



EMPLOYMENT TRIBUNALS

Claimant: Mr Piotr Zaluski

Respondent: NSL Ltd

Heard by video on: 24 February 2023

Before: Employment Judge Corrigan
Dr N Westwood
Mrs S Dengate

Representation

Claimant: In person

Respondent: Mr P Tomison, Counsel

REMEDY JUDGMENT

1. Having found the Respondent did contravene the Equality Act 2010 in respect of indirect race discrimination and race-related harassment the respondent is ordered to pay compensation to the claimant of £17,992.
2. This sum consists of £15,000 injury to feelings, £484 aggravated damages and 8% interest of £2508 for the period of 739 days ending with today.
3. The tribunal also makes a recommendation that the respondent remove the record of the final written warning entirely from the claimant's personnel file within 42 days from today. The tribunal also makes a recommendation that the claimant is regarded as having a clear disciplinary record including with respect to the two previous occasions referred to at paragraph 12 and 13 of the liability reasons (dated 24 February 2023) which were held against him on this occasion as set out in the reasons.

REASONS

1. The claimant gave evidence. The tribunal also had regard to the liability reasons, the liability bundle and the remedy claim document submitted by the claimant.
2. We heard submissions by the respondent. The claimant chose not to add anything in addition to his evidence.
3. We had regard to the 4th Addendum to the Presidential Guidance on Vento bands which provides that for claims submitted after 6 April 2021 the lower band is £900 - £9,100 and the middle band is £9,100 - £27,400. We also had regard to Commissioner of Police of the Metropolis v Shaw 2012 ICR 464, EAT, and the broad categories of case where aggravated damages can be awarded including where subsequent conduct adds to the injury or rubs salt into the wound.

Conclusions

4. We considered the appropriate award for injury to feelings was £15,000. We accepted the respondent's submission that there had been a lot going on in the claimant's life at the relevant time and there were other difficult circumstances he was dealing with. He had had long covid and was living separately from his wife as she had had to return to Poland to care for her father. He was also upset at the bereavement itself. However we found at the liability hearing and confirm that the claimant suffered significant distress at the way the respondent handled his need to return to Poland to deal with the bereavement. As matters arose such as the unexpected quarantine on arrival in Poland the respondent's approach exacerbated their effect, even if there was also significant stress caused by the fact of the quarantine itself.
5. As the claimant said he expected compassion and sympathy from his long term employer at the hardest moment of his life and received the opposite. That the actions of the respondent was causing the claimant significant anger and distress and exacerbating the difficulties he faced was evident in the contemporaneous correspondence (for example pages 129-130).
6. The respondent's requirements put the claimant in an impossible position; held the threat of dismissal over him for three months and then left him living with a final written warning for 12 months with the stress that causes. We accept that this was very stressful.
7. The above relates to the indirect discrimination.
8. Added to this was the conduct of Mark Shaw with the inappropriate overstepping and abusing of his authority to try to force the claimant's return without attending to the funeral at all. His conduct was very high handed and very distressing. It created an oppressive environment and we find it an aggravating feature.

9. We find that the award should fall well within the middle band due to the length of time, which including the ongoing consequence of the final written warning amounted to 15 months. The worst of which was before the claimant knew he was not going to be dismissed. The case involved high handed race related harassment which was not resolved through the respondent's processes.
10. The claimant had taken unpaid leave to attend the 5 hearing dates including today. He sought compensation for the loss of pay. We heard from the respondent that the perpetrators had been paid to attend tribunal, as they were assisting the respondent as witnesses. The respondent argued that there is no basis for compensating the claimant for the loss of pay in attending and that it was appropriate to treat the claimant differently from those appearing as witnesses for the respondent. It defended the situation by saying that if the respondent always paid an employee litigant to attend tribunal then they could face weeks of loss in a claim that was unmeritorious.
11. We accepted the point that it was appropriate at the time for the claimant to attend tribunal as unpaid leave, however, he has now been successful and we consider it is adding salt to the wound/ condoning oppressive behaviour if the perpetrators of the discrimination were paid to be at the hearing whereas the claimant had to take unpaid leave. Mr Shaw was in attendance again today. We considered it appropriate to add aggravated damages of £484 to compensate the claimant for that situation, which we considered does add insult to injury.
12. We added 8 % interest to the award running from the date accepted by the respondent of 15 February 2021, giving a period of 2 years and 9 days.
13. The respondent did not disagree with our making the recommendation in respect of the removal of the final written warning from the file, as the claimant requested. We unilaterally considered the second recommendation appropriate, and there was no objection from the parties, given our findings that the previous two matters were a reason for the race related harassment in this case.

Employment Judge Corrigan
24 February 2023

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