



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Thomas  
**Respondent:** Rendall and Rittner Ltd  
**Heard at:** East London Hearing Centre  
**On:** 14 November 2022  
**Before:** Employment Judge Burgher  
**Members:** Ms S Harwood  
Ms P Alford

## Appearances

**For the Claimant:** Ms L Dixon Williams (Partner)  
**For the Respondent:** Did not attend

*This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.*

## REMEDY JUDGMENT

The Respondent is ordered to pay the Claimant the sum of £12,566.31 in respect of his successful unlawful victimisation claim.

## REASONS

### Issues

1. The matter was listed for a remedy hearing. The issues before the Tribunal for remedy were limited to injury to feelings, appropriate interest and ACAS uplift if appropriate.

Non-attendance by the Respondent

2. The Respondent did not attend. The Tribunal clerk tried to contact the Respondent's representatives at the start of the hearing to enquire but was not able to get in contact. The Tribunal clerk then contacted the Respondent themselves who informed the Tribunal that they did not know that a remedy hearing was taking place.

3. The Tribunal considered the relevant correspondence, namely:-

3.1 On 21 September 2022 the Claimant produced an updated schedule of loss.

3.2 On 21 September 2022 the parties were issued with notice of postponement and informed that the remedy hearing by video was relisted to take place on 14 November 2022.

3.3 On 21 September 2022 the Respondent applied to stay proceedings pending EAT preliminary hearing and to accommodate the Respondent's advocate who was in another hearing on the 14 November 2022.

3.4 On 23 September 2022 the Respondent produced its counter schedule of loss with narrative justifying sum specified.

3.5 The Tribunal did not reply to the Respondent's application for a stay. The Respondent did not resubmit the application for the Tribunal to consider as a matter of urgency.

4. As such the hearing on 14 November 2022 remained listed. The Respondent did not attend.

5. The Tribunal considered the most appropriate way to proceed. Ms Dixon Williams, for the Claimant stated that the remedy hearing should continue. She stated that the appeal was not relevant to the calculation of the sum. She stated that the Respondent was aware of the Claimant's claim for remedy and had provided a counter schedule of loss.

6. Following adjournment, the Tribunal concluded that it was in accordance with the overriding objective to continue with the remedy hearing pursuant to rule 47 of the Employment Tribunal rules which states:

*47. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.*

7. Whilst the Tribunal did not respond to the Respondent's application for stay, it was not entitled to assume that the hearing would not proceed as listed without confirmation. The absence of a renewed request from the Respondent for a stay/postponement aggravates the problem of their non-attendance.

8. It was proportionate to proceed with the remedy hearing, the Respondent had specified its case in remedy in its counter schedule of loss dated 23 September 2022 and the Tribunal could fully consider that as part of the remedy assessment.

9. The Tribunal accepted Ms Dixon Williams's submission that the EAT proceedings were separate to remedy. If the appeal subsequently succeeds the award would fall away, if not then the remedy awarded would be determined. We did not consider that further delay was appropriate or warranted in these circumstances.

#### Claimant's evidence

10. The Claimant gave evidence under oath and adopted the statements made in his schedule of loss that the Respondent had an opportunity to respond to. The Tribunal addressed the areas of dispute raised by the Respondent's counter schedule of loss by questioning the Claimant on the Respondent's position.

11. After the Claimant had finished giving evidence, the Tribunal was handed an email sent at 10.35am from Mr Bennison on behalf of the Respondent. This stated:

Thank you for your call earlier regarding the attendance of my colleague, Ms Omotosho.

Regrettably, Ms Omotosho has been taken ill and spent the weekend in her local hospital suffering breathing difficulties, related to COVID, complicated by pregnancy.

Ms Omotosho was discharged from hospital yesterday (Sunday) but is still unwell and unable to deal with this hearing.

In these unforeseen circumstances and given that there is no colleague available to represent the Respondent fully or at all, then the Respondent respectfully seeks a postponement of this Hearing under Rule 22 and 30 of the Rules of Procedure 2013, in that given the position of the case and the fact that 1) there is an outstanding Remedy Hearing and 2) an appeal progressing in the EAT then it is paramount to the interests of justice and the Respondent's position, that a postponement be granted to either allow for the recovery of the Advocate with detailed knowledge of the case, Ms Omotosho or in the alternative, another Advocate to be fully briefed in order to be of assistance to the Tribunal.

The Respondent and Citation apologise for this late application and the inconvenience it has caused but this was totally unforeseen.

This email has been copied to the Claimant's Representative under Rule 92 of the Rules of Procedure 2013.

12. The Tribunal reviewed the position following this email and considered it was appropriate to proceed. Specifically:

12.1 There was no reference to whether an alternative advocate was being lined up to cover for Ms Omotosho's stated unavailability specified in the Respondent's email on 21 September 2022

12.2 The remedy issues did not require 'detailed knowledge of the case', the issues were limited and the Respondent's position was articulated in its counter schedule of loss dated 23 September 2022.

13. In these circumstances we concluded that the overriding objective and interests of justice required the remedy hearing to be considered without further delay.

## **Facts**

14. The Tribunal has found the following facts from the evidence before us.

15. The Claimant gave evidence, and we accept that the delay in the disciplinary and grievance outcome to him had bad effect on his family life and his health. Whilst there was no medical evidence before us we accept that the uncertainty impacted on his mental health and that he was prescribed antidepressants.

16. The Claimant stated, and we accept, that he found it difficult to sleep and his relationships with his wife and newborn baby were affected as he was anxious and stressed. Although the Claimant was on full pay during the period he was worried about potential consequences that could affect his employment and future earning capacity.

17. The Claimant also lost confidence in work processes. This was his first job in the UK and he expected the rules to be followed.

18. At paragraph 56 of our judgment on liability we found that the Claimant was chasing the answers to his concerns about the grievance outcome from 14 November 2020 and this was not responded to. The Claimant had to chase again on 21 January 2021 and finally got response on the 27 January 2021. We mention this because the Claimant's evidence before us he stated that he tried to engage with the company on several occasions and they refused to speak with him. We did not accept that the Claimant's evidence in this regard was consistent with our earlier findings in relation to how often the Claimant had sought to contact the Respondent to progress the outcome of his disciplinary and grievances.

19. In relation to the ACAS code the Claimant stated that it was unreasonably delayed.

20. As mentioned the Tribunal raised the Respondent's contentions with the Claimant during his evidence, specifically that the Claimant had a low level of detriment for the delay, and if it was communicated sooner the impact would have been greater to him. The Claimant did not accept these propositions.

## **Law**

21. The Tribunal considered compensation in accordance with the provisions of section 124 of the Equality Act 2010.

22. In the case of Vento v Chief Constable of West Yorkshire Police [2003] IRLR 102, CA Mummery LJ gave guidance at paragraph 65 (figures amended to give effect to the Presidential Guidance on injury to feelings: 3 Addendum 27 March 2020, as follows)

- i) The top band should normally be between [£27,000 and £45,000]. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed [£45,000].
- ii) The middle band of between [£9,000 and £27,000] should be used for serious cases, which do not merit an award in the highest band.
- iii) Awards of between [£900 and £9,000] are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

23. The Tribunal also considered the ACAS code of practice on disciplinary and grievances.

24. In relation to the ACAS code, there was poor communication in relation to the progression of the ACAS code that provided that employers and employees should deal with issues promptly and should not unreasonably delay meetings, decisions, or confirmations. Employees should be allowed to appeal against reasons made.

## **Conclusions**

25. We compensate for the injured feelings suffered and not for the act that was done. The act that was done is as set out in paragraph 97 of the liability judgment. When considering the appropriate sum for injury to feelings the Claimant sought an award of £15,000 and a further sum of £4000 as additional compensation (for ACAS uplift).

26. The Respondent's counter schedule contended that sum of £1000 feelings was appropriate. The Tribunal concluded that the Respondent had approached this matter from the wrong perspective, focusing only on the delay in communicating the outcome. However, the focus of the Tribunal is to compensate the Claimant for the injured feelings that flow from this. We accept that the uncertainty that flowed from the delay impacted his health, his family life and his confidence in working processes. Whether his injury to feeling would have been greater is outcome (of dismissal) been

communicated in February 2021 earlier does not mean the Claimant has not established injury to feelings resulting to what occurred.

27. When considering the legal principles, the Tribunal considered that the facts place this case at the bottom of the mid band of Vento band. We conclude that an award of £9000 is appropriate for injury to feelings. Interest of £1927.20 is therefore payable on injury to feelings as calculated in the table below.

28. When considering any ACAS adjustment the Tribunal conclude that the Respondent unreasonably delayed in the communication the outcomes the Claimant. We concluded that this was a serious failing especially given the Respondent's grievance procedure at paragraph 6.1. We balance this failing against the fact that there was not a total failure to address the ACAS processes and the fact that the Claimant had failed to pursue his internal appeal. We conclude that the appropriate amount for ACAS uplift is 15%. This is a further sum of £1,639.08 as calculated in the table below.

**1. Non financial losses**

Injury to feelings	9,000.00
Plus interest @ 8% for 977 days	1,927.23
<b>Total non-financial award</b>	<b>10,927.23</b>

**2. ACAS uplift**

15% x £10,927.23	1,639.08
<b>Total</b>	<b>£12,566.31</b>

29. The Respondent is therefore ordered to pay the Claimant total sum of £12,566.31 in respect successful claims.

**Acting Regional Employment Judge Burgher  
Dated: 21 November 2022**