



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Marie Raphael

**Respondent:** 1) Trentside Manor Care Limited  
2) Mr T Dhadha  
3) Mr P Dhadha

**Heard at:** Birmingham      **On:** 30 & 31 May & 30 June 2023

**Before:** Employment Judge Liz Ord  
Member Mrs Rachel Pelter  
Member Mr Jatinder Sharma

**Representation:**

Claimant: Mr Tim Sheppard (counsel)  
Respondent: Mrs Michele Peckham (solicitor)

## RESERVED REMEDY JUDGMENT

The unanimous decision of the tribunal is:

The respondent is ordered to pay the claimant compensation in the sum of £100,840.34.

## REASONS

### Background

1. By an oral judgment on liability delivered on 29 March 2023, the tribunal adjudged that the claimant's complaints of disability discrimination, unfair dismissal and wrongful dismissal were well founded and succeeded.
2. The case came before us again for remedy hearing on 30 and 31 May 2023 and we deliberated on 30 June 2023.

### The Issues

3. The issues for the tribunal were agreed at the hearing as being:

**Unfair Dismissal Award:**

1. What basic award is payable to the Claimant?
2. What is the basic award, and would it be just and equitable to reduce it and if so, to what extent?
3. Loss of statutory rights – is the claimant entitled to compensation for loss of statutory rights. If so, how much?

**Discrimination Claim:**

4. Compensatory award – what compensatory award is payable to the Claimant?
5. What financial losses the dismissal caused the Claimant
6. Whether the Claimant took reasonable steps to mitigate her loss
7. Whether there was a chance the Claimant would have been fairly dismissed anyway if a fair procedure had been followed or for some other reason?
8. Whether the Claimant's compensation should be reduced and if so, by how much?
9. Whether Acas code of practice on disciplinary and grievance procedures applies?
10. If so, whether the R or the Claimant unreasonably failed to comply with it – if so, whether it is just and equitable to increase or decrease any award payable to the Claimant – if so, by what proportion. – up to 25%.
11. Whether the Claimant contributed to her dismissal by blameworthy conduct – whether it would be just and equitable to reduce her award and if so – by how much?
12. Should interest be awarded if so, how much and on the financial side. Mid-point from the date of the act of discrimination and the date the tribunal calculates the

award – simple interest at 8% - Submissions from the parties on when the act of discrimination is – is it suspension, dismissal and/or appeal.

13. If interest is to be awarded, how much?
14. Injury to feelings – has the discrimination caused the Claimant injury to feelings – if so, how much compensation should be awarded for that –
15. Should interest be awarded – if so, how much? – from the date of the discriminatory act to the date of award – simple interest at 8%.
16. Should aggravated damages be awarded?

## **Evidence**

4. The tribunal had before it the following:
  - a. A remedy bundle of 180 pages (RB);
  - b. The original liability bundle of 962 pages (LB);
  - c. A witness statement bundle of 27 pages;
  - d. List of issues;
  - e. Agreed mitigation earnings;
  - f. Hourly rates of pay;
  - g. Revised schedule of loss dated 29.6.2023.
5. It heard evidence on oath:
  - a. from the claimant and from her husband, Mr John Raphael.
  - b. from Mr Pargan Dhadha for the respondents.

## **The Law**

6. The tribunal considered the law as referred to by the claimant's and respondents' counsel, and as set out in the "Respondents Submissions for Remedy Hearing 30-31 May 2023", and the "Revised Schedule of Loss On Behalf Of The Claimant".

## **Facts and Discussion**

### **Prior to dismissal, was the claimant's working week 4 or 5 days?**

7. The claimant normally worked a 5 day week from Monday to Friday, although she wanted to explore the possibility of working a shorter week. She was stressed, largely due to implementing of the General Data Protection Regulations (GDPR) within the care home, which she found a big responsibility and a worry, particularly as she had little support.

**Case No: 1305965/2018**

8. There were 2 meetings between the claimant and Pargan Dhadda on 4 and 16 May 2018 when the claimant asked to reduce her hours to a 4 day week in order to avoid going off sick. On 16 May it was agreed that a 4 day week could be trialled. Pargan Dhadda told her to check whether it was acceptable to the Care Quality Commission (CQC) and, if so, put a plan in place. Sarah Ireland (Inspector for adult social care) at the CQC confirmed on 22 June 2018 that she was content with the proposal, subject to monitoring.
9. The claimant started the 4 day week trial on the week commencing 18 June 2018, with Friday being her day off work. The claimant gave evidence that this was on an agreed trial basis for 3 months. We accept this evidence.
10. She only took off 2 Fridays before being dismissed, which were the Fridays of 22/6 and 29/6. As her dismissal was during the trial period, when there was no permanent change to her terms and conditions, she was still contracted to work 5 days a week on a permanent basis. Therefore, we find that, at the time of dismissal, she was contracted to work 5 days a week.

**Week's pay**

11. In essence, a week's pay is the gross contractual remuneration an employee is entitled to be paid when working their normal working hours each week.
12. The claimant was paid basic gross pay of £25,000 at the time of her dismissal, which equates to £480.77 per week gross.
13. However, she also received a weekly bonus based on occupancy levels, the aim being to fill beds in the home. In evidence, Pargan Dhadda said he agreed to this bonus structure in around 2014/2015 instead of a salary increase. The claimant submitted an occupancy report to him and this was used to determine her bonus.
14. Mole Mining Ltd. v Jenkins [1972] ICR 282 provides that it may be possible to infer a contractual term that a regular bonus will be paid, such that it falls within remuneration. We infer from the evidence that the bonus was a contractual term and accordingly part of remuneration.
15. Based on the last full 12 weeks' pay, the parties agree that the claimant's gross weekly pay including bonus was £580, and that the claimant's net weekly pay was £449. We accept these figures.

**Loss of statutory rights**

16. The claimant was employed by the respondent from 1/8/2011 to 21/8/2018, amounting to over 7 years. It would take the claimant 2 years to reacquire the right to claim unfair dismissal or a statutory redundancy payment, and 7 years to reacquire her lost statutory notice period. This is a significant time period and consequently we find that an award of £500 would be just and equitable.

**Financial losses**

**Past Loss to remedy hearing**

17. The claimant was 64 years old when she was dismissed (d.o.b 3/10/1954) and worked 45 hours per week (p59 LB – original offer letter of 27/6/2011). We asked ourselves how many days per week she would have been working going forward.
18. She was working a trial period of 4 days per week and had been succession planning for some time by training up Amanda Jones. Amanda stood in for her at times.
19. The claimant was not in the best of health and suffered from a number of medical conditions. She had suffered a stroke in 2015, she had Chronic Obstructive Pulmonary Disease (COPD) and a chronic heart condition. Her energy levels had reduced and she often felt tired.
20. Whilst the implementation of GDPR would no longer be a significant issue going forward, there were always going to be substantial pressures working as a manager in the home. The claimant had said in evidence that she needed the 3 day break each weekend to recover, and we find that she would have continued to need it. We find that she would have completed the 3 month trial of working 4 days per week and that at the end of it, her contract would have been permanently changed to 4 days.
21. The claimant had told the respondent that she was going to retire when she was 66 years old, although in evidence she implied it was a throwaway comment, pointing to the fact she is still working now, albeit in a different job and for less hours. She said she had no firm plans to retire at that age, and she loved the care home and the residents, and it was an important part of her life.
22. However, her medical conditions were not getting any better and her health would not have allowed her to carry on indefinitely in the management role. It would not have been feasible to reduce her days any further, say to 3 days, as the responsibilities of the role were too demanding.
23. Having trained up Amanda Jones, we find that the claimant would have given up her management position on her 66th birthday (3/10/2020), when she was able to draw her state pension. Therefore, her manager's salary would have stopped on 2/10/2020.
24. However, it would have been a huge wrench for her to leave the home and she would not have done so voluntarily at that stage. We find that she would have stepped down to the role of Senior Carer on her 66<sup>th</sup> birthday and let Ms Jones take over the management. It is likely that she would have wanted to reduce her hours due to her health issues and we find that she would have gone down to a 3 day week on her 66<sup>th</sup> birthday and continued on this basis until her 70<sup>th</sup> birthday (3/10/2020).

25. The employees at the care home were given an annual salary increase each April, although the claimant stopped getting an increase from 2015. Pargan Dhadda's evidence was that the claimant received a bonus instead. However, the purpose of a bonus is to incentivise, and is usually paid in addition to salary and not instead of a normal pay increase. The claimant did not make any agreement to forgo pay increases, which reduced her basic pay in real terms. We find that, had there been no discrimination, the claimant's salary would have increased in line with that of other employees.
26. We accept the net weekly salary figures set out in the claimant's revised schedule of loss and we have used them to calculate her financial losses up to her 66<sup>th</sup> birthday on the basis of a 4 day week (see calculation below).
27. From her 66<sup>th</sup> birthday, she would have earned a Senior Carer's wage, which at that time (3/10/2020) was £9.79 per hour (e-mail of 31/5/2023 on hourly rates). So working a 3 day week, she would have earned a gross weekly wage of  $3/5 \times 45 \times 9.79 = £264.33$  (13,745.16 per annum). This would have increased on an annual basis.

#### **Mitigation of financial losses**

28. The burden of proof rests with the employer to show the claimant failed to mitigate her loss.
29. After her dismissal, the claimant's confidence was shattered. She had dedicated over 20 years to the care sector and loved the work and the people she cared for. Having an unblemished record, it was hard for her to take the sudden and unexpected accusation of gross misconduct, and to have her livelihood snatched away. Nothing like this had ever happened to her before. Her health was fragile and she had been under considerable stress.
30. Consequently, she struggled at first to seek employment and we accept at the time she did all that she could reasonably be expected to do. Despite her health, she managed to start applying for various jobs (full time and part time) in the retail sector, and created a table of some of those jobs (RB 95).
31. She gave evidence that she applied for more jobs than this, but she had not written them down and could not remember the details as it was so long ago. These other jobs were usually on line or she just called into shops in person to ask whether there was any available work. She was a credible witness and we accept this evidence.
32. She was restricted in the type of jobs she could do, as she was unable to type and for the past 20 years she had only worked in the care sector, thereby limiting her skills. She did not apply for jobs in the care sector, except for one, which was with a care recruitment agency (Total Jobs Catering) from whom she heard nothing.
33. The claimant gave evidence that, to get a role in the care sector, she needed to produce an Advanced Disclosure and Barring Service Certificate and she was unable to do so because of her dismissal for gross misconduct. The CQC and the County Council were aware of her dismissal and this tarnished

her reputation. It was only from the date of the tribunal's liability judgment that she felt her name could start to be cleared and she became more employable. We accept this.

34. In November 2018, the claimant managed to get a part time, temporary job with Boots over the Christmas period. She worked from 16 November 2018 until 4 January 2019 and earned a net figure of £2,219.97 (agreed by the parties). She continued to apply for other jobs during and after this period.
35. She was unable to secure any other employment until the following Christmas when Boots took her on again on a part time basis (18 hours over 3 days). Initially, this was for a temporary period from 4 November 2019 until January 2020. However, the claimant's contract was extended on several occasions and she became a permanent employee. She is still working there now.
36. We find that the claimant became settled at Boots by the Spring of 2020. Then the Covid lockdown occurred in March 2020 and there was a significant reduction in job opportunities. Jobs in the retail sector became few and far between. Boots was an essential retailer during Covid and that gave her some job security. Therefore, it was not unreasonable of her not to look for work at that time.
37. By the Autumn of 2020, more employment opportunities became available. However, the claimant reached her 66<sup>th</sup> birthday that October, and was able to draw her state pension. We find that, from then onwards, she stopped looking for jobs.
38. In conclusion, we find that the claimant did what she could reasonably be expected to do to mitigate her loss up to her 66<sup>th</sup> birthday on 3/10/2020. Thereafter, she ceased mitigating her losses and is not entitled to be compensated from then onwards.
39. The parties have agreed the net annual mitigation earnings for the financial years 2019/2020 (£3,845.11) and 2020/2021 (10,342.37), and we accept those figures (the latter of which we have pro-rated).

**Whether there was a chance the claimant would have been fairly dismissed anyway**

40. The respondent's case is that the claimant would have left the care home about 3 to 6 months after the dismissal in any event because of her poor health. They say that the job was physically demanding and she was struggling to cope.
41. The claimant's case is that she loved her job and had no intention of leaving. She always took residents around the home and to the toilet, and washed and dressed them. She did inspections, including upstairs and in the grounds, and checked on building works that were being done at the home. Whilst she had a small tremor in her hand, her arm did not shake, and her knees were fine after having arthroscopies. She had not been required to shield during Covid.

42. We accept the claimant's evidence. Whilst she had less energy than previously, she was still able to do her job satisfactorily and there was no indication from the respondent that she might be dismissed on capability grounds. She would not leave voluntarily because she loved the job and the residents.
43. Pargan Dhadha suggested that she would not have been able to get through the Covid pandemic at work. However, she was not classed as vulnerable during the pandemic, and she was very capable and able to draw on a wealth of experience. We have no reason to believe she could not have continued working throughout Covid in the care home. In fact, she did work throughout that period in the retail sector for Boots. We therefore find that she would have continued to work for the respondent throughout the Covid period.
44. We conclude that there was no chance that the claimant would have been fairly dismissed in any event and we make no reduction on this count.

**Whether there should be an ACAS code of practice uplift**

45. There were substantial failings in the disciplinary process. Pargan Dhadha had wanted to dismiss the claimant for some time and had discussed it with his HR advisers. He was looking for the first opportunity to do so. When he thought he had found it, he immediately proceeded, as quickly as possible, to put in motion basic disciplinary steps, simply to attempt to satisfy compulsory procedural requirements. He had no real interest in finding out whether the claimant had actually committed any misconduct.
46. Pargan Dhadha purported to undertake an investigation, albeit with serious flaws and no proper consideration of the allegations. The claimant was not given all relevant documents in that a crucial risk assessment, handover notes, and statements from Janet Paterson, Daisy Bourne and Amanda Jones were missing.
47. On the other hand, Pargan considered other documents, which were either irrelevant or improper to have before him, namely his own witness statement, and a grievance against the claimant by Cassey Brindley on an entirely different matter.
48. Many other documents had been sent to the claimant at very short notice and in a chaotic and piecemeal fashion. Incomplete Personal Care Plans (PCPs) were shown to her, although she was given no opportunity to comment on each of the alleged failings.
49. Consequently, the claimant had inadequate opportunity to consider the case against her and to properly defend herself. She gave evidence that she felt Pargan Dhadha was not listening to her. We accept that evidence.
50. The disciplinary process was kept in the family with Pargan Dhadha firmly in control all along. The disciplinary hearing was held by Bobby Dhadha, Pargan's nephew, and he proceeded in a similar fashion to Pargan. The appeal hearing was conducted by his cousin, Harninder Kandola, with Pargan telling him what questions to ask. This was despite the fact there



were senior managerial staff at the sister care home, Wilbraham House, who could have undertaken an independent appeal.

51. Bobby Dhadda also failed to provide the claimant with the crucial risk assessment and handover notes, and gave her no opportunity to comment on the PCPs. There was no consideration of the claimant's length of service or unblemished record.
52. The outcome letter gave no indication of why the claimant's explanations for her conduct were not accepted, and does not analyse why she was guilty of gross misconduct. There is no consideration of lesser sanctions. Other members of staff had previously received lesser sanctions for far more serious conduct, such as medication errors and duplication of medication.
53. In conclusion, we find that the respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures and, for the reasons given, we award a 20% uplift in compensation.

#### **Whether compensation should be reduced for blameworthy conduct**

54. The claimant made a minor error by not writing down her mental risk assessment, whilst under the significant pressures of work. If she had written it down, it would not have altered her decision. Amanda Jones was on duty after the claimant left the premises and it was reasonable for the claimant to assume Amanda would take over the situation.
55. In any event, this was not the true reason for dismissing the claimant, but was simply an excuse. The real reason she was dismissed was because of her reduced energy levels, and need for flexible working which Pargan Dhadda had reluctantly agreed to. Therefore, it was these things, which arose out her disability, that led to the dismissal, rather than her administrative error.
56. Therefore, there is no contributory conduct for us to take into account and we make no deduction.

#### **Whether interest should be awarded on financial losses**

57. There is no good reason not to award interest. Accordingly, interest at 8% is awarded from the mid-point of the date of the act of discrimination, which we take as the suspension (2/7/2018) and the date the tribunal calculated the award (6/7/2023)

#### **Whether the discrimination injured the claimant's feelings**

58. The claimant suffered from depression from when she was young and her father died, and had been taking medication (Citalopram) to control it. However, after her suspension, her mental health significantly deteriorated. Whilst she was not suicidal, she was in a very bad way and felt it was the beginning of the end.
59. She went to her GP, who diagnosed adjustment reaction and increased her dose of Citalopram. It remained elevated up to and throughout these tribunal proceeding as a direct result of the allegations and the dismissal.

She did not seek further medical treatment. However, this does not mean she did not continue to suffer.

60. She had worked in the in care sector for 20 years and the respondent's home for 7 years. She was dedicated to the care home and had put in place many improvements. She loved the residents and got on well with the staff. She had a clean disciplinary record throughout her time at the home.
61. Consequently, it came as a tremendous shock to be dismissed totally unexpectedly. She was terrified during the disciplinary process, as she was made to confront a stream of misconduct allegations. She found the allegations incredulous and they caused her great feelings of shame. She thought her world had collapsed and she felt worthless and useless. Her husband, John Raphael, gave evidence that she changed as a person after the dismissal and she was in a deep and dark place. We accept this.
62. She was suddenly suspended and made to leave the care home without being able to say goodbye to her beloved residents, some of whom had been there since she started and with whom she had developed close relationships. Amanda stopped talking to her and the claimant felt she had lost a friend.
63. She was concerned about what people might think of her, including her own family, and she became introverted and isolated. She felt too embarrassed to go out with friends or meet people on the street, and she stopped doing things she had previously done, like going to the theatre and visiting her son and daughter-in-law. Her son worked in a similar sector and they used to talk about work. She was not able to cope with talking about work any more.
64. Delays in the tribunal process meant that the claimant endured nearly 5 years of suffering before her name was cleared and she could begin to recover. During both the liability and remedy hearings she was put under robust cross examination and had to relive the distressing events.
65. In evidence, the claimant said she does not think she will ever get over it. We accept this.
66. Having regard to all these matters, we conclude that the claimant's injury to feelings claim falls towards the upper end of the middle Vento band. Accordingly, taking account of the Presidential Guidance of March 2018 for injury to feelings and psychiatric injury (following *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ879), we award £20,000.

**Whether interest should be awarded on injury to feelings compensation**

67. There is no good reason not to award interest. Accordingly, interest at 8% is awarded from the date of the suspension (2/7/2018) and the date the tribunal calculated the award (6/7/2023).

**68. Whether aggravated damages should be awarded**

69. The respondents deliberately withheld crucial evidence from the tribunal, namely the risk assessment and handover notes, until they were directly

requested by the judge, thereby conducting proceedings in a disingenuous manner.

70. The way in which Pargan Dhadda and Bobby Dhadda gave evidence was high handed and intimidatory, and was blatantly self serving.

71. As a result, the claimant was put to additional, unnecessary distress.

72. Consequently, we make an award of aggravated damages of £5,000.

**Calculation**

**73. Wrongful Dismissal**

7 full weeks' notice pay

21/8/2018 to 9/10/2018: 7 x £456.18            £3,193.26

**Compensation for Unfair Dismissal**

*74. Basic Award*

At the effective date of termination, the statutory cap on gross weekly pay was £508.00. The claimant's gross weekly pay at the time was £580.00 and so the cap applies.

1.5 x 7 x £508.00 = £5,334.00

*75. Compensation for Loss of Statutory Rights*

£500

**Compensation for Discrimination**

*76. Past Financial Loss*

From end of notice period to 66<sup>th</sup> birthday (net earnings)

10/10/2018 - 31/3/2019: 24.4 weeks x £456.18 x 4/5	£8,904.63
1/4/2019 - 31/3/2019: 52 weeks x £458.39 x 4/5	£19,069.02
1/4/2020 - 2/10/2020: 26.6 weeks x £461.23 x 4/5	£9,814.98
Total	£37,788.63

*Adjustments to past financial loss*

*Mitigation earnings (net)*

21/8/2018 – 31/3/2019    £2,219.97

1/4/2020 - 31/3/2021    10,342.37    Equivalent to £198.89 per week

Pro-rated from 1/4/2020 to 2/10/2020    Equivalent of 26.4 weeks

$$26.6 \times \text{£}198.89 = \text{£}5,290.47$$

$$\text{Total mitigation earnings} = \text{£}2,219.97 + \text{£}5,290.47 = \text{£}7,510.44$$

*Past financial Loss after deductions*

$$\text{£}37,788.63 - \text{£}7,510.44 = \text{£}30,278.19$$

*ACAS uplift on financial loss*

Uplift applied after mitigation earnings have been deducted

We awarded 20% and so the uplift is:

$$0.20 \times \text{£}30,278.19 = \text{£}6,055.64$$

*Total financial loss after uplift*

$$\text{£}30,278.19 + \text{£}6,055.64 = \text{£}36,333.83$$

*Interest on financial losses*

From the mid-point between suspension date and calculation date

1830 days from 2/7/2018 to 6/7/2023 mid point = 915 days

$$915 \times 0.08 \times 1/365 \times 36,333.83 = \text{£}7,286.61$$

*Total financial loss*

$$\text{£}36,333.83 + \text{£}7,286.61 = \text{£}43,620.44$$

*77. Injury to feelings compensation*

£20,000

*Interest on injury to feelings compensation*

From the suspension date to the calculation date = 1,830 days

$$1,830 \times 0.08 \times 1/365 \times 20,000 = \text{£}8,021.84$$

*Total injury to feelings compensation*

$$\text{£}20,000 + \text{£}8,021.84 = \text{£}28,021.84$$

78. *Aggravated Damages*

£5,000

*Interest on aggravated damages*

From the mid-point between suspension date and calculation date  
= 915 days

$915 \times 0.08 \times 1/365 \times 5,000 = £1,002.73$

*Total*

$£5,000 + £1,002.73 = £6,002.73$

79. **Summary of award**

Wrongful dismissal	£3,193.26
Basic award	£5,334.00
Loss statutory rights	£500
Past financial loss	£43,620.44
Injury to feelings	£28,021.84
Aggravated damages	£6,002.73
<b>Total</b>	<b>£86,672.27</b>

80. **Grossing up**

Awards up to £30,000 are tax free.

A marginal rate of 20% tax is assumed

The basic award is not subject to grossing up (already gross) but it does form part of the tax free allowance. Including the basic award, £30,000 is deducted from the total and the balance grossed up.

$£86,672.27 - £30,000 = £56,672.27$  to gross up

$80\% = 56,672.27$

$100\% = 56,672.27/80 \times 100 = 70,840.34$

81. **Total compensatory award**

$£30,000 + £70,840.34 = £100,840.34$

Employment Judge Liz Ord  
06 July 2023

Notes

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