



EMPLOYMENT TRIBUNALS

Claimant Mr B Lipinski

Respondent Beacon Communication Services Limited

Heard at: Exeter
(remotely by video hearing)

On: 27 April 2023

Before:
Employment Judge Goraj

Representation

The claimant: in person

The respondent: Mr M Venner (CEO)/
Ms J Baker (Commercial Manager)

RESERVED JUDGMENT AT A REMEDY HEARING

THE JUDGMENT OF THE TRIBUNAL IS that: -

1. The respondent, who has not entered a response, was permitted to participate in the remedy hearing pursuant to Rule 21 (3) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 to the extent identified in this Judgment.
2. The respondent's application to postpone the remedy hearing was refused.
3. The claimant was awarded, and the respondent is ordered to pay to the claimant, the total sum of £15,973.60 in compensation pursuant to section 124 of the Equality Act 2010 in respect of the claimant's claims for disability discrimination.

4. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to this case.

REASONS

Background

The claims

1. By a claim form which was presented to the Tribunals on 24 August 2022, the claimant, who stated on his claim form that he was employed by the respondent between 9 September 2021 and 11 May 2022 as a graduate acquisition and planning associate, brought complaints of disability discrimination (failure to make reasonable adjustments and discrimination arising from disability) against the respondent. The disability upon which the claimant relies for the purposes of his disability discrimination claim is anxiety and depression. The claim form and particulars of claim are at pages 2- 20 of the bundle which has been provided by the claimant (to the Tribunal and the respondent) for the purposes of this remedy hearing (“the bundle”).
2. The claimant’s ACAS EC certificate records that the claimant’s EC notification was received by ACAS on 13 July 2022 and that the EC certificate was issued on 27 July 2022.

The respondent

3. The respondent did not enter a response to the proceedings. The Tribunals wrote to the respondent on 11 October 2022 advising it that as it had not entered a response a judgment may be issued. The respondent was further advised that it was entitled to receive notice of any hearing but could only participate in any hearing to the extent permitted by the Employment Judge who heard the case.

The Judgment dated 1 November 2022

4. The Tribunal subsequently entered a judgment against the respondent pursuant to Rule 21 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the 2013 Rules”) on 1 November 2021 (which was sent to the parties on 8 November 2022) (“the Judgment dated 1 November 2021”) as the respondent had not entered a response to the claimant’s claim as follows:- “ the claims of disability discrimination (failure to make reasonable adjustments and discrimination because of something arising from a disability) succeed”. It also stated that the remedy to which the claimant was entitled would be determined at a Remedy Hearing (page 22 of the bundle).

5. The respondent subsequently engaged in correspondence with the Tribunal in which it contended that it had not received the claim form or received any contact with ACAS. The respondent made an application by an email dated 14 November 2022 for the reconsideration of the Judgment dated 1 November 2022. The respondent did not however, and has not at any time subsequently, applied for an extension of time pursuant to Rule 20 of the 2013 Rules to enter a response/ submitted a proposed draft response explaining the nature of any defence to the claimant's claims.

Refusal of the application for reconsideration and associated matters

6. The respondent's application for reconsideration of the Judgment dated 1 November 2022 was refused by the Tribunal by a Judgment dated 24 January 2023 (which was sent to the parties on 6 February 2023) ("the Judgment dated 24 January 2023"). The Judgment dated 24 January 2023 is at pages 42- 44 of the bundle.
7. The Tribunal explained in the Judgment dated 24 January 2023, that the application had been refused as the claimant was entitled to a judgment as the respondent had not entered a response to the claim including that the respondent had not set out any basis for suggesting that the decision was wrong/ explained the nature of any defence to the claim.
8. The Tribunal further explained in the Judgment dated 24 January 2023 (paragraph 15) what the respondent had to do if it wished to defend the proceedings namely, that it should make an application to the Tribunal for an extension of time to present a response which should include a draft of its defence to the claim and that if the application was successful the Judgment dated 1 November 2022 would be set aside (without requiring a reconsideration of the Judgment dated 1 November 2022). The Tribunal further stated at paragraph 16 of the Judgment dated 24 January 2023 that the respondent had been on notice since 24 November 2022 of the right to apply for an extension of time for the presentation of a response and it was a matter for it to decide whether to now make such an application – the Tribunal made it clear that it was not expressing any view on the merits of any such application which would be decided at the time that it was made. No such application was subsequently made by the respondent.
9. The Tribunal also provided, as requested by the respondent on 9 January 2023, written reasons dated 24 January 2023 (which were sent to the parties on 6 February 2023) for the Judgment dated 1 November 2022. These reasons (which are at pages 39 – 41 of the bundle) were provided by the Tribunal notwithstanding that the request had been made outside the normal 14-day period as it was in the interests of justice to do so.

The respondent's appeal to the EAT

10. The Tribunal noted, whilst preparing for this remedy hearing, that the respondent had advised the Tribunal in correspondence, that written reasons for the Judgment dated 1 November 2022 had been requested for the purposes of an appeal to the Employment Appeal Tribunal ("the EAT"). Having therefore being alerted to the possibility of an extant appeal, this Tribunal therefore caused enquiries to be made on the morning of the hearing to ascertain the present status of any such appeal. In response, the Tribunal was provided by the EAT with a copy of the respondent's notice of appeal (dated 19 December 2022) and also a letter from the EAT (which appears to a copy of a template letter as it is addressed to the claimant/ is incomplete) dated 7 January 2023 advising that the appeal had not been properly instituted as a copy of the Tribunal's written reasons had not been provided.
11. The respondent confirmed at the remedy hearing that it had not submitted the written reasons for the Judgment dated 1 November 2022, which were supplied by the Tribunal on 6 February 2023, to the EAT as it understood that they were obtained outside the relevant time limits for the purposes of any appeal to the EAT. The respondent has therefore taken no further steps in connection with any appeal to the EAT.
12. The Tribunal noted that the only ground given for appeal by the respondent in its notice of appeal to the EAT dated 19 December 2022 was that the claim had succeeded despite the fact that the time limit for bringing a claim had already expired as Early Conciliation had commenced on 19 July 2022 which was in excess of the 3 month deadline and that the claimant/ his representative would have been aware of the relevant deadlines. There was no indication in the Notice of Appeal of the nature of any substantive defence to the claimant's claims of disability discrimination.
13. The address of the respondent as stated on the claimant's claim form (E3, Pitts Cleave Industrial Estate, Parkwood Road, Tavistock, Devon PL19 0PW) (which is also the address used by the Tribunal in correspondence) is the registered office address of the respondent recorded at companies house.

The respondent's participation in the proceedings

14. The respondent attended the remedy hearing. The respondent was represented by its CEO Mr Venner and also by Ms J Baker Commercial Manager (who indicated that she would be dealing with the conduct of the case and subsequently, when given leave to do so, questioned the claimant/ made submissions on behalf of the respondent) . The Tribunal explained to the respondent that as it had not entered a response to the proceedings it was only entitled to participate in the proceedings to the extent permitted by the Judge pursuant to Rule 20 (3) of the 2013 Rules .
15. The respondent applied to participate in the proceedings in order to apply for a postponement of the remedy hearing and, if such postponement application was refused, to be also permitted to participate in the remedy hearing.
16. The Tribunal drew the parties attention to the Court of Appeal Judgment in **Office Equipment Systems Limited v Hughes 2018 EWCA Civ 1842** relating to the participation in proceedings.

The respondent's application to postpone the remedy hearing

17. The respondent applied to postpone the remedy hearing on the grounds that it contended that it had not received notice of the original proceedings. The respondent accepted that it had “dropped the ball” with regard to the defence of the proceedings which it stated was due to its lack of understanding of Tribunal procedures. The respondent applied for a postponement of the remedy hearing on the basis that it would ensure that a draft response/ relevant application/ evidence was submitted by the Wednesday of the following week.
18. The claimant, having been allowed an opportunity to speak to his solicitor, opposed the respondent's application for a postponement of the remedy hearing on the grounds that although judgment had been entered by the Tribunal on 1 November 2022 and the respondent had subsequently been advised by the Tribunal how to apply to set the it aside the respondent had still not made any such application/ provided its proposed response to the proceedings. The claimant further contended that this case was distinguishable from that of **Hughes** as the respondent had not entered any kind of response in this case. The claimant still further contended that any further delay in the proceedings would, in any event, have an adverse effect on his condition of anxiety and depression. The claimant did not however oppose the respondent's application to participate in the remedy hearing if it proceeded.
19. Having given the matter careful consideration, the Tribunal decided, having regard in particular to the provisions of Rule 20 (3) of the 2013 Rules together with the authority of **Office Equipment Systems Limited v**

Hughes that it was in the interests of justice, notwithstanding that the respondent had not entered a valid response, to permit the respondent to participate in the remedy hearing in order to apply for a postponement of the hearing.

20. The Tribunal further concluded however that, in all the circumstances of the case, the respondent's application for a postponement of the remedy hearing should be refused.
21. When reaching this conclusion the Tribunal had regard in particular, to the history of this case including that although the Judgment was dated 1 November 2022 (of which the respondent was aware by at the very latest 14 November 2022), that the respondent was advised by the Tribunal on 24 November 2022 of the procedure to apply for an extension of time for the presentation of a response and again in the Judgment dated 24 January 2023 of the procedure to be adopted to challenge the Judgment dated 1 November 2022, the respondent had still not made any written application for an extension of time in which to present a response / provided any proposed grounds of defence. Further, the respondent had not provided any details of its grounds of defence (other than a reference to contended time issues) in its (not properly constituted) Notice of Appeal to the EAT or made any application to postpone the remedy hearing until the start of the this hearing (contrary to the provisions of Rule 30A of the 2013 Rules). The Tribunal also had regard to the stated likely detrimental effect on the claimant's condition of anxiety and depression of any further delay in the proceedings.
22. In all the circumstances the Tribunal was not satisfied that it was in the interests of justice to postpone the remedy hearing including that there were any exceptional circumstances for the purposes of Rule 30 A of the 2013 Rules.
23. The Tribunal also concluded however that it was appropriate, in all the circumstances, to permit the respondent (which had previously been provided with a copy of the bundle by the claimant) to participate in the remedy hearing including to question the claimant/ make submissions on remedy. When reaching this conclusion the Tribunal had regard to its discretion to permit the respondent to participate pursuant to Rule 20 (3) of the 2013 Rules together with the authority of **Office Equipment Systems v Hughes** and that the claimant did not oppose such application.

THE CLAIMANT'S REMEDY CLAIM

Witness evidence

24. The Tribunal has had regard to the impact/ witness statement from the claimant together with his oral evidence.

Documents

25. The Tribunal has had regard to the remedy bundle (the bundle) provided by the claimant. The bundle includes a detailed schedule of loss at pages 50 – 53 of the bundle.

26. The Tribunal has also had regard to the claimant's written contract of employment which was provided at the request of the Tribunal as there was an issue between the parties as to whether it was a fixed term contract/ the provisions for termination.

27. The Tribunal has also had regard to the oral submissions of the parties.

28. The Tribunal has made the following findings of fact for the purpose of remedy.

THE FACTS

29. The claimant was employed by the respondent as an Acquisition and Planning Associate commencing on 9 September 2021.

The claimant's contract of employment and associated matters

30. The claimant was issued with a contract of employment dated 9 September 2021. The contract states that the contract was part of the "Graduate Trainee Program 2021". The claimant contended that the contract was for a 2-year period. The claimant, however, accepted in evidence that the contract was terminable on 1 week's written notice during the first 2 years of employment (paragraph 11 of the contract).

31. At paragraph 3 of the contract, it states that the claimant will be paid at the rate of £20,000 per annum payable monthly in arrears. There is no provision in the contract providing for any increases in pay.

32. Although the claimant's contract states that the claimant would be paid an annual gross salary of £20,000 per annum the claimant however contended in his schedule of loss (page 50 of the bundle) that his gross annual pay at the date of the termination of his employment was £16,970.20 with a gross weekly pay of £326.35 and a net weekly pay of £292.40. The respondent confirmed that it agreed with the salary details contained in the Schedule of loss. These figures appear to be calculated on the basis of the taxable income figures provided by the HMRC for the 6-month period between 15 October 2021 and 15 March 2022 at page 54 of the bundle.

33. The claimant contended in his Schedule of Loss that graduate salaries were expected to increase to between £28,000 to £32,000 after one year's

experience and the claimant seeks a median figure of £30,000 gross for his second year of service if he had remained in the employment of the respondent. The claimant has not provided any evidence in support of such contention.

34. The Tribunal is not satisfied that the claimant's salary would have increased to £30,000 gross per annum if the claimant had remained in the respondent's employment after September 2022 as contended by the claimant. When reaching this conclusion, the Tribunal has taken into account that there is no reference to any such increase in the claimant's contract of employment or any other documentary evidence to support such increase.
35. The Tribunal has therefore proceeded on the basis that any award for compensation in respect of the respondent's failure to make reasonable adjustments and /or in respect of his dismissal should be calculated on the basis of the gross annual salary of £20,000 stated in the claimant's contract of employment which the Tribunal calculates gives a gross weekly salary of £385 and a net weekly salary of (on or around) £310 (allowing for the deduction of income tax and national insurance).

The claimant's health

36. The claimant was diagnosed with depression and anxiety in April 2020 at which time he was prescribed sertraline 50mg. This dosage was increased in November 2021 to 100mg due to a decline in the claimant's mental health. The position is confirmed by the claimant's GP's letter dated 4 August 2022 which is at page 150 of the bundle. The claimant's condition of depression and anxiety meant that he had difficulties sleeping (either too much sleep or insomnia) poor energy levels fatigue, hopelessness , low self esteem and social anxiety.
37. The Tribunal accepts the claimant's evidence that the respondent was aware of the claimant's mental health condition from at the latest November 2021.
38. The claimant was permitted to work from home but was not provided by the respondent with a laptop which would have enabled the claimant to have worked from home rather than going on sick leave on days when he did not feel mentally strong enough to attend the office.
39. There is no suggestion in this case that the claimant was anything other than a conscientious and hard working employee.
40. In March 2022 the claimant contacted Remploy to obtain advice about managing his condition of anxiety and depression. The claimant was signed off work with depression on 16 March 2022.

The termination of the claimant's employment

41. On or around 1 April 2022 the claimant received a telephone call from the respondent informing him that he was going to be dismissed as there was no longer a role for him at the respondent. At an exit interview on 8 April 2022 the claimant was told that he was being dismissed as there was no role for him in the project management team or in any other department in the respondent.
42. The parties agree (and this is accepted by the Tribunal), that notwithstanding the references to other dates in the documents, the claimant's employment with the respondent terminated on 14 April 2022. This is the date which is confirmed in the respondent's letter of dismissal dated 14 April 2022 which is at page 46 of the bundle. In this letter the respondent states that the respondent had "reviewed your contract and will not be continuing it". A leaving date of 14 April 2022 is also stated in the claimant's P45 at pages 47/ 48 of the bundle.
43. The claimant's mental health condition was exacerbated by the claimant's dismissal at which time he experienced difficulties eating and sleeping, struggled to complete basic tasks such as getting out of bed and experienced thoughts of anger, frustration, hopelessness, worthlessness and / self-harm. The claimant contended that his condition was also exacerbated by the fact that he became aware that an employee had been engaged by the respondent to replace him following his dismissal. This was denied by the respondent who contended that any new employees undertook a different role. The Tribunal had insufficient information before it to make any findings of fact on this aspect of the claim.
44. The claimant's GP records confirm that the claimant remained on a dosage of 100mg of sertraline in the months following the termination of the claimant's employment with the respondent.

Alternative employment

45. The claimant secured alternative employment with Pertemps from 27 May 2022 until 9 September 2022. The HMRC document at pages 151 – 152 of the bundle confirms that the claimant received a total gross salary of £7,010.63 and a total net salary of £5,998.66 during this period. The claimant does not claim any compensation from the respondent for this period as he accepts that he received more than he would have received if he had remained with the respondent at that time.
46. The claimant was not provided with any further work by Pertemps after 9 September 2022 and has not been able to secure any alternative work since that date.
47. In September 2022 the claimant commenced a part time postgraduate (MSc) course in Business and Management in order to increase his skills and employability. The claimant has completed around half of the course. The claimant confirmed that this is a part time distant learning course which does not prevent him from also undertaking paid employment.

48. The claimant has included in the bundle, from page 203 onwards, 4 applications which he made for other roles during March and April 2022. There are however no applications included in the bundle in respect of the period after April 2022. The claimant stated in evidence that he had made a total of around 7-8 applications for employment since the termination of his employment with the respondent. The claimant did not contend that he was unable to work because of ill health after 9 September 2022.

Payments from the DWP

49. The claimant has received payments of Universal Credit from 7 May 2022 until 7 April 2023 (save for August 2022 when the claimant did not receive any payments) as recorded in the GOV – UK statement at pages 153- 154 of the bundle.

CLOSING SUBMISSIONS

50. The Tribunal has had regard to the oral submissions of the parties together with the authorities/ guidance referred to below. The contentions of the parties are summarised in the Conclusions below.

THE LAW

51. The Tribunal has had regard in particular to the following statutory provisions :- sections 119, 123, 124 and 140B of the Equality Act 2010 (“the 2010 Act”).

52. The Tribunal has also had regard to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 which give Tribunals the power to award interest on awards made in the discrimination cases. The relevant rate of interest is currently 8 %. For injury to feelings an award of interest starts on the date of the act of the discrimination complained of and ends on the day on which the Tribunal calculates the amount of interest. For other awards, interest is awarded for the period beginning on the mid point date and ending on the day of the calculation of the interest. Interest cannot be awarded in respect of losses which arise after the date of calculation such as in respect of future loss of earnings.

53. The Tribunal has also had regard in particular to the following authorities:-

Vento v Chief Constable of West Yorkshire (No 2) [2003] IRLR 102 CA
Ministry of Defence v Cannock [1994] ICR 918 CA.

Abbey National plc and anor v Chagger [2010] ICR 397CA.

54. The Tribunal has also had regard to the Presidential Guidance dated 28 March 2022 relating to Employment Awards for injury to feelings (Fifth addendum) in respect of claims presented on or after 6 April 2022 as referred to further below.
55. The Tribunal has reminded itself in particular that if the Tribunal decides to award compensation, section 119 (1) of the 2010 Act sets out what a county court may order which is to grant any remedy which could be granted in the High Court in proceedings for tort or judicial review and which includes compensation for financial loss and personal injury. Such compensation can include damages for injury to feelings (section 119 (4) of the 2010 Act) . Such damages would be payable by reason of a statutory tort on the part of the respondent, the measure of damages in respect of which is to place the claimant, so far as is possible, in the position that he would have been in but for the discrimination (**Cannock**).
56. Placing a claimant in the position he would have been it but for the discrimination will entail an assessment of the degree of chance that the claimant's dismissal would have occurred in any event if there had been no unlawful discrimination (**Chagger**).
57. Mitigation of loss – in common law claimants are under a duty to mitigate their losses and a similar duty arises in discrimination claims where compensation may be decreased if the claimant has reduced or could reasonably have been expected to reduce his or hers losses. It is for an employer to show that a claimant has failed to mitigate his or her losses. As a starting point compensation will be assessed on the basis that the claimant took all reasonable steps to mitigate his / her losses. If however the employee failed to take such steps the award will be reduced to reflect only those losses that would have been incurred if he / she had taken the appropriate steps. The question of whether a claimant had mitigated her/ his losses is a question of fact to be judged on the particular circumstances of the case.

Injury to feelings

58. In the case of **(1) Armitage, (2) Marsden and (3) HM Prison service v Johnson [1997] IRLR 162** the EAT set out five principles to consider when assessing awards for injury to feelings in cases of discrimination namely:-

- (1) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without

punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.

- (2) Awards should not be too low as that would diminish respect for the policy of the 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.
- (3) Awards should bear some broad general similarity to the range of awards in personal injury cases. This should be done by reference the whole range of such awards rather than to any particular type award.
- (4) In exercising discretion in assessing a sum, the Tribunal should remind themselves the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power by reference to earnings.
- (5) The Tribunal should bear in mind the need for public respect for the level of awards made.

59. Further guidance was given on awards by the setting of three bands for compensation for injury to feelings by the Court of Appeal in the case of **Vento (2003)**.

60. Those bands (subject to the adjustments referred to below) are as follows:-

- (1) A lower band (originally of between £500 and £5,000) is appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.
- (2) A middle band (originally between £5,000 and £15,000) should be used in serious cases, which do not merit an award in the highest band.
- (3) A top band (originally between £15,000 and £25,000) should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment.
- (4) Those bands were subsequently amended to take into account inflation in the case of **Da'Bell v NSPCC [2010] IRLR 19 EAT**.

- (5) Further in the case of **Simmons v Castle**[2013] 1 WLR 1239, the Court of Appeal held that the general level of damages in certain types of claim (such as injury to feeling type claims) should be increased by 10% in cases where judgment is given after 1 April 2013. The Court of Appeal subsequently confirmed in **Da Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879** that Employment Tribunal injury to feelings awards should similarly be uplifted.
- (6) Following **De Souza**, the Presidents of the Employment Tribunals issued guidance on 5 September 2017 adjusting the **Vento** figures for inflation and the **Simmons** 10% uplift in respect of which proceedings were issued on or after 11 September 2017. The Presidents have subsequently issued annual addenda updating the bands to take into account the changes to the RPI.
- (7) The proceedings in this case were issued in August 2022 and are therefore subject to the Fifth Addendum issued on 28 March 2022 which applies to claims which were presented on or after 6 April 2022.
- (8) In accordance with the Fifth Addendum the **Vento** bands for the purposes of this case are as follows:-
- (1) Lower Band (less serious cases) - £990 to £9,900.
 - (2) Middle Band (cases that do not merit an award in the upper band) - £9, 900 to £29, 600 and,
 - (3) Upper Band (the most serious cases)- £29,600 to £49,300.

THE CONCLUSIONS OF THE TRIBUNAL.

Does the Tribunal have jurisdiction to award any compensation?

61. The Tribunal has noted that in the respondent's Notice of Appeal to the Employment Appeal Tribunal (paragraph 12 above) the respondent contended that the time limit for presenting the claims to the Tribunal had expired as the Early Conciliation process had commenced on 19 July 2022 which was in excess of the 3-month deadline for the bringing of the claims.
62. For the avoidance of doubt, the Tribunal is however satisfied that the claimant's claims (of failure to make reasonable adjustments and discrimination arising from the claimant's disability) were presented within the relevant statutory time period pursuant to sections 123 and 140B of the 2010 Act.

63. When reaching this conclusion the Tribunal has taken into account that conduct extending over a period is to be treated as done at the end of that period pursuant to section 123 (3) (a) of the 2010 Act and that the last act complained of in this case was the claimant's dismissal on 14 April 2022. As recorded in the Early Conciliation Certificate, the claimant subsequently commenced Early Conciliation on 13 July 2022 (Day A) (the last day of the 3 month period for the purposes of section 123 of the Act 2010) and the Early Conciliation Certificate was issued on 27 July 2022 (Day B). The claimant is therefore entitled to rely on the extension afforded by section 140 B (4) of the 2010 Act. The claimant's claim form was subsequently presented on 24 August 2022 ie within one month of Day B and is therefore in time.

The claimant's claim for injury to feelings

64. In summary, the claimant is claiming injury to feeling in the sum of £12,000 (middle band of Vento) together with interest at 8% from the date of his dismissal to the date of the hearing/ judgment. The claimant asks the Tribunal to take into account in particular that the claimant was a hardworking employee with a good record, that the discrimination resulted in his dismissal together with fact that he subsequently found out after his dismissal that another employee had been taken on in the department in which he worked notwithstanding that he had been told that there was no role for him which caused him extensive humiliation and distress.

65. In summary, the respondent contended that any award of injury to feelings should be in the lower band of Vento including as it denied that the claimant was replaced by another employee.

66. Having given the matter careful consideration, the Tribunal is satisfied that it is appropriate, in all the circumstances of the case, to award the claimant compensation in the sum of £12,000 as claimed by him for injury to feelings. When reaching this conclusion the Tribunal has taken into account in particular that this is a case in which there has been both a failure to make reasonable adjustments (paragraph 3b of the reasons for the Judgment dated 1 November 2022) and also discrimination because of something arising from disability namely the claimant's dismissal because of his level of sickness caused by his disability (paragraph 3a of the reasons for the Judgment dated 1 November 2022).

67. These are serious acts involving the dismissal of an employee engaged on a graduate training programme and in respect of whom there is no suggestion that he was anything other than a hardworking and conscientious employee. Further the Tribunal is satisfied from its above findings of fact that such dismissal (even without the allegations relating to

the replacement employee) caused the claimant distress/ humiliation and exacerbated his anxiety and depression as recorded at paragraph 43 above and in respect of which the respondent has not offered any apology.

68. In all the circumstances the Tribunal is satisfied that it is appropriate to award the claimant compensation in the middle band of **Vento** (and not the lower band as contended by the respondent) in the sum of £12,000 as claimed by the claimant.
69. The Tribunal is further satisfied that it is appropriate in all the circumstances of the case to award the claimant interest at 8 % per annum on such monies as claimed by the claimant in his schedule of loss for the period between the date of his dismissal (which is the act relied upon by the claimant for such purposes) on 14 April 2022 (and not 11 May 2022 as stated in the claimant's schedule of loss) and the date of this reserved judgment (23 May 2023) which the Tribunal calculates as follows :-
- (a) 14 April 2022 to 23 May 2023 = 405 days.
 - (b) £12,000 / 365 days = £32.88
 - (c) £32.88 x 8% = £2.63 (daily rate).
 - (d) 2.63 x 405 days = **£1,065.15**

The claimant's claim for financial loss

70. The claimant also claims in his schedule of loss for financial losses arising from / incurred since his dismissal for the 2 year period (until 9 September 2023) of the graduate training period including at the increased rate of £30,000 per annum in the second year of his employment. The claimant does not however seek any compensation for the period between his dismissal and 1 September 2022 as the claimant says that his earnings in this post dismissal period exceeded those received from the respondent during that period. The claimant is also claiming interest at 8 % per cent per annum on any such award from the midpoint.
71. The respondent denies that the claimant was employed for a (fixed) period of two years. The respondent relies on the claimant's contract of employment dated 9 September 2021 which does not contain any reference to a two year term and is expressly stated to be terminable on one week's notice during the first 2 years of employment.
72. The respondent further contended that any award of compensation should be limited as the claimant failed to take reasonable steps to mitigate his losses following the ending of his post termination employment on 9 September 2022. The respondent has not provided any evidence of any suitable alternative employment but relies on the fact that there are only 4 applications for alternative employment contained in the bundle and that

the claimant stated in evidence that he had only made a total of around 7-8 applications for alternative employment.

73. Having given the matter careful consideration in the light of the findings of fact and statutory provisions/principles referred to above together with the competing contentions of the parties, the Tribunal is satisfied that it is appropriate to make the claimant an award of compensation for loss of earnings suffered arising from/ following the claimant's dismissal (as claimed for by the claimant) subject to the matters referred to below.
74. The Tribunal is satisfied (for the reasons explained at paragraphs 31 and 35 above) that it is appropriate to calculate any award of compensation on the basis that the claimant was entitled to a gross annual salary of £20,000 under the terms of his contract dated 9 September 2021. This gives a gross weekly salary of £385 per week and a net weekly salary of (on or around £310 (allowing for income tax and national insurance deductions). Further the Tribunal is not satisfied, for the reasons stated at paragraph 34 above, that the claimant's salary would have increased as contended by the claimant if he had remained in the employment of the respondent.
75. The Tribunal is not satisfied, for the reasons explained at paragraph 30 above, that this was a contract for a 2 year period as contended by the claimant. Not only is there no reference to such 2 year period in the contract dated 9 September 2021 but it is also expressly stated to be terminable on one week's notice during the first two years of employment (paragraph 11 of the contract).
76. The Tribunal is not satisfied on the facts that this is a case in which it is appropriate to make any reduction in any award of compensation on the basis that it is likely that the claimant's employment would, in any event, have come to an end lawfully shortly thereafter but for the discriminatory act of dismissal. In this case the respondent has not provided (including in the purported appeal to the Employment Appeal Tribunal) any explanation for the reasons for the termination of the claimant's employment which came shortly after the claimant's disability related absence in March 2022.
77. The Tribunal is however satisfied that there is an issue in this case as to whether the claimant has taken reasonable steps to mitigate his losses following the loss of his alternative employment on 9 September 2022. The Tribunal fully appreciates that the onus is on the respondent to satisfy the Tribunal that the claimant has failed to take reasonable steps to mitigate his losses and further that the respondent has not provided any evidence of when the claimant may have obtained suitable alternative employment if he had taken such steps. What is however, striking in this case, is not

only the very limited number of applications made by the claimant for alternative employment (4 in the bundle and 7-8 in total) but also that the claimant has not provided a copy of any applications for employment for the period after the ending of his employment in September 2022 and the commencement of his part time distant learning MSc course notwithstanding that the claimant acknowledged that the course did not prevent him from securing alternative employment. Further, there is no suggestion in this case that the claimant was not well enough by reason of his disability/ any effect of his dismissal to work following the termination of his employment by the respondent.

78. In all the circumstances, the Tribunal is not satisfied that the claimant took reasonable steps following the ending of his employment with Pertemps in September 2022 to secure further suitable alternative employment. The Tribunal has therefore gone on to consider when it is likely that the claimant would have secured further suitable alternative employment if he had taken such steps. Working with the limited available information the Tribunal is satisfied, on the balance of probabilities, that if the claimant had taken reasonable steps by way example of extending the number of agencies with whom he had registered/ made direct contact with public authorities/ commercial businesses that it is likely that a graduate who was demonstrating an interest in business by undertaking a MSc Course would have secured suitable comparable employment by the end of December 2022 and that any claim for financial losses should be limited accordingly.

79. For the purposes of determining such financial award the Tribunal has calculated the amount the claimant would have earned with the respondent if he had remained with the respondent on a salary of £20,000 gross (£385 gross per week and £310 net per week) for the period between 15 April 2022 and 31 December 2022 and deducted from such monies net monies/ benefits received during such period which the Tribunal calculates as follows :-

- (a) Period between 15 April 2022 and 31 December 2022 = 37 weeks.
- (b) If the claimant had remained in the employment of the respondent on a gross salary of £20,000 between 15 April 2022 and 31 December 2022 he would have received £11, 470 net (37 x £310).
- (c) Monies received by the claimant in salary and benefits between 15 April 2022 and 31 December 2022 = (1) Total net salary from Pertemps - £5,998.66 (paragraph 45 above) plus (2) Total benefits £2,643.49 (page 154 of the bundle) = £8,642.15
- (d) The net loss of salary between 15 April 2022 and 31 December 2022 in therefore **£2,827.85** which is awarded to the claimant.

80. The claimant also claims interest at 8 per cent on any financial award (from the midpoint). The Tribunal is satisfied that it is appropriate to award such interest which is calculated as set out below:-

- (a) The relevant period is from 15 April 2022 to 31 December 2022 (total of 260 days).
- (b) The midpoint is therefore after 130 days (260 days / 2)
- (c) Total awarded for net loss of salary =£2,827.85
- (d) $£2,827.85 / 365 = £7.74$.
- (e) $£7.74 \times 8\% = £0.62$ (daily rate).
- (f) $£0.62 \times 130 \text{ days} = \underline{\underline{£80.60}}$.

TOTAL AWARD

81. The sums awarded to the claimant which the respondent is ordered to pay to the claimant are therefore as follows:-

- (a) £12,000 (compensation for injury to feelings)
- (b) £1,065.15 (interest on injury to feelings).
- (c) £2,827.85 (compensation for loss earnings) and
- (d) £80.60 (interest on loss of earnings)
- (e) Total award is therefore **£15,973.60.**

Employment Judge Goraj
Date: 23 May 2023

Judgment sent to the Parties: 23 May 2023

FOR THE OFFICE OF THE TRIBUNALS