



EMPLOYMENT TRIBUNALS

Claimant: Miss L Whitehall
Respondent: Ulverscroft Group Ltd
On: 26 October 2022
Before: Employment Judge Ahmed
At: Leicester (in chambers)

JUDGMENT ON REMEDY

The unanimous decision of the Tribunal is that the Respondent is ordered to pay to the Claimant £13,621.03 (net) as damages, compensation and interest for unlawful age discrimination.

REASONS

1. This decision deals with the issue of remedy following a liability hearing on 3 -7 October 2022 at which the tribunal found that the Claimant was directly discriminated against because of her age. Unfortunately, there was insufficient time at the end of that hearing to determine the issue of remedy. The parties were able to conclude the evidence and submissions. The determination of the remedy issue was therefore adjourned. It took place at a meeting of the Tribunal on 26 October without the parties.

2. Thankfully many of the issues in relation to remedy are no longer in dispute. What remains contentious is now confined to the following areas :

2.1 The amount of compensation for future loss, if any, from 12 October 2020 (when the Claimant found temporary employment with the DWP) to an appropriate date;

2.2 Whether the Claimant should be awarded damages for loss of a car allowance;

2.3 The amount to be awarded for injury to feelings;

2.4 Whether there should be an award for aggravated damages;

2.5 Whether the compensation (other than injury to feelings) should be reduced to reflect the likelihood of the Claimant losing her employment in any event under the principles set out in **Chagger v Abbey National plc and another** (2010) IRLR 47.

THE FACTS

3. The facts for the purposes of the remedy issue are not in dispute unless otherwise stated. Following the dismissal, which was effective from 31st March 2020, the Claimant was paid salary by way of notice to the end of April 2020. Although there is no payslip in the bundle for April it is now agreed the Claimant was paid to the end of that month.

4. The Claimant made a number of applications for new employment from April 2020 onwards. There is no criticism by the Respondent of her efforts to mitigate loss from the date of dismissal to the point she found temporary employment with the DWP on 12 October 2020. Her employment with DWP became permanent on 29 July 2021 though it was not marked by any pay increase. The Respondent does not dispute that the Claimant is entitled to loss of earnings from the date of dismissal to 12 October 2020.

5. From there however the positions of the parties diverge. The Claimant seeks loss of earnings from 12 October 2020 to the date of this hearing and beyond giving credit for the income she received. The Respondent's position is that any award for loss of earnings should cease from 12 October 2020 when the chain of causation was broken and when the Claimant stopped looking for better paid employment.

6. On the evidence we are satisfied the Claimant ceased her search for any alternative or better paid employment after she became employed by the DWP on 12 October 2020. There is no evidence of any job applications made from that date unlike the period prior to that when the Claimant made a large number of applications and has provided evidence of them in the bundle. The Claimant accepts in oral evidence that she did not make any job enquires after she became a permanent employee in July 2021 but we are satisfied that the Claimant made no applications for better paid employment from 12 October 2020. She has therefore failed to mitigate her loss beyond that point. In our judgment it is just and equitable not to make any further award for loss of earnings beyond 12 October 2020.

7. In terms of the figures for the relevant period these are agreed. The Claimant was earning £543.52 per week when employed by the Respondent. She suffered loss of earnings from 1 May 2020 to 12 October 2020 being a period of 23 weeks. This comes to £12,500.96 (23 weeks x £543.52).

8. The Claimant also suffered pension losses during that time. The amount of the pension loss is agreed at £20.89 per week which comes to £480.47 (£20.89 x 23).

9. The Claimant was provided with a company car for her work. The Claimant's unchallenged evidence was that she was also entitled to the personal use of the car. The Claimant seeks a loss of £5,000.00 per annum for the loss of benefit. The Respondent has not offered any alternative figures to challenge that amount. We accept the Claimant's figures as reasonable. The loss in relation to the benefit of a car for personal use for the relevant period is £2,211.45 (23 x at £96.15).

10. We now turn to the award for injury to feelings. The general principles that apply to assessing such awards were set out in **Prison Service v Johnson** [1997] IRLR 162. The principles are as follows: injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator. Feelings of indignation at the discriminator's conduct should not be allowed to inflate the award. 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 awards could be seen as the way to untaxed riches. Awards should bear some broad general similarity to the range of awards in personal injury cases. We are required to account for the value in everyday life of the sum in question by reference to purchasing power or by reference to earnings. Tribunals should bear in mind the need for public respect for the level of awards made. The matters compensated for by an injury to feelings award encompass subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.

11. In **Vento v Chief Constable of West Yorkshire Police (No2)** [2003] IRLR 102 the Court of Appeal identified three broad bands of compensation for injury to feelings and gave the following guidance:

11.1 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 sex or race. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.00;

11.2 The 'middle band' is applicable where cases do not merit an award in the highest band;

11.3 The 'lower band' is appropriate for less serious cases such as where the act of discrimination is an isolated or one-off occurrence.

12. The Second Addendum to the **Presidential Guidance** (which updates the amounts each year in line with inflation) sets out the following figures which apply to cases after April 2019 but before April 2020. In line with the Guidance the updated **Vento** bands are as follows:

a lower band of £900.00 to £8,800.00 (less serious cases);

a middle band of £8,800.00 to £26,300.00 (cases that do not merit an award in the upper band);

an upper band of £26,300.00 to £44,000.00 (the most serious cases)

13. The Claimant in this case seeks an award in the middle band of **Vento**. The Respondent argues that this case falls in the lower band and even then near the bottom of the lower band. It suggests a sum of £3,000.00

14. In coming to our decision we have had regard to the fact that the Claimant's distress would have been exacerbated by the fact that her former husband, and the father of her sons, had died around the same time as the act of discrimination. This would have added to the feelings of distress and upset. The Claimant always

believed that her dismissal was an act of age discrimination and it has taken lengthy proceedings for her to be vindicated. Her allegation was not treated seriously by the Respondent when she complained. She lost her job and had to undergo a period of unemployment which would obviously have been upsetting.

15. On the other hand we note that the Claimant did not seek advice from her GP as to any medication for stress or associated symptoms nor did she apparently need or seek counselling. It was a single act, albeit a serious one of losing one's employment, rather than any lengthy long-term campaign. The Claimant was able to find alternative employment before too long.

16. In all of the circumstances we consider that this case falls within the lower **Vento** band and furthermore around the middle of that band. We consider the appropriate level of the award to be £5,000.00

17. The Claimant is of course entitled to interest on injury to feelings. The applicable rate of interest is 8%. It was 940 days from the date of the act (which was 31 March 2020) to the date of the remedy determination. The daily rate of interest is £1.09. The amount of the interest is therefore £1,024.60.

18. We do not consider that this is a case where the Respondent has acted in a high-handed or oppressive manner. It is not therefore appropriate to make an award for aggravated damages.

19. We do however find that there was at least a 50% chance that if age discrimination had not been a factor that the Claimant would have lost her employment in any event. We heard evidence from the Respondent, which we accept, that the business was suffering losses and these needed to be stemmed through dismissal of staff. The Claimant was one of three people at risk but in reality the state of affairs was such that it was either herself or Ms Coetzer who were likely to lose their employment. The decision came down to the Claimant and Ms Coetzer. Had age discrimination not been a factor there was at least a 50% chance the Claimant would have been chosen for redundancy. We therefore consider it appropriate to reduce the award (other than injury to feelings) by 50% under the principles established in **Chagger**.

20. A summary of the award is therefore as follows:

Loss of earnings.....	£12,500.96
Loss of pension.....	£480.46
Loss of car allowance.....	£2,211.45
Total.....	£15,192.88
Less 50% reduction.....	£7,596.44

Add award for Injury to feelings.....£5,000.00

Interest on injury to feelings.....£1,024.60

Total award.....£13,621.03

Employment Judge Ahmed

Date: 8 November 2022

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