



EMPLOYMENT TRIBUNALS

Claimant: Mrs E Worsley

Respondent: The Commissioners for HM Revenue and Customs

HELD AT: Manchester

ON: 26 and 27 September 2022

BEFORE: Employment Judge K M Ross
Ms M T Dowling

REPRESENTATION:

Claimant: Mr K Ali (Counsel)

Respondent: Mr J Hurd (Counsel)

JUDGMENT having been sent to the parties on 28 September, oral reasons having been given on 27 September at the remedy hearing which took place on 26 and 27 September and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Tribunal found in the claimant's favour in a liability Judgment arising out of a hearing held on 11, 12, 15 16,17, 18 and 19 July 2019.
2. There was a significant delay in listing the case for a final remedy hearing. The reasons for this were multi factorial. The claimant is very seriously mentally ill. She has a condition which means she is unable to use modern forms of communication. She does not own a telephone, neither a landline nor a mobile phone, and she has a phobia about opening post. Communication with the claimant even in ordinary times is extremely challenging. She relies on a neighbour putting a note on the windscreen of her car if there is any form of communication for her.

3. She lives in very difficult circumstances. Due to hoarding tendencies caused by her mental illness, her property has fallen into disrepair. At times Royal Mail has failed to deliver post believing (because of the state of the house) there was nobody living there.

4. During the COVID-19 pandemic, communication became even more difficult.

5. Fortunately, throughout this time the claimant has continued to be well represented by her solicitors and very ably at hearings by Mr Ali, counsel.

The Hearing

6. During the delay caused by these various factors, one of the Tribunal members (Mrs Ensell) retired and was unable to sit in retirement. In these circumstances the parties consented to the remedy hearing being heard by a panel of two.

7. Mr Hurd (counsel for the respondent) was mindful both of the duty to his own client but also of his duty to the court: to discharge the overriding objective and cooperate to enable a fair hearing and to place the parties on an equal footing.

8. With this in mind, and with the expertise and assistance of these two counsel, the Tribunal was asked to give a judgment on three matters:

- (1) Any award for injury to feelings;
- (2) Any award for personal injury;
- (3) To make a decision as to whether interest should be awarded at the judgment rate for the entire period or whether given the hardship to the respondent interest should be awarded during a different, shorter, period.

9. We had the benefit of a medical report from Dr Latif, a Chartered Psychologist, jointly instructed by both parties and information from the claimant's GP. We had a small file of documents for this hearing together with a statement from the claimant, and we heard from the claimant.

10. We had the benefit of submissions from both counsel.

The Facts

11. We find the following facts.

12. The claimant has a serious mental illness. She has had a difficult life and work was the one constant factor in her life. Unfortunately, when the claimant was dismissed by the respondent this appears to have been a catalyst for a serious deterioration in her mental health. The claimant is effectively a recluse. She has no contact with her family and no longer participates in any hobbies. She is a hoarder, and her house is in a state of extreme disrepair. She struggles to look after herself. There is no hot water. She told us she is dreading the winter.

Injury to Feelings

13. At the outset of our deliberations we reminded ourselves of the well-known guidance in *Prison Service & Others v Johnson* [1997] ICR EAT:

- Awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party.
- An award should not be inflated by feelings of indignation at the guilty party's conduct.
- Awards should not be so low as to diminish respect for the policy of discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches.
- Awards should be broadly similar to the range of awards in personal injury cases.
- Tribunals should bear in mind the value in everyday life of the sum they are contemplating.
- Tribunals should bear in mind the need for public respect for the level of the awards made.

14. We have had regard to the difficult circumstances in which the claimant was raised but we reminded ourselves that despite her mental health difficulties she managed to work for the respondent from the age of 16 in 1970 until her employment was terminated by the respondent in 2015, giving her extremely lengthy service of over 40 years in a job that she valued and also contact with colleagues and normal everyday life. Dr Latif stated: "the claimant considered "work to be very much part and parcel of her identity" and noted she had 45 years continuous service with the respondent. p207. We also reminded ourselves that in our liability judgement at paragraphs 315 and 316, we found that the claimant would have worked until retirement, had she not been subject to discrimination by the respondent.

15. We reminded ourselves we found the claimant's dismissal was discriminatory, as was a failure to move the claimant to a different team from the autumn of 2014 onwards until her dismissal on 13 July 2015.

16. We had regard to the detailed evidence the claimant provided by the claimant in her statement for this hearing and her oral evidence. We find that she remains very unwell psychologically and entirely accept the evidence she gave.

17. We have had regard to the appropriate Vento bands for the relevant period. Mr Hurd helpfully provide the 2015 bands, with the appropriate adjustments for inflation at paragraph 86 of his outline submissions.

18. Mr Ali submitted that this was a case that justified one of the highest awards and sought a figure in the higher band but taking into account the claimant was also seeking a personal injury award, sought £30,000 Mr Hurd felt that the more appropriate award would be within the mid band, reminding us that the claimant had

a pre-existing mental health condition, that the respondent had apologised and that the Tribunal had made no specific finding of bullying by manager LM. He submitted £18,000 was an appropriate award for injury to feelings.

19. The Tribunal has had regard to the fact we found that the claimant would have worked to retirement. We took into account that Dr Latif stated it was plausible she would have worked beyond retirement. We took into account the exceptional circumstances of this case-notably the fact that the claimant had spent almost her entire working life for the respondent, that her work was the one constant in her life and that her employment being terminated by the respondent meant that she lost those further years and spiralled into the difficult situation she finds herself in today.

20. The Tribunal reminded itself that we must be careful of double recovery if we are minded to make an award for personal injury too. We found, taking all the evidence into account, that an appropriate award for injury to feelings is £20,000.

Personal Injury

21. The Tribunal reminds itself that an award for personal injury should be made on tortious principles. We remind ourselves that we must take the victim as we find her. We remind ourselves of the eggshell skull principle. We remind ourselves that although many people would not have reacted in the extreme way that the claimant did, with such a deterioration in her mental health on the termination of her employment, we must have regard to the claimant's evidence and the psychologist's report in terms of the nature of the claimant's mental illness and the effect the discriminatory act of dismissal had upon her.

22. We have had regard to the Judicial Studies guidelines. It was not disputed that the claimant was in the "moderately severe band". Mr Ali suggested an award of £30,000. Mr Hurd submitted £20,000 was appropriate.

23. We have noted Dr Latif's diagnosis of depression with associated anxious mood. We considered carefully and took into account the evidence of Dr Latif in terms of prognosis at paragraph 3 and 4 at p207, where she stated she did not see the claimant's depression returning to pre dismissal levels and explained why.

24. We accept Mr Hurd's point that other allegations of alleged disability discrimination did not contribute to our final decision and take into account that some of the more distressing features of the claimant's mental illness were already apparent before the respondent dismissed her, such as her hoarding tendencies and difficult relationship with her son. However we accept the claimant's evidence that her relationship with her son has been destroyed since her employment ended.

25. Having regard to tortious principles and having regard to the medical evidence provided by the expert who states the claimant's current mental illness was triggered by the respondent's discriminatory conduct, and having regard to the personal injury guidelines, we consider an award of £25,000 is appropriate.

26. In reaching this decision we have taken into account that the Psychologist stated "her work at HMRC over the years will have been a crux to her coping well for long periods of time ,as this will have allowed her to feel valued, responsible and significant." She went on to state "the stress from the discrimination she is found to

have experienced, coupled with her dismissal will have led Mrs Worsley's available resources to collapse around her, leaving her little in the way of coping strategies." Dr Latif also stated "The work at HMRC was not just a job for her, it formed part of her life and identity as a person".

27. Accordingly we find that although the claimant had pre existing mental health difficulties, the failure to transfer her and her dismissal were the triggers for the serious illness she has suffered since 2015 and still has today.

28. When making these awards we have been mindful that this is a very serious case. In these circumstances where the claimant has a recognised personal injury and has also suffered great distress at what happened, we find it is appropriate to make an award both for injury to feelings and personal injury but we have taken into account the amount of each award and the overall total, when making our decision.

Interest

29. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI1996/2803 governs the powers relating to interest on awards in discrimination cases. Under regulation 2(1) a Tribunal is required to consider whether to award interest even if the claimant does not specifically apply for it. The parties can agree the amount of interest to be award (regulation 2(2)).

30. In this case the parties asked us to determine the period during which interest should be applied. The respondent suggested these were circumstances where the respondent would be caused serious injustice if interest was payable over the full period.

31. Once we had made the determination, helpfully the parties agreed the interest payable and that was reflected in our judgment.

32. Regulation 6(1) deals with how interest is awarded.

33. Regulation 6(3) is relevant:

"Where the Tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2), it may –

- (a) Calculate interest or, as the case may be, interest on the particular sum for such different period; or
- (b) Calculate interest for such different periods in respect of various sums in the award as it considers appropriate in the circumstances having regard to the provision of these Regulations."

34. The Tribunal reminds itself that the only discretion allowed to us is whether or not to award interest at all and, where we have decided to award interest, in the determination of the length of the period for which interest is payable. It is a limited discretion. It is an exception to the usual rule in circumstances where "serious

injustice” would be caused by awarding interest for the specified period that we may make a calculation for a different period or periods as we consider it appropriate in the circumstances.

35. We also remind ourselves of the rate of interest, which is at regulation 3(2):

“The rate of interest to be applied shall be in England and Wales the rate fixed for the time being by section 17 of the Judgments Act 1838.”

36. There is no dispute that the present rate under the Judgment Act is 8%.

37. There is no doubt that there has been a delay in this case reaching a remedy hearing. However, as we outlined at the start of this Judgment, the reasons for that are multifactorial. There was some delay at the very beginning before the liability hearing took place in July 2019 because there was a problem with the Tribunal administration and the location of the claim form which caused a significant delay. Communication with the claimant also caused delay, due to her mental ill health. However, the delay between our Liability Judgment in August 2019 and this hearing in September 2022 was caused primarily by the very serious mental illness of the claimant and the nature of it. That is not a criticism of the claimant. She is unwell. It is not her fault that she is unable to use modern means of communication and struggles to respond to post.

38. The other factor was the COVID-19 pandemic which, in conjunction with the nature of the claimant's illness, caused further delay. The pandemic made communication difficult for everyone. Initially all cases were paused during the national lockdown. When the Tribunal reopened and cases progressed, it was particularly difficult to contact the claimant. Her relationship with her son had broken down by this time and she was extremely isolated, making it difficult for her solicitors to obtain instructions.

39. A further key problem arose when the expert who, with the diligence of the claimant's solicitor and the legal representative for the respondent, was an agreed expert, stated that it was only possible for consultation to take place via remote video link. That is not a criticism of the medical professional. It is understandable in the circumstances of the pandemic that a consultation should take place remotely. It became the norm in many fields. However, for this claimant with her particular mental health issues and her problems with modern communication it was not appropriate. There was then a further delay when arranging when arranging a face-to-face consultation.

40. We turn to consider “serious injustice”. We remind ourselves that is an exception to the usual rule. We considered the circumstances. We do not find the fact that that the claimant is suffering mental illness is exceptional. She suffers from depression and anxiety with associated obsessive features as identified both by the Psychologist and the claimant. It is a serious form of mental ill-health but mental illness, even serious mental illness is not uncommon and we have no evidence to suggest that that was exceptional.

41. We find that the circumstances of the Covid 19 pandemic are exceptional. None of us have lived through a pandemic in our lifetime.

42. However, we turn to the “serious injustice”. The “serious injustice” must refer to the paying party. We appreciate that the respondent is a public body which in these straightened financial circumstances must use their resources carefully and appropriately. However, we are not satisfied that serious injustice will be caused to HMRC if interest is awarded in the usual way, over the usual period identified in the Regulations.

43. At this point we step back and consider: what was the purpose of these Regulations? The purpose of awarding interest over the period identified by the Regulations is to ensure that a claimant who suffered discrimination is not disadvantaged by delay in receiving their compensation.

44. The real rogue element here is the rate of interest. Although we are now living in very uncertain economic times and interest rates are rising, the Court judgment rate has been at 8% for very many years and this has not reflected commercial interest rates which have been far lower than that for a very long time. However, we do not determine the rate of interest under section 17 of the Judgments Act 1838 and the Regulations give us no power to vary the rate of interest. If the effect of the high rate of interest payable under section 17 of the Judgments Act 1838 could amount to a reason considered to be a serious injustice to the respondent, then the Tribunal would be requested to vary the period for which interest is to be awarded on a regular basis but that is not the practice and we have not been referred to any case law to suggest to that it would be appropriate.

45. Therefore we find much of the delay in this case was caused by the nature of the claimant's severe mental illness and we are not satisfied that serious hardship will occur if the respondent pays the interest for the full period.

46. By contrast, if we depart from the usual period of awarding interest laid down by the Regulations, this will cause injustice to the claimant.

47. Finally I apologise for the delay in providing these written reasons which were requested promptly. The delay has been due to the pressure of other judicial business.

Employment Judge K M Ross
Date: 9 November 2022

REASONS SENT TO THE PARTIES ON
14 November 2022

FOR THE TRIBUNAL OFFICE

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