical evidence in the bundle was selective and the extracts referred to were taken out of context.

11 The Respondent points to the fact that the Claimant had various health issues before her employment with them and submitted that there must be a likelihood that some other life event would have triggered a deterioration in her health, it seeks a discount on any award to reflect the possibility that the Claimant would not have been able to return to work as the result of some other event or reason.

12 We carefully considered the history of the Claimant's conditions set out in her witness statements, in the GP notes and the relevant medical documents dating back to 2011 and 2012, together with the Claimant's employment history. The Claimant is able to point to specific causes or triggers for each of the periods in which she was unable to work; for instance, the impact of her shoulder injury, and then the operation on her spine, the Claimant gave cogent evidence as to how she managed her condition and was able to work in between these respective setbacks.

13 We have already found that the Claimant resigned to protect her deteriorating health and that the impact of the stress that she was experiencing worsened both her POTS and EDS and contributed to her seizures worsening or changing in nature. We note that on 23 October 2018, the UCLH Autonomic Unit Clinical Nurse Specialist [at page 217-218] confirmed that the Claimant has good insight into the effect of stress on her condition.

14 We accept the Claimant's evidence that she was well maintained or well managing her epileptic condition up to the summer of 2018 when she started working for the Respondent and that the change in the nature of her seizures was a new presentation, which her consultant neurologist considered to have potentially neuropsychiatric causes. This is consistent with the referral by her Consultant Neurologist on the 21 November 2018 [page 219] to a Consultant Neuropsychiatrist, in which Dr Heaney reports that the Claimant had a combination of problems which can produce seizures, that she had been well maintained on anti-epileptic drugs and that the recent presentation is more consistent with either syncope or non-epileptic attack which is a complex neuropsychiatric formulation. We find that this is consistent with stress being a contributory factor. We are satisfied on the balance of probabilities that the stress and anxiety did cause or at least significantly contribute to the change in the Claimant's condition.

Financial loss- efforts to find work

15 The Claimant was offered a job with St. Mungo's on the 27 November 2018 but was unable to take this up because of the occupational health assessment that she was fit to do so; she was signed off as unfit to work from December 2018 to June 2020. We accept the Claimant's evidence in respect of the impact of her conditions in this period and her consequent inability to work. The Claimant was receiving ongoing therapy in the period between April and July 2020 in an attempt to address the fear and anxiety that she had

developed in relation to disclosing and discussing her disability at work. We accept her evidence that this was a new development and that previously she had no issue with disclosing and discussing her disability, as we have found she had done with the Respondent at the start of her employment with them.

16 We find that the Claimant's description of her attempts to find work when her conditions stabilised is consistent with her medical notes and with someone who was taking all reasonable steps to attempt to find alternative work. In April 2020, her medical records note that her tachycardia has stabilised, in June 2020 she was offered a position with St Thomas's NHS Foundation Trust which started in September 2020 at a salary of £24,250.

17 The Claimant has produced a Revised Schedule of Loss [110-116] in which she claims for her lost earnings based on what she anticipated or expected her salary to be in the relevant period had she remained able to work. This reflects an increase in her salary from the end of her fixed term contract with the Respondent and then incrementally increasing her earnings in each subsequent role, each year thereafter. We find that this is consistent with her actual employment pattern when she was able to return to work. She first obtained employment at St. Thomas's NHS Foundation Trust at a salary of £24,210 from 23 September to 26 April 2021; followed by employment with Catalyst from 27 April 2021 to 30 January 2022, at a salary of £28,000; then her current employment with MIND from 31 January 2022 to the present day, at a salary of £33,777.00, in a management role in which the Claimant is managing a team. We find on the balance of probabilities, i.e. that it is more likely than not, having taken into account her employment history once she returned to work, that the Claimant would have been able to increase her earnings at the rate predicted in her schedule of loss had there been no gap in her employment. We find that the Claimant was well qualified for the positions for which she applied, evidenced by the fact she was successful in her application to St Mungo's, albeit she was unable to take up the position because of her health.

18 We are satisfied that the Claimant's figures in her schedule of loss are a reasonable estimate of her losses in respect of the job offer in 30 June 2020. This role was with an NHS Foundation Trust and subject to pre-employment checks, we were referred to the length of time taken by the Respondent to carry out its own pre-employment checks and the expectation that the Claimant would wait for those to be completed before starting her job, we find that it is not unreasonable for her to wait between 30 June and beginning of 21 September 2022 to start that employment. We are also satisfied that it is likely that any other job in this sector would similarly have required her to undergo pre-employment checks in any event.

19 We find that the Claimant's calculation in the schedule of loss under past loss of income [p111-113], in the sum of £41,242.67, is an accurate estimation of the amount of lost earnings the Claimant has incurred as a result of the Respondent's discrimination. We are also satisfied that the claim for pension loss in the sum of £242 similarly flows from the acts of discrimination we found. We find the total amount of financial losses are £41,484.67 and that is the sum we award before any uplift.

Injury to feelings

20 The Claimant has brought claims for injury to feelings, psychiatric injury and injury to health. In considering whether to make an award for any such an injury we have taken into account the Claimant's evidence, which we have accepted, in respect of the

impact of the Respondent's discriminatory conduct on her feelings, any additional psychiatric injury and the injury to her health. We are satisfied that it is just and equitable to make an award for financial loss, and for injury to feelings and injury to the Claimant's health.

21 In reaching our decision as to the appropriate award we applied the following principles. We note that injury to feelings awards encompass subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression. (*Vento v Chief Constable of West Yorkshire Police (No.2)* [2002] EWCA Civ 1871, [2003] IRLR 102, [2003] ICR 31.)

22 We found that the Claimant was exposed to discriminatory conduct from the outset of her employment, that is, from the first day until her resignation, and that the consequences of that discriminatory conduct lasted for considerably longer than the length of her employment. We have found that the impact on her was such that 20 months later she was receiving therapy for the anxiety she experienced in discussing and disclosing her disabilities. We have also found that the impact on her health lasted over two years and was such that she had been unable to work from the before the date of her resignation in October 2018 to starting her employment with St Thomas NHS Foundation Trust in September 2020 when her health conditions were improving and better controlled by increase of medication and she was able to return to some levels of activity allowing the Claimant to return to work. The Claimant described feelings of grief at having lost 2 years of her life. We are satisfied that the impact on the Claimant was significant and lasted throughout those 20 months and is still ongoing but to a somewhat lesser degree.

23 We recognise that there is some overlap between injury to feelings and psychiatric damage and there is a risk of double recovery; we have taken this into account when reaching our conclusion as to the appropriate level of award. We have also considered it appropriate to separate out the award for personal injury whilst again recognising there is some overlap.

24 We are satisfied that appropriate figure to take into account the injury to feelings and the psychiatric damage to the Claimant, is in the mid *Vento* band. We have taken into account in considering the impact on the Claimant, her inability to work and to support herself, her anxiety in respect of disclosing her conditions, and her anxiety or fear in respect of future treatment by employers, we are satisfied that the appropriate level of award to reflect injury to feelings and psychiatric damage is £20,000. In doing so we have taken into the account not only the *Vento* guidance but also the authorities of *Ministry of Defence v Cannock* [1994] IRLR 509 and *Prison Service v Johnson* [1997] IRLR 162 and the guidance of Smith J at paragraph 27 of that authority as follows:

- “(1) Awards to injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of vindication at the tortfeasor's conduct should not be allowed to be inflate the award.
- (2) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive award could, to use Lord Bingham's phrase, be seen as the way to untaxed riches.

- (3) Awards should bear some broad general similarity to the range of award to personal injury cases. We do not think that this should be done by reference to any particular type of personal injury award; rather to the whole range of such awards.
- (4) In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.
- (5) Finally, tribunals should bear in mind Lord Bingham's reference to the need of public respect to the levels of award made.

25. We also took into account the comparator case relied upon by the Respondent and the value of that award in today's terms. The injury to feelings award in the case of *Chris* was at £7000 in 2012, which today would be in the region of £10,500 with *Castle v Simmons* uplift and inflation. We are satisfied that this would not accurately or fully compensate the Claimant for the injury that we have found she has suffered and would be too low. The Claimant provided us with a copy of *Tameside Hospital NHS Foundation Trust v Mylott* [2011] where an award was made in £16,000 and uprated to £26,000.

26. We have taken into account the overall award in reflecting on the appropriate level for injury to feelings, within which we are including psychiatric damage, and as indicated above, have made a separate award for personal injury; taking into account the totality of the award, we are satisfied that £20,000 is the appropriate sum for the award for injury to feelings.

Personal injury

27. We find that on starting her employment with GP Care Group, the Claimant's pre-existing conditions of POTS, EDS and epilepsy were well managed with a monitored regime of medication, physiotherapy and structured self-care. We are satisfied that the Claimant passed the occupational health assessment in July 2018 and accept the Claimant's evidence and assessment of Dr Easemon that the treatment of the Claimant which we have found to be discriminatory caused a deterioration in her health. We are satisfied that the Claimant's health conditions went from being in a stable state to being in an acutely poor state after September 2018. At the 4 October 2018, her symptoms are evidently worse [page 115] this is recorded in her GP notes as stress related, where stress at work is also recorded on the 5 September 2018 [page 150].

28. We have found that the stress and anxiety caused to the Claimant as a result of being subjected to the Respondent's discrimination had an impact on her ability to manage her conditions and on the conditions themselves, including leading to the change in nature of her seizures. We have found that the discrimination caused or substantially contributed to the destabilisation of those tonic clonic seizures and reported absent seizures; leading to the referral to a neuropsychiatry as referred to above. We have also found on the balance of probabilities that it was the discriminatory treatment which resulted in a destabilisation of her postural tachycardic syndrome, with dizzy spells and palpitations followed by anxiety [p232 10/6/19 Dr Hagen, Consultant Neurologist]. The Claimant's GP reports as at 1 July 2019 [p237-239] that the Claimant suffered significant deterioration of her chronic health conditions due to the stress she endured in her role [with the Respondent]. The Claimant

was referred to counselling for additional support and referred to neuropsychiatry and cognitive behaviour therapy.

29. We were referred to the Judicial College Guidelines on personal injury awards, the Claimant submitted that an award equivalent to that for moderate chronic pain where the band was between £21,070- £38,500 would be appropriate and submitted that her claim be valued at £25,000.

30. We find that there was an exacerbation of a pre-existing injury and that discount should be given for the underlying condition already being in existence and to reflect the risk that other life events may have otherwise impacted her condition. We have found that there was exacerbation of those pre-existing conditions as a result of the Respondent's discriminatory conduct and that the effect lasted for a considerable period of time, throughout the 20 months in which the Claimant was unable to work and that the Claimant is still experiencing a new type of seizure and requiring increased medication. We are satisfied that the sum of £15,000 should be awarded to reflect the exacerbation of the Claimant's conditions.

Uplift for failure to follow the provisions of the ACAS code.

31. The Claimant relies on the fact that Mr Percival was on the grievance panel, the Respondent suggested that having been informed that he would be on the panel the Claimant did not object. We referred to our previous findings on this point in our liability decision, where we found that it was unreasonable for Mr Percival not to realise that he was effectively the subject of the grievance. We accept the evidence in respect of the Respondent being under-resourced at the time, however the panel consisted of Mr Percival and Ruth Walters and we find the grievance could have been dealt with by Ruth Walters alone. We are satisfied that the effect of having Mr Percival on the panel meant that the Claimant was not provided with a fair or impartial hearing and that as a result the conduct of the grievance fall outside the provisions of the ACAS code. We found that this was an unreasonable failure to follow those provisions and that an uplift should follow. However, we accept that this was not done maliciously, and it was a failure on Mr Percival and Ms Walters part to understand that the complaints were also about Mr Percival's actions. The Respondent points to the failure of the Claimant to appeal. We are satisfied that the Claimant had lost all confidence in the Respondent and resigned as a result of the impact on her health. We accept that she saw no useful purpose in going through an appeal, which would only serve to further impact negatively on her health. We are satisfied that an uplift of 15% should be applied in this case.

32. We note that the holiday pay claim is not pursued nor set out in the schedule of loss. The loss of pension contribution in the sum of £242 was not disputed. We were not addressed in respect of the two items claimed as 'expenses incurred as a result of the dismissal' in the Claimant's Schedule of Loss dated 4 February 2020 and heard no evidence on these, a claim for those expense was not included in the Claimant's Revised Schedule of loss dated 6 June 2022. We have not made any award in respect of those amounts.

Interest

33. We have calculated interest on the amounts that we have awarded after the uplift of 15% has been applied. The awards are as follows:

Loss of earnings

34. The sum of £41,242.67 in respect of lost earning plus the sum of £242 in respect of lost pension contributions. Being the total of 41,484.67. plus, the uplift of 15% which equals £6,222.70, the total sum is therefore £47,707.37. Interest is awarded from the midpoint between 21 October 2018, the date of the Claimant's resignation and 27 June 2022, the date of the calculation of this award, that being a total of 1345 days. The midpoint is therefore 673 days. Interest on the sum of £47,707.37 at 8% per annum is £3816.59 which gives a daily sum of £10.46, x 673 equals £7039.58, which is amount of interest we award on the Claimant's financial loss.

Interest on injury to feelings

35. The calculation is from the date of the injury, 18 August 2018 to 27 June 2022, which is 1406 days. The sum awarded was £20,000 subject to an uplift of 15% in the sum of £3000. The total award after uplift is £23,000. Interest on that sum at 8% is £1840 per annum, giving a daily rate of £5.04. £5.04 x 1046 gives a total sum of £7,086.24 which is the sum we award in respect of interest on injury to feelings award.

Interest on personal injury award

36. The amount awarded is £15,000, which is subject to the uplift of 15% (£2,250) bringing the total sum to £17,250 after the uplift. Interest on that sum at 8% brings the yearly figure of £1380 and a daily rate of £3.78. Interest on all other sums other than injury to feelings under the Employment Tribunal Interest on Awards in Discrimination Cases Regulations 1996 is to be calculated from the midpoint. The midpoint between 18 August 2018 and 27 June 2022 is reached at day 703. The total interest awarded on the personal injury award is £2,657.34.

37. The total awarded are therefore as follows:

- a. Financial losses £47,707.37 (after uplift) plus interest of £7039.58
- b. Injury to feelings £23,000 (after uplift) plus interest of £7086.24
- c. Personal injury £17,250 (after uplift) plus interest of £2,657.34.

38. The grand total of the award is therefore the sum of **£104,740.53** payable to the Claimant by the Respondent forthwith.

Employment Judge C Lewis
Dated: 26 September 2022