



EMPLOYMENT TRIBUNALS

Claimant: Mrs J R O'Day

Respondent: The Dominic Barberi Multi Academy Company

Heard at: Reading (by C.V.P.) **On:** 19 and 20 May 2022

Before: Employment Judge George;
Mrs C Carr;
Dr C Whitehouse (sitting remotely)

Appearances

For the claimant: Mr M Emery, solicitor

For the respondent: Mr S Peacock, solicitor

This has been a remote hearing not objected to by the parties. The form of remote hearing was V – Video, by CVP. Employment Judge George and Mrs Carr were sitting in Reading Employment Tribunal. Dr Whitehouse was sitting remotely.

RESERVED REMEDY JUDGMENT

(varied to take account of grossing up)

The respondent shall pay to the claimant compensation for disability discrimination in the sum **of £82,530.67** calculated as follows:

Injury to feelings

Compensation for injury to feelings	21,000.00	
Interest on £21,000.00 @ 8% from 21.07.2018 (mid-point between 26.03.2018 and 13.11.2018) to 31.03.2023 (1715 days) @ £4.60 p.d.	7,893.70	
Total award for injury to feelings incl. interest	28,893.70	28,893.70

Past Financial Loss (calculated as at 31.03.2023)

Financial Loss 2018-19

Net Salary £473.10 p.w.

Gross Salary £673.23 p.w.

Employer's pension contribution £110.95
p.w.

Total £(473.10 + 110.95) = £584.05 p.w.

01.10.2018 to 31.03.2019 (on ½ pay due to sickness absence) 26 weeks @ £292.03 p.w.	7,592.78		
01.04.2019 to 31.08.2019 22 weeks @ £584.05 p.w.	12,849.10		
Loss to 31.08.2019	20,441.88	20,441.88	
LESS 30% for chance C would not have returned to work in Summer 2018		(6,132.56)	
Adjusted Loss to 31.08.2019		14,309.32	
Financial Loss 2019-2020	30,983.16		
Net Salary £482.66 p.w. employer's pension contribution £113.17 p.w. Total = £595.83 52 weeks @ £595.83 p.w.			
Financial Loss 2020-2021	31,602.48		
Net Salary £492.31 p.w. employer's pension contribution £115.43 p.w. Total = £607.74 52 weeks @ £607.74 p.w.			
Financial Loss 2021-2022	32,234.80		
Net Salary £502.16 p.w. employer's pension contribution £117.74 p.w. Total = £619.90 52 weeks @ £619.90 p.w.			
Financial Loss 2022-2023	19,177.66		
01.09.21 to 31.03.22 (taken as date of calculation for ease) Net Salary £512.20 p.w. employer's pension contribution Total = £632.30 p.w. £632.30 X 30.33 weeks			
Total Financial Loss 01.09.2019 to 31.03.2022	113,998.10	113,998.10	
LESS 50% for chance of retirement aged 65 years at 31.08.2019		(56,999.05)	
		56,999.05	
LESS 70% of that for declining prospect of remaining in full time employment until aged 70 years		(39,899.34)	
Adjusted loss 2019 – 31.03.2023		17,099.71	
Adjusted loss to 31.08.2019 carried forward		14,309.32	
Total adjusted financial loss to 31.03.2023		31,409.03	
Interest on that @ 8% from 31.12.2020 (mid-point between 1.10.2018 and 31.03.2022) to 31.03.2022 (821 days @ £6.88 p.d.)		5,651.90	
Total adjusted financial loss 01.09.2023 to 31.03.2023 incl interest		37,060.93	37,060.93

Future Financial Loss 01.04.2023 to 31.03.2024

5 months (21.66 weeks) @ £632.30 p.w. for year 2022-2023	13,695.62	
7 months (30.33 weeks) @ (£632.30 X 1.02) = £644.95 p.w. for year 2023-2024	19,561.21	
Total financial Loss 01.04.2023 to 31.03.2024	<u>33,256.83</u>	33,256.83
LESS 50% for chance of retirement aged 65 years at 31.08.2019		(16,628.42)
		<u>16,628.41</u>
LESS 70% of that for declining prospect of remaining in full time employment until aged 70 years		(11,639.89)
Adjusted loss 01.04.2023 to 31.03.2024		<u>4,988.52</u>
<u>Total compensation subject to grossing up to take account of the incidence of income tax</u>		<u>70,943.15</u>
Excess of total compensation over £30,000		40,943.15
Grossing up of first £37,699 at 20% (37,699 X 100/80)		47,123.75
Grossing up of (40,943.15 – 37,699) at 40% (3,244.15 X 100/60)		5,406.92
Total		<u>52,530.67</u>
LESS £40,943.15		<u>(40,943.15)</u>
Increase in compensation necessary to compensate for incidence of tax		<u>11,587.52</u>
Total Sum Payable after grossing up		82,530.67

REASONS

1. The reserved remedy judgment was sent to the parties on 24 April 2023 with case management orders directing the parties to seek to agree the amount by which the award should be increased to take account of the incidence of income tax. No response has been received. In those circumstances, the reserved remedy judgment is varied to substitute the amount set out above.
2. In the absence of information from the claimant about the amount of tax she is likely to pay on this award, it is assumed that the whole of her personal allowance for the financial year 2023 to 2024 would be used by other income from pensions and that the whole of the excess of total compensation over £30,000 would be subject to tax at the rates applicable for the current financial year.
3. This variation is done by way of a reconsideration of the Tribunal's own initiative because it is just and equitable that the claimant should be fully compensated which would not happen were the award not increased to take account of the incidence of tax.

Employment Judge George

Date: ...24 April 2023

Varied: 6 July 2023

Sent to the parties on:
24 April 2023

Varied judgment sent to the parties on
7 July 2023

For the Tribunal: