



EMPLOYMENT TRIBUNALS

SITTING AT: CROYDON (by CVP)

BEFORE: EMPLOYMENT JUDGE MORTON
Ms C Chaudhuri
Ms N Beeston

BETWEEN:

Mr R Knight

Claimant

AND

Orchard Hill College Academy Trust Respondent

ON: 16 September 2022 and 7 February 2023

Appearances:

For the Claimant: No appearance

For the Respondent: Ms K Eddy, Counsel (on 16 September 2022 only)

REMEDY JUDGMENT

It is the unanimous judgment of the Tribunal that the Claimant is entitled to £2500 by way of injury to feelings for whistleblowing detriment. That sum is payable by the Respondent forthwith.

Reasons

1. The claim in this case had been listed for a three-hour remedy hearing, following promulgation of a unanimous liability judgment of Employment Judge Hyams Parish, Ms Christofi and Ms Edwards dated 7 April 2022, in which the Claimant

succeeded on one allegation of whistleblowing detriment. Following the promulgation of the judgment, Judge Hyams-Parish was appointed to the Circuit Bench and no longer sits as an employment judge. Accordingly, it was necessary for the remedy hearing to be heard by a different panel from that which heard the liability part of the hearing.

2. On the morning of the first day of the hearing the Claimant submitted an application for postponement with some medical evidence in support. He said "I am unable to attend a hearing at this time. I am under emergency mental health services and have been homeless since last month. I ask for urgent adjournment. I have also made an appeal earlier in the year following the decision that is with the EAT. Any decisions would prejudice my appeal."
3. For reasons set out in the case management orders made on the same day, and sent to the parties on 20 September 2022, the Tribunal decided to adjourn the hearing to allow the Claimant a further opportunity to present his case as regards remedy, either in person or by way of written submissions. It was made clear that if the Claimant did not take that opportunity the Tribunal would reconvene in chambers, without the parties present, to reach a decision on the basis of the evidence available from the liability hearing and the parties' written submissions (if any).
4. In the event nothing further was heard from the Claimant following the adjourned hearing on 16 September. The Tribunal accordingly reconvened on 7 February 2023 to decide how much to award the Claimant by way of remedy.
5. In order to reach its decision, the Tribunal had regard to paragraphs 144 and 168-9 of the Tribunal's liability judgment, which stated as follows:

PD14: The claimant's letter to Heath Mason dated 3 April 2017

The claimant wrote to Mr Mason, copying it to Ms Hammond-Smith, Mr Cole (Chair of Brantridge Governing Body) and David Hope (Chair of Trust Board) complaining of the respondent's failure to respond to his formal grievance of 8 March 2017. The letter included the following extracts:

I am frustrated that I have suffered this injury despite repeatedly raising my concerns over safety since last academic year that has repeatedly not been adequately addressed. I have suffered months of assaults without adequate staffing levels and repeatedly been assigned untrained supply staff that were unable to support safe working practice as highlighted in my formal grievance, as was the inadequate post incident access to the nurse and lack of debriefing to ensure staff are safe to continue working.

Disappointingly my injuries occurred after raising a formal grievance on 08/03 and meeting with yourself and Jayne Hammond-smith HR Director on 10/03, when I was assured that my Public Interest Disclosures over Safety, Safeguarding, Teaching practice and Staff conduct would be addressed. I was reassured that my full Teaching position and ASC accreditation role would be reinstated with appropriate support put in place.

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Your failure to respond to my formal grievance in line with policy and procedure is further evidence of the schools noncompliance and poor practice and compels me to now take next steps. I clearly stated in my formal grievance and our subsequent meeting that I am aware of my responsibilities and that failure to address my concerns internally would professional oblige me to seek external agency support to ensure that they are. Despite your verbal reassurances I have had safety in the workplace compromised further with increased risk, leading to incidents that have caused me brain injury.

In light of your failure to respect either ACAS guidance or our own policies and procedures, along with your continued failure to appropriately address the concerns that I have raised within the workplace, make reasonable adjustments for my disabilities, investigate incidents appropriately or in good time. I shall raise my concerns with external agencies to resolve the Public Interest Disclosures I have raised internally, that continue to be unresolved to ensure that they are addressed. Additionally I shall contact ACAS to make a claim against the school with the Employment Tribunal for the discrimination and detriment that I have suffered in the workplace for raising my concerns.

The Tribunal concluded that this email could properly be considered a protected disclosure, given its content, but particularly taking into account 8 March 2017 grievance to which it referred, and which the Tribunal found was a protected disclosure. In effect, the Tribunal found the claimant to have re-stated, in this letter, the disclosures he made in his 8 March grievance.

(v) Allegation against Mr Cole

There is one allegation against Mr Cole [14.37]. In response to the claimant's letter to Mr Mason dated 3 April 2017, which was copied to Mr Cole, Mr Cole wrote to Ms Hammond-Smith on 6 April 2017 as follows:

I will write to this man to let him know I have his letter, and to politely say that his lack of professional attitude and legalistic approach to this issue will not help him in the least. We also need to let him know that we are aware of the circumstances under which he left his previous post since the agenda here seems to be that he is looking for a pay off. Let's not give in to this kind of blackmail, Is there any chance Jayne of starting counter-proceedings against him i.e. competency procedures? Or what other ways are there to give him notice?

Your advice on my reply to him please.

Martin

When Ms Hammond-Smith subsequently wrote to the claimant, she included Mr Cole's email in error. Given its content and the threat to "start counter proceedings" against the claimant in the form of a competency process, the Tribunal concluded that the claimant suffered a detriment. Mr Cole was not called as a witness by the respondent and therefore the Tribunal heard no evidence from him. The Tribunal concluded that the email spoke for itself and that Mr Cole was materially influenced by the content of 3 April 2017 letter which the Tribunal found to be a protected disclosure. Accordingly, this allegation was well founded.

6. The Claimant's evidence on the impact of this act of whistleblowing detriment was contained at paragraphs 144 and 150 of the Claimant's witness statement:

144. On the 3 April 2017 having received no adequate response from the school to my grievance & whistleblowing concerns I escalated my formal concerns to the Trust and governors as I had not only been harassed for my absence and questioned why I was off work when they knew full well. I informed the trust that I will raising his concerns externally if I didn't get a response.

150. Soon after I realised that Ms Hammond Smith had left an email chain by mistake addressed to her from Martin Coles, sent to Ms Hammond on the 6 April 2017. In that email Mr Coles discusses on finding ways of how to get rid of me and suggesting various options such as competency procedures. Further references were made to my previous employment and how it ended. I was shocked and extremely upset by this as it was a confidential matter."

7. The Claimant provided no other statement or evidence in relation to remedy in this matter, despite having been given a further opportunity to do so by the case management orders sent to the parties on 20 September 2022. The tribunal therefore had only the contents of his witness statement and the general claim for injury to feelings in his Schedule of Loss, on which to base its decision.
8. The Tribunal was unanimously of the view that this incident warranted an award towards the lower end of in the lowest of the three bands set out originally in the case of *Vento v Chief Constable of West Yorkshire Police (No.2) 2003 ICR 318, CA*. At the date of presentation of the claim containing the allegations of whistleblowing detriment, 1 May 2018, the relevant band was £800 - £8400 (a range that was applicable with effect from the Presidential Guidance issued in September 2017). The Tribunal considered that the detriment was a one off occurrence (no other allegations of whistleblowing detriment were upheld) and although the Claimant was upset by it, he gave the Tribunal no assistance in determining how upset he was or what factors he considered ought to be taken into account. The figure of £2500 was arrived at accordingly and appeared proportionate to the likely hurt suffered in the overall circumstances of this case as we understood them from the liability judgment.
9. Given the procedural history of the case as described in detail in paragraphs 3-44 of the liability judgment the Tribunal decided pursuant to Regulations 6(3) and 7(2) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 that it would not be just to add interest to the award.

Employment Judge Morton

Date: **7 February 2023**

JUDGMENT SENT TO THE PARTIES ON
Date: **16 February 2023**

AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE

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