EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mrs L McCabe	**v**	**Selazar Limited**

Heard at: Central London Employment Tribunal

On: 3 October 2022

Before: Employment Judge Brown

Members: Mrs S Campbell
Mr D Clay

Appearances:

For the Claimant: Mr J Gidney, Counsel
For the Respondents: Mr K Aggrey-Orleans, Counsel

REMEDY JUDGMENT

The unanimous judgment of the Tribunal is that:

1. **The Respondent shall pay the Claimant a grand total of £125,604.98 in compensation for all her claims, including injury to feelings, past and future loss, interest, an ACAS uplift and grossing up.**

2. **The grand total includes:**

   2.1. **A global injury to feelings award of £20,000 plus £3,235.07 interest.**

   2.2. **An award for past economic loss of £23,972.97 plus £1,938.86 interest.**

   2.3. **An award for future economic loss of £15,345.04.**

   2.4. **Compensation for wrongful dismissal of £7,553.52**

   2.5. **An Unfair Dismissal basic award of £2,412.00**

2.6. **An award for unfair dismissal loss of statutory rights of £376.60.**

2.7. **An award for unpaid expenses of £6,589.61**

2.8. **An award for unpaid holiday pay of £1,625.51**

2.9. **An ACAS uplift of 20%.**

3. **The Claimant mitigated for loss.**

REASONS

Preliminary

1. By Judgment promulgated on 28 July 2022 the Tribunal found that

1.1. The Respondent automatically unfairly dismiss the Claimant under *s103A ERA 1996*.

1.2. The Respondent subjected the Claimant to age discrimination when it dismissed her.

1.3. The Respondent unfairly dismissed the Claimant pursuant to s98(4) ERA 1996.

1.4. It was 30% likely that the Respondent would have dismissed the Claimant fairly in any event.

1.5. No deduction for contributory fault is appropriate.

1.6. The Respondent subjected the Claimant to protected disclosure detriments by doing the following:

1.6.1. On 17th July 2020 the Respondent removed the Claimant as a Companies House Director of the Respondent without due process (s168 Companies Act) being followed;

1.6.2. On 20th July 2020 the Respondent placed the Claimant on garden leave;

1.6.3. The Respondent subjected the Claimant to a disciplinary process without being given the opportunity to respond to any allegations during an investigatory stage;

1.6.4. The Respondent refused the Claimant's request for an EGM made in September 2020 on the grounds that it was 'frivolous, defamatory and vexatious' despite it being supported by the Claimant's whistle-blowing report.

1.6.5. The Respondent issued documentation, in conjunction with PWC in August 2020, to facilitate additional investment within Selazar

which did not include any reference to the Claimant as either a company founder or CFO.

1.7. These detriments formed a course of conduct, or were a series of linked acts, and were all brought in time.

1.8. The Respondent wrongfully dismissed the Claimant.

1.9. The Respondent breached the Claimant's contract or made unlawful deductions from her wages when it failed to pay her expenses of £6,589.61.

1.10. The Respondent failed to pay the Claimant for all her accrued but untaken holiday on termination of her employment.

2. For the purposes of the remedy hearing, the following was agreed between the parties: the basic award at £ 2,421.00; £ 376.60 for loss of statutory rights, subject to a *Polkey* deduction; and the Claimant's annual gross pay at £ 40,250.

3. The following matters were in dispute: the Claimant's net weekly wage – the Respondent contended that is was £522.00, which was the average of her weekly earnings after April 2020. The Claimant contended that that was an incorrect figure, because the Tax Code "BR" had been applied to her wages in that period, which meant that no personal allowance had been applied before deducting tax. The Claimant said that the correct figure for her weekly wage in the 3 months before dismissal was £581.04. Also in dispute were the correct amounts to be awarded for: compensatory loss (the period of loss and mitigation were both in dispute); injury to feelings and aggravated damages; interest; any ACAS uplift.

4. The Tribunal heard evidence from the Claimant. There was a Bundle of documents. Both parties made submissions. The Tribunal reserved its judgment. The hearing was conducted by CVP videolink with no interruptions.

5. The Respondent had applied for reconsideration of the liability judgment. One element of its reconsideration application, relating to the Tribunal's finding that "On 17th July 2020 the Respondent removed the Claimant as a Companies House Director of the Respondent without due process (s168 Companies Act) being followed", had been listed for hearing on 3 October 2022. The Respondent did not proceed with that reconsideration application.

Relevant Facts

6. The Claimant was born on 10 July 1965 and was aged 55 when she was dismissed by the Respondent on 25 September 2020.

7. On 14 October 2016 the Claimant signed an employment contract with the Respondent, appointing her from 1 January 2016 as Finance Director.

8. The Claimant later agreed a new contract of employment,. Pursuant to it, she was employed part-time for 24 hours each week (cl 6.1) and was entitled to 3 months' notice to terminate her contract (cl.15), p60 - 73.

9. The Claimant's contract provided, at clause 9.2, that she was entitled to 28 days' paid holiday each year, p288. It provided that she was entitled to be paid for accrued, but untaken, holiday, on termination of her employment, at 1/260th of her salary for each day of accrued but untaken holiday, clauses 9.4 & 9.5, p64.

10. The Respondent did not pay the Claimant's following expenses on termination of her employment: Accommodation £1,109; Flights £5,371.68; Taxi £108.93.

11. It did not pay her for her accrued but untaken holiday.

12. After April 2020, the Claimant's payslips from the Respondent showed the tax code "BR", p292. This meant that the personal tax allowance of £12,570 had not been applied to her earnings before tax was deducted. The tribunal accepted the Claimant's evidence that is was not unusual during covid as HMRC had staffing issues at the time. The way in which the personal tax allowance ought to have been applied to the Claimant was a £9,500 allowance to her "Angel Accounting" salary and the remainder to her Selazar salary. HMRC did eventually rectify the error and gave the Claimant a tax rebate. The Claimant did not produce the evidence of the rebate. However, the tribunal accepted the Claimant's evidence that the correct net figure for her weekly salary should have been £581.04. The wrong tax code had clearly been applied to the Claimant's pay slips after April 2020. Calculating her weekly wage as an average of those payslips would be erroneous. On the other hand, the Claimant has accounting experience and knows how tax codes are applied and what the correct calculation for net salary should be.

13. Before the Claimant joined the Respondent she ran her own business called Angel Accounting, which provided accountancy services to clients, p5. Her intention had been to grow the Angel Accounting business so that its annual fee income was sustained at £500,000 by the time she was 55 in 2020, so that it would be an attractive business to sell. In 2018 the Claimant had discovered that one of the Angel Accounting employees had committed a fraud while the Claimant was away from the business, so that money was owed to HMRC. As a result, Angel Accounting entered into a CVA in September 2019, to ensure that HMRC was paid the tax owed to it, p143-161. If the CVA was not fulfilled, Directors of the Company, of which the Claimant is one, could be personally liable for outstanding money.

14. After the Claimant was dismissed, Angel Accounting's income dropped significantly for various reasons, including loss of clients during the covid pandemic. The Claimant was concerned that, if the CVA could not be fulfilled, this would cause irreparable damage to her professional reputation. The Claimant had agreed to sell Angel Accounting but withdrew from that agreement after she was dismissed by the Respondent. While the sale agreement had provided for the buyer to start making payments for Angel Accounting in May 2020, the buyer had, in fact, never made any payments.

15. As a consequence of her dismissal by the Respondent, the Claimant became very distressed and lost self confidence to the extent that she often felt unable to leave the house. She felt unable to look for work with another employer. She alternated between periods when she was unable to sleep and periods when she was exhausted. The Claimant did not produce any medical evidence to show that she had been diagnosed with a medical condition, or had received any medical treatment for her low mood,

since her dismissal. However, the Tribunal accepted that she was, and remains, very upset and humiliated by her dismissal. She was visibly distressed when giving evidence about her dismissal and her subsequent feelings of desperation and lack of confidence, even in leaving her home.

16. The Claimant decided to work at Angel Accounting, rather than look for other work, with the aim of returning Angel Accounting to its level of profitability before the covid pandemic. She wished to ensure that the CVA was fulfilled. Angel Accounting has paid the Claimant £9,500.04 per annum for her work. The current financial forecasts for Angel Accounting are that it will be able to pay itself out of the CVA and that by 2026 the Claimant will be able to draw a salary and dividend package from the company of about £73,000 per annum, pp169 -170.

17. The Respondent contended that, from March 2021, the Claimant could have found alternative employment paying a higher salary. The Respondent did not produce evidence of suitable vacancies for the Claimant.

18. The Tribunal accepted the Claimant's evidence that she was indignant and wounded by her discriminatory dismissal, "It was bad enough that the Company instructed Lee Gibbons to look for a younger candidate, but then to be admonished in a meeting with the other executive directors and told to 'Calm down…don't let the hormones get out of control' was deeply upsetting."

19. It was not in dispute that the Selazar pension is the standard nest scheme - the contributions from the employer are 3%. The Claimant's pension was 3% of £40,250.00 or £ 1,207.50 = £ 23.22 per week.

Relevant Law

Mitigation

20. When calculating the compensatory award in an unfair dismissal case, the calculation should be based on the assumption that the employee has taken all reasonable steps to reduce his or her loss. If the employer establishes that the employee has failed to take such steps, then the compensatory award should be reduced so as to cover only those losses which would have been incurred even if the employee had taken appropriate steps.

21. Sir John Donaldson in *Archibald Feightage Limited v Wilson* [1974] IRLR 10, NIRC said that the dismissed employee's duty to mitigate his or her loss will be fulfilled if he or she can be said to have acted as a reasonable person would do if he or she had no hope of seeking compensation from his or her employer.

22. In *Savage v Saxena* 1998 ICR the EAT commented that a three-stage approach should be taken to determining whether an employee has failed to mitigate his or her loss. The Tribunal should identify what steps should have been taken by the Claimant to mitigate his or her loss. It should find the date upon which such steps would have produced an alternative income and, thereafter, the Tribunal should reduce the amount of compensation by the amount of income which would have been earned.

Injury to Feelings

23. The Tribunal is guided by principles set out in Prison Service v Johnson [1997] IRLR 162 in relation to assessing injury to feeling awards. Awards for injury to feelings are compensatory. They should be just to both parties, fully compensating the Claimant, (without punishing the Respondent) only for proven, unlawful discrimination for which the Respondent is liable. Awards that are too low would diminish respect for the policy underlying anti-discrimination legislation. However, excessive awards could also have the same effect. Awards need to command public respect. Society has condemned discrimination because of a protected characteristic and awards must ensure that it is seen to be wrong.

24. Awards should bear some broad general similarity to the range of awards in personal injury cases. Tribunals should remind themselves of the value in everyday life of the sum they have in mind by reference to purchasing power.

25. It is helpful to consider the band into which the injury falls, Vento v Chief Constable of West Yorkshire Police [2003] IRLR 102. In Vento the Court of Appeal said that the top band should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the grounds of race or sex. The middle band should be use for serious cases which do not merit an award in the highest band and the lower band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

26. The Claimant's claim was presented on 27 March 2020. The relevant Joint Presidential Guidance provides, "In respect of claims presented on or after 6 April 2020, the Vento bands shall be as follows: a lower band of £900 to £9,000 (less serious cases); a middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band); and an upper band of £27,000 to £45,000 (the most serious cases), with the most exceptional cases capable of exceeding £45,000." These bands take account of the 10 per cent Simmons v Castle uplift.

Aggravated Damages

27. Aggravated damages are available for an act of discrimination (Armitage, Marsden and HM Prison Service v Johnson [1997] IRLR 162, [1997] ICR 275, EAT).

28. The award must still be compensatory and not punitive in nature, Commissioner of Police of the Metropolis v Shaw [2012] IRLR 291, EAT . In that case, the EAT said that aggravated damages are usually an aspect of injury to feelings. The aggravating factors cause greater hurt, thus increasing damages. The EAT also said that a separate figure for aggravated damages can be given; or it can be wrapped up in one overall figure. The circumstances attracting an award of aggravated damages fall into three categories:

(a) The manner in which the wrong was committed. The basic concept here is that the distress caused by an act of discrimination may be made worse by it being done in an exceptionally upsetting way. In this context the phrase "high-handed, malicious, insulting or oppressive" is often referred to – it gives a good general idea of the kind of behaviour which may justify an award, but should not be treated as an exhaustive definition. An award can be made in the case of any exceptional or contumelious conduct which has the effect of seriously increasing the claimant's distress.

(b) Motive. Discriminatory conduct which is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is, as a matter of common sense and common experience, likely to cause more distress than the same acts would cause if evidently done without such a motive – say, as a result of ignorance or insensitivity. That will, however, only of course be the case if the claimant is aware of the motive in question: otherwise it could not be effective to aggravate the injury. There is thus in practice a considerable overlap with (a).

(c) Subsequent conduct.

29. In HM Land Registry v McGlue UKEAT/0435/11, [2013] EqLR 701, EAT. The EAT said that aggravated damages 'have a proper place and role to fill', but that a tribunal should also 'be aware and be cautious not to award under the heading “injury to feelings” damages for the self-same conduct as it then compensates under the heading of “aggravated damages”'.

ACAS Code of Practice

30. In *Allma Construction Ltd v Laing UKEATS/0041/11* (*25 January 2012, unreported*) Lady Smith suggested that a tribunal should approach an ACAS uplift in the following way: 'Does a relevant Code of Practice apply? Has the employer failed to comply with that Code in any respect? If so, in what respect? Do we consider that that failure was unreasonable? If so, why? Do we consider it just and equitable, in all the circumstances, to increase the claimant's award? Why is it just and equitable to do so? If we consider that the award ought to be increased, by how much ought it to be increased? Why do we consider that that increase is appropriate?' Similar guidance on structured decision-taking here was given by Judge Tayler in *Rentplus UK Ltd v Coulson [2022] EAT 81*, *[2022] IRLR 664*.

31. Guidance on quantifying an award was given by Griffiths J in *Slade v Biggs [2022] IRLR 216*, EAT, at [77] where it was suggested that the ET should pose the following questions:

"i) Is the case such as to make it just and equitable to award any ACAS uplift?

ii) If so, what does the ET consider a just and equitable percentage, not exceeding although possibly equalling, 25%?

Any uplift must reflect “all the circumstances”, including the seriousness and/or motivation for the breach, which the ET will be able to assess against the usual range of cases using its expertise and experience as a specialist tribunal. It is not necessary to apply, in addition to the question of seriousness, a test of exceptionality.

iii) Does the uplift overlap, or potentially overlap, with other general awards, such as injury to feelings; and, if so, what in the ET's judgment is the appropriate adjustment, if any, to the percentage of those awards in order to avoid double-counting?

This question must and no doubt will be answered using the ET's common sense and good judgment having regard to the final outcome. It cannot, in the nature of things, be a mathematical exercise.

iv) Applying a final sense-check, is the sum of money represented by the application of the percentage uplift arrived at by the ET disproportionate in absolute terms and, if so, what further adjustment needs to be made?

Whilst wholly disproportionate sums must be scaled down, the statutory question is the percentage uplift which is "just and equitable in all the circumstances", and those who pay large sums should not inevitably be given the benefit of a non-statutory ceiling which has no application to smaller claims. Nor should there be reference to past cases in order to identify some numerical threshold beyond which the percentage has to be further modified. That would cramp the broad discretion given to the ET, undesirably complicate assessment of what is "just and equitable" by reference to caselaw, and introduce a new element of capping into the statute which Parliament has not suggested."

32. The aim of the uplift is at least partly punitive, *Brown v Veolia ES (UK) Ltd UKEAT/0041/20 (6 July 2021, unreported)*.

Discussion and Decision

Weekly Wage

33. The tribunal has accepted the Claimant's evidence that her correct net weekly wage was, in fact, £581.04 at the time of her dismissal.

Wrongful dismissal

34. Pursuant to the Claimant's contract of employment, she was entitled to 3 months' notice. The correct award for wrongful dismissal was £7,553.52. Calculated as ((£581.04 x 52 = £30,214.08) / 12 = £2,517.84) x 3 = £7,553.52.

Breach of contract

35. The Respondent breached the Claimant's contract or made unlawful deductions from her wages when it failed to pay her expenses of £6,589.61.

Holiday pay

36. It was not in dispute that the Claimant's outstanding holiday amounted to 10.5 days. The Tribunal awarded the Claimant 10.5 days holiday pay: 1/260 of £40,250 = £154.81 = x 10.5 = £1,625.51.

Unfair Dismissal Agreed Sums

37. The basic award for unfair dismissal was agreed at £2,412.00.

38. Loss of statutory rights for unfair dismissal was agreed at £538.00 less 30% = £376.60.

39. The Tribunal made these awards for unfair dismissal in addition to the compensation it awarded for the discriminatory dismissal.

Past losses – failure to mitigate

40. It is for the Respondent to show that the Claimant has not taken reasonable steps to mitigate her loss.

41. The Tribunal accepted the Claimant's evidence that she did not feel well enough to look for work at another employer. It decided that the Claimant acted reasonably in continuing to continue to work for the company which she had set up and owned, when she was lacking in the necessary confidence to work for a third party employer. It was also reasonable for her wish to ensure that the CVA was fulfilled, given the reputational and personal financial risk to her if it was not. She was, at least, partially mitigating her loss by her Angel Accounting salary.

42. There was no evidence that the Claimant would have obtained another job at a particular level of salary had she attempted to find work with another employer. The Tribunal took into account its industrial knowledge and considered that the Claimant might well have had difficulty in the labour market given her age and the circumstances of her dismissal. The Tribunal did not find that the Claimant would have obtained alternative work had she looked for work with another employer between the date of her dismissal and the date of the remedy hearing.

43. The Tribunal therefore awarded the Claimant the whole of her past loss of earnings between the date of her dismissal and the remedy hearing. The relevant period was 105.6 weeks. 105.6 weeks x 581.04 = £61,357.82. The Tribunal deducted the £7,553.52 wrongful dismissal award for the notice period and the £ 22,009.23 she had earned in mitigation. That left £31,795.07. Applying the Polkey deduction X 0.7 = £22,256.55.

44. The Claimant's pension was 3% of £40,250.00 or £ 1,207.50 = £ 23.22 per week.

45. Her past loss of pension was £ 23.22 x 105.6 = £2,452.03. Applying the Polkey deduction x 0.7 = £1,716.42

46. The Claimant's past financial loss was £22,256.55 + £1,716.42 = £23,972.97.

Future loss

47. The Claimant sought 1 year's future loss of earnings. She contends that her salary from Angel Accounting will increased to the level she was earning at the Respondent in one year. The Tribunal decided that there was no evidence that the Claimant would obtain an alternative job any more quickly than a year after the remedy hearing. Her job at Angel Accounting is secure and she will continue to partially mitigate her loss through her Angel Accounting salary.

48. The Tribunal awarded her one year's future loss. 52 x £581.04 = £30,214.08 less £9,500.04 = £20,714.04. Applying the Polkey deduction x 0.7 = £14,499.83 future loss of earnings.

49. Future pension loss is 52 x £23.22 = £1,207.44. Applying Polkey x 0.7 = £845.21.

50. The Claimant's future losses are £14,499.83 + £845.21 = £15,345.04.

Compensation for Discriminatory Dismissal – Interest

51. The Tribunal agreed with the Claimant that it had decided that her dismissal was an act of age discrimination. That was clear from the Judgment: "The Respondent subjected the Claimant to age discrimination when it dismissed her." Interest therefore applied to any awards for economic loss and for injury to feelings arising from the dismissal. The Tribunal did not accept the Claimant's contention that interest should be awarded from the date of the menopause comment. The relevant discriminatory act was the dismissal, so interest was to be applied from that date.

Injury to Feelings

52. The Tribunal accepted that the Claimant had suffered significant injury to feelings as a result of her dismissal and only felt comfortable and safe working in her own business. Her distress was such that she alternated between periods when she was unable to sleep and periods when she was utterly exhausted. She continues to suffer low self esteem and continues to feel unable to look for work elsewhere, 2 years after her dismissal.

53. The Tribunal noted that the Claimant sought separate injury feelings awards for her dismissal and her protected disclosure detriments. It reminded itself of the facts of the detriments: On 17th July 2020 the Respondent removed the Claimant as a Companies House Director of the Respondent without due process (s168 Companies Act) being followed; On 20th July 2020 the Respondent placed the Claimant on garden leave; The Respondent subjected the Claimant to a disciplinary process without being given the opportunity to respond to any allegations during an investigatory stage; The Respondent refused the Claimant's request for an EGM made in September 2020 on the grounds that it was 'frivolous, defamatory and vexatious' despite it being supported by the Claimant's whistle-blowing report; The Respondent issued documentation, in conjunction with PWC in August 2020, to facilitate additional investment within Selazar which did not include any reference to the Claimant as either a company founder or CFO.

54. It noted that many were precursors to her dismissal, or were otherwise associated with removal of the Claimant from the company. It found that the facts of the detriments worsened the circumstances of her dismissal and prolonged the period of her humiliation associated with the dismissal. They made the dismissal and the period leading up to it particularly unpleasant. In the Claimant's evidence to the Tribunal, she did not distinguish between the injury to feelings caused by the detriments themselves and injury to feelings caused by the dismissal.

55. Regarding aggravated damages, the Claimant contended that these were appropriate because the Respondent had misled Mr Ross about the Claimant's actions. It was not clear to the Tribunal when the Claimant had become aware of this; or that this was, in fact, a feature which exacerbated her injury to feelings.

56. The Tribunal recognised that the Claimant felt wounded by the discovery that Mr Gibbons had been asked to recruit a younger candidate, more in tune with a technology start up.

57. The Tribunal considered that it was appropriate to make a global injury to feelings award for the protected disclosure detriments and the age discrimination. All related

to the Claimant's dismissal and removal from the Company. The detriments prolonged the period during which the Claimant was subjected to ill treatment.

58. The Tribunal took into account that the detriments took place over the period of about two months. It took into account the surreptitious and underhand way the Respondent removed the Claimant as a Director of the Respondent Company, which she had helped to set up. It noted that the unfairness of the dismissal procedure was bound to have increased the Claimant's feelings of indignation at her treatment. The Claimant suffered significant injury to feelings which persist 2 years after her dismissal, including feelings of low self esteem and humiliation. The Claimant's ongoing feelings of misery in relation to her treatment were apparent during the Tribunal hearing.

59. The Tribunal considered that an award well into the middle band of Vento was appropriate. At the relevant dates, the middle band was £9,000 to £27,000.

60. The appropriate award for injury to feelings in the case was £20,000.

61. The parties did not contend that Polkey applied to the injury to feelings award. The Tribunal considered that no Polkey deduction was appropriate as the award was for injury to feelings caused by discrimination and protected disclosure detriments.

Breach of ACAS Code

62. The Tribunal decided that the Respondent's breaches of the ACAS Code of Practice were numerous and egregious. It did not provide the Claimant with copies of written evidence, including Mr Burns' emails, before the hearing, in breach of paragraph [9] CoP. Mr Ashworth did not attempt to hold a meeting with the Claimant in breach of paragraphs [11] and [12]. A decision to dismiss the Claimant had already been made, even before a proposed disciplinary hearing, in breach of [18]. The Tribunal decided that the Respondent acted unreasonably in all of these respects.

63. The Tribunal can make an uplift of up to 25% pursuant to *TULR(C)A 1992, s 207A.* The uplift applies to complaints listed in TULR(C)A Schedule A2. These include discrimination, unfair dismissal, detriment, unlawful deductions from wages and breach of contract complaints.

64. In this case, there was a thoroughgoing failure to adhere to a fair process. It was appropriate to apply a higher uplift to reflect the gravity of the Respondent's failure.

65. The Tribunal would have awarded the maximum 25% uplift but was conscious of the danger of double recovery, where some of the injury to feelings award had encompassed the unfairness of the dismissal process.

66. It therefore awarded a 20% uplift to avoid double recovery, but also to reflect the punitive nature of the award for serious breaches of the Code.

67. Taking into account the amount of the award, that percentage uplift (about £15,000 – see further below) was not disproportionate in absolute terms.

68. The Tribunal applied the uplift to the dismissal-related complaints. It did not apply it to the expenses and holiday pay claims because these were not related to the manner and process for the dismissal.

Interest

69. The Tribunal awarded interest on the losses flowing from the discriminatory dismissal – on both the injury to feelings award and the compensation for past economic losses.

70. There were 365 + 365 + 8 = 738 days between the dismissal and the remedy hearing.

71. The calculation was as follows:

72. Injury to feelings: 0.08 x £20,000 x 738/365 = £3,235.07.

73. The total injury to feelings award, including interest is therefore £23,235.07

74. Past economic loss: from the midpoint between dismissal and the hearing date: 0.08 x £23,972.97 x 738/365 x 0.5 = £1,938.86.

75. The total past loss award, including interest, is therefore £25,911.83.

Applying the ACAS uplift

76. The Tribunal applied the ACAS uplift to the dismissal-related elements of the award. Before uplift, these totalled: Injury to feelings, including interest £23,235.07 + past economic loss, including interest £25,911.83 + future loss £15,345.04 + wrongful dismissal £7,553.52 + Unfair Dismissal basic award £2,412.00 + unfair dismissal loss of statutory rights £376.60 = £74,834.06

77. Adding 20%: £74,834.06 x 1.2 = £89,800.87.

Grossing up

78. The total award would therefore be: £89,800.87 + expenses of £6,589.61 + holiday pay £1,625.51 = £98,015.99.

79. It is appropriate to gross up the Claimant's award where it exceeds the £30,000 tax free element, to ensure that the Claimant is adequately compensated*Shove v Downs Surgical plc* [1984] IRLR 17, [1984] ICR 532.

80. The amount by which the award exceeds £30,000 and the amount which therefore needs to be grossed up is £68,015.99.

81. S 406 ITEPA has been amended to provide that, although 'injury' includes psychiatric injury, as from the 2018/19 tax year it does not include 'injured feelings'. For that reason, compensation for injury to feelings counts towards the £30,000 and will be taxable to the extent that it exceeds this sum, *Sir Benjamin Slade v Biggs* [2022] IRLR 216, EAT.

82. In this case, the award itself will take the Claimant into the 40% tax band. When grossing up an award, however, account must be taken of the employee's personal allowance and the standard rate for the year in which the employee received the compensation award, so that an assessment of a flat rate of 40% on the whole of the award would not be correct, *Yorkshire Housing v Cuerden UKEAT/10397/09.*

83. The Claimant's current personal tax allowance will be £12,570. £9,500 will be accorded to her Angel Accounting salary, leaving £3,070 to be applied to the award.

84. Accordingly, £64,945.99 of the Tribunal's award will be taxable.

85. 20% tax will be charged on the first £37,700 of this, and 40% on the remaining £27,245.99.

86. Grossing up £37,700 for 20% tax is 37,700 / 0.8 = £47,125.00.

87. Grossing up £27,245.99 for 40% tax is 27,245.99 / 0.6 = £45,409.98.

88. The total award is therefore £30,000 (tax free) + £3,070 (element of award falling into the personal allowance bracket) + £47,125.00 (element grossed up for 20% tax) + £45,409.98 (element grossed up for 40% tax) = £125.604.98.

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Employment Judge **Brown**

Date: 17 October 2022

SENT to the PARTIES ON

18/10/2022

FOR THE TRIBUNAL OFFICE