



EMPLOYMENT TRIBUNALS

Claimant: Mr T Cowland

Respondent: South Western Ambulance Service NHS Foundation Trust

Heard at: Exeter **On:** 2 March 2023

Before: Employment Judge A Matthews

Members: Mrs V Blake
Mr I Ley

Representation:

Claimant: In Person, accompanied by his father, Dr G Cowland

Respondent: Mr M Sellwood of Counsel

UNANIMOUS JUDGMENT

(Judgment with reasons was given orally on 2 March 2023. A written Judgment without reasons was sent to the parties on 16 March 2023. These written reasons are now provided at the Claimant's written request dated 27 March 2023, made within the appropriate time limit.)

For convenience, the written Judgment, without reasons, is repeated here:

1. The Respondent is ordered to pay to Mr Cowland £26,087.04 comprising:
 - Compensation for injury to feelings in respect of the discrimination of £11,600, including interest of £1,600.
 - Compensation for financial loss arising from the discrimination of £10,179.04 including interest of £754.
 - A basic award in respect of the unfair dismissal of £3,808.
 - A compensatory award in respect of the unfair dismissal of £500.

2. The Recoupment Regulations do not apply.

[Note: No schedule of calculations is attached. Where calculations were necessary, these were agreed between the parties.]

Reasons

1. Introduction

2. Following the Tribunal's Judgment as to liability after a hearing on 12-15 December 2022, this hearing was set down to deal with the issue of remedy.
3. We heard from Ms Sarah Makeig-Jones (the Trust's Employee Relations Manager) who produced a written statement.
4. There was a 142 page bundle of supplementary documents. Occasional reference was made to the bundle used at the hearing as to liability.

5. Applicable Law

6. Section 126 of the Employment Rights Act 1996 provides as follows:

"126 Acts which are both unfair dismissal and discrimination

(1) This section applies where compensation falls to be awarded in respect of any act both under-

(a) the provisions of this Act relating to unfair dismissal, and

(b) the Equality Act 2010.

(2) An employment tribunal shall not award compensation under either of those Acts in respect of any loss or other matter which is or has been taken into account under the other by the tribunal (or another employment tribunal) in awarding compensation on the same or another complaint in respect of that act."

7. Section 119 of the Equality Act 2010 (the "EA"), so far as it is applicable, provides as follows:

"119 Remedies"

"(2) The county court has power to grant any remedy which could be granted by the High Court-

(a) In proceedings in tort;"

"(4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)."

8. Section 124 of the EA, so far as it is applicable, provides as follows:

“124 Remedies: general

- (1) *This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).*
- (2) *The tribunal may-*
 - (a) *make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;*
 - (b) *order the respondent to pay compensation to the complainant;*
 - (c) *make an appropriate recommendation.*
- (3) *An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect (on the complainant) of any matter to which the proceedings relate.”*
- “(6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court or the sheriff under section 119.”*

9. Conclusions

10. The Tribunal made a declaration as part of its Judgment as to liability.
11. The Tribunal makes no recommendation, although it hopes the Trust may find the observations it made in its Judgment as to liability helpful and consider some suitable training for managers involved in processes such as these.
12. We were considerably helped by the Schedules of Loss provided by Mr Cowland and the Counter Schedule produced by the Trust. These are at pages 1-20 of the supplementary bundle.
13. The parties had agreed a number of points. First, they had agreed the Basic Award for unfair dismissal at £3,808. Second, they had agreed an award of £500 for loss of statutory rights. Third, they had agreed that 19 days' pay was due to Mr Cowland to bridge the gap between his leaving the Trust's employment and finding a new job.
14. This, in essence, left us with two decisions to make. First, what is the appropriate award for injury to feelings. Second, what financial loss should Mr Cowland be compensated for. We will deal with each in turn.
15. Injury to feelings
16. An award made in this respect is to compensate for anger, distress and upset caused to Mr Cowland by the unlawful discrimination he was subjected to. It is not a punitive award. The focus is on the injury caused to Mr Cowland.

17. It is awarded in bands. The upper band for the most serious cases is £29,900-£49,300. The middle band for cases that do not merit an award in the upper band is £9,900-£29,600. The lower band for less serious cases is £990-£9,900.

18. Applying this to Mr Cowland's circumstances our findings are these.

19. We have observed throughout these proceedings that Mr Cowland has been considerably emotionally affected by his experiences. Of that, there is no doubt. What we must examine is what lies behind that.

20. It is very apparent that an important contributory factor is Mr Cowland's view of the incident on 16 January 2020. That contributory factor must be discounted in our determination of the award for injury to feelings because it was not a result of a discriminatory act. Equally, we must discount the anger, distress and upset caused to Mr Cowland by what he perceived to be various acts of discrimination which we have not found substantiated. Our focus must be on the injury caused by the discriminatory dismissal we have found.

21. In our view the level of award should be at the bottom end of the middle band and we award £10,000 plus interest.

22. Financial Loss

23. We called for more evidence on this subject, which we have heard today. That has been helpful.

24. From that evidence we have been able to form a view on what should and would have happened had there been no discriminatory dismissal.

25. In short, our finding is that the employment relationship would have continued on the same basis in terms of pay and conditions for a further period of six months. Financial loss is awarded for that six month period, together with interest.

26. The six month period would have allowed for the following:

- A sufficient period for a proper pro-active and assisted job search.
- The consideration of other options, principally funding the FCT post - we note that a part time post did become available.
- An updated occupational health report.

27. However, we do not think that this would have led to Mr Cowland's continued employment with the Trust. We take account of the fact that Mr Cowland moved to a new job with a different organisation in a patient facing

role. That, however, was in a different environment. We very much doubt that Mr Cowland would have been comfortable going back to a patient facing role with the Trust.

28. Only one suitable job came up and we are unsure that Mr Cowland would have taken that without the 25% unsocial hours uplift.
29. On the evidence we have, we doubt that Mr Cowland would have secured a Band 7 role.
30. Therefore, the most likely outcome is that the Trust would have continued the process with Mr Cowland, this time making proper provision for alternatives, but leading inevitably to a non-discriminatory dismissal.

Employment Judge A Matthews
Date: 8 April 2023

Reasons sent to the Parties on 20 April 2023

For the Tribunal Office