



EMPLOYMENT TRIBUNALS

Claimant: Pavandeep Hundal

Respondent: South Gloucestershire Council

Heard at: Bristol Employment Tribunal **On:** 5 April 2023

Before: Employment Judge Millard
Mr Adam
Mrs Maidment

Representation

Claimant: Mr Downey (Counsel)

Respondent: Mr Leach (Counsel)

JUDGMENT ON REMEDY

1. The Respondent must pay the Claimant £3,570.34 in respect of her loss of earnings claim.
2. The Respondent must pay the Claimant £9,000 in respect of her injury to feelings claim.

REASONS

Hearing

1. The hearing was held at Bristol Employment Tribunal on 5 April 2023. The hearing was conducted with the parties attending in person.
2. The Tribunal had sight of a bundle of documents comprising A1-152 as well as the original hearing bundle.
3. The Claimant produced a schedule of loss totaling £305,510.72.
4. The Claimant gave evidence. The Respondent called Ms Parfitt and Mr Careswell to give evidence.

5. The Tribunal heard submissions from the representatives. The Claimant's counsel abandoned the Claimant's schedule of loss at the outset of submissions and the hearing was adjourned to enable the Claimant to produce an amended hand written schedule of loss. This amended schedule of loss totaled £197,978.91. The remedy hearing having been listed for a day, the delay caused by the Claimant redrafting her schedule of loss during the hearing, meant that judgment was reserved.

Findings of Fact

6. The Tribunal made the following findings of fact relevant to the issues.
7. These reasons should be read in conjunction with the written reasons of 8 March 2023.
8. Miss Hundal was employed as an agency social worker by South Gloucestershire Council in their Yate office on a fixed term contract. As an agency social worker, Miss Hundal received a higher hourly rate than had she have been a permanent employee, in order to reflect that her contract was for a fixed period and that she did not obtain the suite of rights attaching to employee status. That contract commenced on 8 July 2019. It was extended by agreement of both parties on 6 September 2019 until 29 December 2019.
9. On 23 October 2019 Miss Hundal was given notice by the Respondent of the end of her agency placement.
10. On 29 October 2019, Miss Hundal was provided with a positive reference from her manager Mr Careswell [A36-38 of the Remedy bundle]. This reference gave her reason for leaving as being that she had, "*Completed temporary/limited term contract.*" A brief description of her role was given as,

"Poppy has worked for South Glos. Council as a Social Worker in a locality long-term child protection team. During her time in the team she has managed a case load where children have been subject to child protection plans, children looked after, pre-proceedings cases and some care proceedings as well as some child in need cases. As part of this her tasks have included undertaking assessments, chairing core group meetings and visiting children within statutory timescales.

It is apparent that Poppy is an experienced and knowledgeable social worker.

During her time with us she has written a particular detailed and good quality sibling relationship assessment which demonstrated her in-depth knowledge of child development/attachment and the impact of trauma on children's wellbeing.

I have received positive feedback from a number of family's that Poppy has worked with in respect of their working relationships

*and her good relationships with the children and young people.
Poppy has an honest and open style of working.”*

11. On 22 November 2019, Miss Hundal's agency placement with the Respondent ended. The Tribunal found that Miss Hundal was discriminated against because of her disability in the termination of her agency placement, five weeks earlier than the 29 December 2019.
12. Whilst at the outset of her agency placement, both parties had expressed a hope that Miss Hundal would become a permanent member of staff there was no automatic transfer to become a permanent member of staff and the Respondent was entitled to not extend Miss Hundal's contract beyond 29 December 2019.
13. On 29 November 2019, one week after the end of her agency placement with the Respondent, Miss Hundal was interviewed for a job as a social worker with CAMHS, NHS. At the end of that interview she was offered the role subject to pre-employment checks being completed successfully. The formal written offer of the job was sent on 23 January 2020.
14. Miss Hundal started this job on 16 March 2020. This was a permanent position as opposed to her agency placement with the Respondent, as such it provided her with the full suite of employment rights which attach to employee status. Additionally, she received paid sick leave, pay progression, a defined benefit pension scheme with employer contributions of 20.68% and annual leave amounting to 35 days per year. By contrast, as an agency social worker she did not receive paid sick leave or pay progression. The agency pension contributions were 3% and she received the statutory minimum annual leave.

Loss of Earnings

15. Miss Hundal's contract was due to formally end on 29 December 2019, this was five weeks after the Respondent ended the contract early. Accordingly, Miss Hundal's loss of earnings claim is for the five weeks from the early termination of her contract to the actual contract end point. As an agency employee, Miss Hundal had no guarantee that her agency placement would continue beyond the end date of her contract.
16. Miss Hundal's average weekly net pay whilst employed by the Respondent was £693.27.
17. For the five weeks to the end of her contract, this would have provided a total salary of £3,466.35.
18. Additionally, Miss Hundal would have received a 3% pension contribution from her agency, amounting to £103.99.
19. Accordingly, the total loss of earnings claim is £3,570.34.

Injury to Feelings Award

20. The award of injury to feelings is intended to compensate Miss Hundal for the anger, distress and upset caused by the unlawful treatment she received. It is compensatory and not punitive. The focus is on the actual injury suffered by Miss Hundal and not the gravity of the acts of the Respondent (Komeng v Creative Support Ltd UKEAT/0275/18/JOJ).
21. The general principals that apply to assessing an appropriate injury to feelings award are set out in *Prison Service v Johnson* [1997] IRLR 162, para 27:
- Injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator. Feelings of indignation at the discriminator's conduct should not be allowed to inflate the award;
 - Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination 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;
 - Awards should bear some broad general similarity to the range of awards in personal injury cases – not to any particular type of personal injury but to the whole range of such awards;
 - Tribunals should take into account the value in everyday life of the sum they have in mind, by reference to purchasing power or by reference to earnings;
 - Tribunals should bear in mind the need for public respect for the level of awards made.
22. The matters compensated for by an injury to feelings award encompass subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.
23. In *Vento v Chief Constable of West Yorkshire Police (No2)* [2003] IRLR 102, the Court of Appeal identified three broad bands of compensation for injury to feelings and gave guidance that the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment. The middle band should be used for serious cases, which do not merit an award in the highest band. The lower band is for less serious cases, such as where the act of discrimination is an isolated or one off occurrence.
24. In our judgment the discrimination in this case falls into the lower band. There was not a lengthy campaign of discriminatory harassment against Miss Hundal. A decision was taken to terminate her agency placement five weeks early because of her sickness record caused by her endometriosis, as opposed to that of the comparator agency social worker. It was therefore a single isolated incident of discrimination.
25. Whilst as an experienced social worker and professional, Miss Hundal was caused distress and upset by this decision, she secured a permanent job within a week of her contract ending with the Respondent, with the suite of additional benefits set out above. She also received a positive reference from the Respondent, which is set out in detail above and which she takes

forward with her to all future employments. Any concerns Miss Hundal had of the impact this decision to terminate her contract early would have on her future employment prospects, were swiftly diminished by the prompt securing of new employment and the positive reference, which makes no reference to her sickness record as the reason for her leaving. Any future employers would find nothing unusual in an agency placement that lasted 4.5 months, as by their nature, agency placements are short term in duration.

26. In our judgment, the correct award falls at the top of the lower band. Miss Hundal, who being a professional, was concerned that her professional reputation would be damaged, However, this was short lived as she had secured a positive reference from the Respondent and new employment within a week of the termination of her placement. The appropriate award for injury to feelings is £9,000.
27. In making this award, we note the overlap between the top of the lower band and the bottom of the middle band. This award equally being at the bottom of the middle band.

Employment Judge Millard

Date: 21 May 2023

Judgment & reasons sent to the Parties on 05 June 2023

For the Tribunal Office