EMPLOYMENT TRIBUNALS

Claimants: (1) Mr F Austin
(2) Ms M Newton

Respondents: Royal Borough of Kensington and Chelsea

Heard at: London Central (via Cloud Video Platform) **On:** 25 May 2023

Before: Employment Judge Joffe
Ms C Brayson
Mr D Carter

Appearances
For the claimants: In person
For the respondents: Ms A Ahmad, counsel

REMEDY JUDGMENT

1. The respondent must pay to the first claimant the sum of £4000 for injury to feelings.
2. The respondent must pay to the second claimant the sum of £7000 for injury to feelings.
3. The respondent must pay to the first claimant the sum of £1050 for interest on the injury to feelings award.
4. The respondent must pay to the second claimant the sum of £1837 for interest on the injury to feelings award.

RESERVED REASONS

Claims and issues

1. We reserved these reasons in order to complete the remedy hearing in the day allocated. The only issues before us were what sums, if any, the claimants should be awarded for injury to feelings and what further sums by way of interest on injury to feelings.

Findings

The hearing

2. We heard further oral evidence from the claimants based on their original statements to the Tribunal for the liability hearing and had a bundle for the remedy hearing running to 332 pages which included the pleadings and orders, our liability judgment and some newspaper articles.

3. The claimants both gave evidence to the effect that their feelings were further injured by media reporting of the liability judgment.

4. The respondent called Ms Morris to give evidence about what the respondent had done in relation to requests from the press for comment on the proceedings.

5. The liability judgment was promulgated on 3 November 2021. The delay in holding this remedy hearing is partly accounted for by the claimants pursuing an appeal to the Employment Appeal Tribunal, which we understood had been rejected for being presented out of time.

Relevant findings from the liability judgment

6. The claimants had brought a significant number of claims of harassment related to sex / sexual harassment, public interest disclosure detriment and victimisation.

7. They were successful in respect of claims of harassment as follows:
   a) Ms Shields suggesting to colleagues on 29 November 2019 that the claimants were sleeping together;
   b) Ms Shields saying to colleagues on 29 November 2019 that the second claimant was 'sucking [the first claimant's] cock';
   c) Ms Shields telling colleagues that the second claimant was a 'cunt' in late 2019 (second claimant only).

8. We dismissed the remaining claims.

9. We reached some conclusions in arriving at our judgment on liability which contain findings about the effect of the harassment on the claimants:
   [para 423 and 486 – the 'sleeping together' remark]
   It did however seem to us to be conduct of a sexual nature because it referred to alleged sexual activity. We accepted that it was unwanted by Mr Austin when he found out about it. Ms Shields' purpose appears to have been to vent her frustrations about Mr Austin and Ms Newton to her colleagues but we considered that the conduct, once it came to Mr Austin's attention, would have had the proscribed effect of violating his dignity or creating a humiliating environment for him. It would be reasonable for a manager to feel that an allegation that he was having sexual relations with a subordinate rather than working had that effect and we accepted that it had some such effect on Mr Austin, although we also considered that both he and Ms Newton very quickly also fastened opportunistically on the remarks as material they could use to maintain their own positions

It did however seem to us to be conduct of a sexual nature because it referred to alleged sexual activity and it also seemed to us to be clearly unwanted by Ms Newton when she found out about it. Ms Shields' purpose appears to have been to vent her frustrations about Mr Austin and Ms Newton to her colleagues but we considered that the conduct, once it came to Ms Newton's attention, would have had the proscribed effect of violating her dignity and/or creating a humiliating environment for her. It would be reasonable for Ms Newton to feel that an allegation that she was having sexual relations with her manager rather than working had that effect and we accepted that it had some such effect on Ms Newton, although we also considered, as we stated above, that the claimants fastened opportunistically on the remarks as material they could use to maintain their own positions.

10. In respect of the allegation that Ms Newton was described repeatedly by Lesley Shields as "bitch" and "cunt" , we found as follows:
488. We found that Ms Shields had referred to Ms Newton as a cunt on one occasion.
489. That was clearly conduct which was unwanted by Ms Newton.
490. Was it conduct related to sex? We considered that the word 'cunt' is used to express extreme disapprobation of a person of either gender although it is also a word for female genitalia. There are many such words in the English language, derived from words for both male and female genitalia, some of which are used for both men and women. We considered that whether there was a relationship with sex in a particular cases was likely to be context specific. The selection of the word cunt as an insult for Ms Newton in this instance did not seem to us to have the necessary relationship with sex because there was nothing to suggest that Ms Shields would not have used it in respect of a man she disliked.
491. We considered carefully whether Ms Shields' resentment of Ms Newton was related to her sex. We had to draw inferences about her motivation from the evidence which we had. It was clear that she was upset about the irregular appointment of Ms Newton, about the fact that Mr Austin was not, as she saw it, bearing his share of the workload and the fact that she considered that he was spending time on Ms Newton and her project which was not being used to help with other tasks. At least part of that picture was a perception that there might be a sexual relationship between the two, as evidenced by her remarks on 29 November 2019.
492. It was in that sense that we concluded that the animus Ms Shields had against Ms Newton had some relationship with sex. If the claimant had been male, Ms Shields would not, we concluded, have believed that the situation arose from a workplace affair between the two. The extreme vitriol involved in describing a colleague as a 'cunt', arose, we concluded, from the particular level of resentment created by the combination of factors we have identified, including the perception, probably not amounting to any sort of serious belief, that Mr Austin and Ms Newton might be having an affair.
493. We were satisfied that the use of the insult, once Ms Newton found out about it, particularly in conjunction with the 29 November 2019 incident, had the proscribed effect of violating Ms Newton's dignity and creating an environment that she reasonably regarded as humiliating.

Mr Austin's evidence

11. Mr Austin's witness statement said little about injury to feelings.

12. Mr Austin gave oral evidence that he felt Ms Shields' remarks about him were highly damaging. He said that, as a contractor, his reputation was very important to him. He had not liked going into work not knowing who might be thinking he was sleeping with another employee. He said that this caused him considerable stress and anguish. The press coverage had worried him. He had been asked about a Daily Mail article about the liability judgment (article dated 30 November 2021); someone at his current place of work had said that it would have been nice to have a heads up. He had worried about losing that role and about future employment prospects.

13. In answer to Tribunal questions, Mr Austin said that he had been in his current engagement since September 2021 on fixed term contracts which had been renewed on a number of occasions, most recently in March 2023 (to continue until July 2023). He had not had a firm indication as to whether there would be a further extension.

Ms Newton's evidence

14. Ms Newton gave evidence as to her understandable upset about the harassment. She said that she had been a contractor and new to the organisation, hence in a vulnerable position.

15. Ms Newton was also concerned about the matter having been reported in the media. She said that her (young adult) children had become aware of the matter as a result of the reporting and she had then had to explain about the proceedings to them.

16. She expressed significant concern that these articles would appear if anyone conducted an internet search on her name.

17. Ms Newton suggested in evidence that she would not have continued with her other claims had the respondent apologised about the matters the Tribunal ultimately found proven. It was put to her that she had never said that to the respondent or offered to settle on that basis. Her answer to that question referred to her internal complaints during a period before proceedings commenced.

18. The claimant had not found a new role until December 2021 and was working on extensions of that contract. The current extension was until October 2023.

19. Both claimants referred to having seen one article in a Nigerian publication (which article was not in front of the Tribunal) in support of their contentions that the proceedings had had global publicity.

20. Both claimants made much of the fact that the respondent had wanted the reasons for the judgment in writing. The Tribunal had said to the parties at the end of the liability hearing that, although the decision had been reserved, it

might be possible for the parties to return for an oral judgment and reasons if that were their preference. The respondent preferred not to take the Tribunal up on that offer. The claimants complained that this choice by the respondent had resulted in the full reasons being on the internet and the reporting by the media which followed the judgment.

21. The claimants also alleged that the respondent had in some way been involved in the publication on 12 July 2022 of an article in a local government publication entitled *Council hits back at 'dysfunctional' tribunal ruling.* The article in its entirety said:

A dispute between Kensington & Chelsea LBC and two senior former employees that ended in an employment tribunal has continued to rumble.
Although the council was largely vindicated, it has criticised the tribunal judgement for claiming its Grenfell finance team became 'dysfunctional'.
The tribunal did uphold a number of sexual harassment claims and found the council in breach of the Equality Act but months after its judgement a settlement has yet to be agreed.
Tribunal judges had heard the relationship between the two most senior members of the Grenfell finance team had broken down amid claims of sexual harassment, a 'climate of fear,' use of foul language and laziness. They were told that Francis Austin, who was head of Finance for Grenfell at Kensington & Chelsea, attended one virtual meeting in a bathrobe.
The tribunal concluded Mr Austin and programme manager Monika Newton 'planned what was, in effect, a coup'.
A council spokesperson said: 'The issues raised during the tribunal do not reflect the work of the Grenfell finance team, which has performed efficiently and effectively to complete the financial statements work and provide support to council services.'
However, the council said permanent financial management officers would carry out the work previously done by the Grenfell finance team.

Ms Morris' evidence

22. Ms Morris is the respondent's director of HR and organisational development and she was called in response to the suggestions made by the claimant about the respondent's role in the publicity around the proceedings. She said that the respondent did not court publicity but, if approached, might either make no comment or give a short factual statement. She did not herself manage the press and PR services but was aware of the policy as to press engagement in relation to HR matters.

23. She was aware that the respondent had given a statement as quoted in the local government publication article. She did not know why there had been an approach to the respondent at that point in time although she was aware that journalists had contacted the respondent intermittently after the judgment was given. She had had a couple of emails from the communications team asking her what the position was.

Law

Injury to feelings

24. The tribunal has the power to award to compensation to an employee for injury to feelings resulting from an act of discrimination by virtue of sections 124(5) and 119(4) of the Equality Act 2010.

25. The purpose of the award is to compensate the complainant for the anger, upset and humiliation caused by the discrimination.

26. As set out in Prison Service v Johnson [1997] IRLR 162:
- Awards should be compensatory and just to both parties;
- Awards should not be too low as this would diminish respect for the anti-discrimination legislation;
- Awards should bear some broad general similarity to the range of awards in personal injury cases;
- In exercising their discretion tribunals should remind themselves of the value in everyday life of the sum they had in mind by reference to purchasing power or earnings and should bear in mind need for public respect for the level of awards made.

27. In determining the amount of the award, we are required to follow the *Vento* guidelines in place at the date when proceedings were brought. These were:

    Lower band: £900 - £9,000
    Middle Band: £9,000 - £27,000
    Upper band £27,000 - £45,000

28. We can also gain some assistance from quantum reports in cases considered by other tribunals. None were specifically drawn to our attention but we are broadly familiar with those reports

Interest

29. Interest is payable on any compensation we award for discrimination pursuant to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (SI 1996/2803). The Tribunal has a degree of discretion with regard to the ability to calculate interest by reference to periods other than those set out in the regulations in exceptional cases. For injury to feelings awards, the interest is calculated from the date of discrimination. For other awards, interest is calculated from the midpoint between the date of discrimination and the date when compensation is calculated. The current applicable rate of interest is 8% per annum.

Submissions

30. We had oral submissions from both parties and took these into account in reaching our conclusions; we refer to them insofar as is necessary to explain those conclusions. The respondent submitted that we should make no award

for injury to feelings in light of our findings as to the way in which the claimants had opportunistically made use of the remarks. The respondent also relied on a number of other matters including the fact that the witness statements did not deal at length with injury to feelings.

31. Once we had reached a conclusion on the sums to be awarded by way of compensation, we invited submissions on how we should calculate interest. The respondent submitted that we should reduce the period of interest because the claimants had appealed and the remedy hearing has been significantly delayed. Interest should not run from before the claimants' date of knowledge of Ms Shields' remarks, which was 13 February 2020.

Conclusions

32. We of course had to bear in mind that a large number of claims brought by the claimants did not succeed, including claims about the termination of their engagements with the respondent. It was clear that a great deal of the hurt feelings the claimants endured were caused by matters in relation to which they were not successful. Mr Austin, for example, was very upset that Ms Shields had suggested he was lazy. Both claimants will have been caused stress by having their engagements terminated at the start of the pandemic.

Both claimants

33. We did not accept that the respondent's preference for written reasons was a feature which we could consider as aggravating the injury to feelings or something for which the respondent could be said to be at fault. Parties are entitled to written reasons pursuant to rule 62 of the Employment Tribunals Rules of Procedure 2013; they are entitled to know exactly why they have won or lost and have the reasons in writing if that is what they wish, in particular so that they may consider whether there are grounds for appeal. It was said on behalf of the respondent that as a public body it is constrained to be transparent and also to have regard to cost. We accepted that that was the case. Attending a further hearing to receive oral reasons would have caused further costs to be incurred. The press would have been entitled to attend any such hearing and report on the judgment and since there had been press attendance at the liability hearing, it was likely there would be attendance for the judgment.

34. We could see no evidence that either claimant would have abandoned or not commenced the proceedings if an apology had been offered at some earlier stage in relation to the harassment allegations the Tribunal found proven.

35. We could see no evidence that the respondent had courted the media coverage and it was difficult to see any reason why it would have done so. The respondent had lost in relation to several allegations; the other allegations were not ones which the respondent would plausibly have wished to be present in the public domain or revived. Ms Shields remained on contract to the respondent

and the respondent would have been mindful of the ongoing distress and damage to her reputation of the findings. The quote from the respondent in the local government press article did not show the respondent 'hitting back' or necessarily criticising the judgment, whatever interpretation the journalist had drawn from it.

36. Looking again at our liability judgment and the way in which events and complaints unfolded, it seemed to us that, whether Ms Shields had made these particular remarks or not, the likelihood is that the claimants would have pursued their whistleblowing complaints to the tribunal. These were claims they had valued at hundreds of thousands of pounds. There would have been publicity in any event given the fraud allegations made by the claimants and the relationship with the Grenfell tragedy and the judgment and reasons and some press articles would in any event have been on the internet. Insofar as the claimants have been distressed by the judgment and press articles being in the internet we were not able to find as a matter of causation that that distress was caused by the unlawful acts we found to have occurred

37. We had in the course of our findings already found that the conduct had had a harassing effect on the claimants, contrary to the submission made on behalf of the respondent.

Mr Austin

38. We accepted that Mr Austin was distressed by the remarks made by Ms Shields. They were highly inappropriate and offensive.

39. We have also found that the claimants made use of the fact that Ms Shields had made these inappropriate remarks to seek to improve their own positions at a time when their contracts were up for consideration. Mr Austin was more actively involved in these machinations than Ms Newton.

40. Bearing these features in mind, we concluded that the appropriate award for injury to feelings was in the low band of Vento. These were one off remarks, albeit they had something of an afterlife. In our view, Mr Austin's feelings of outrage were to some extent mixed with feelings of satisfaction at having obtained material which he hoped could be used to improve his own position at the expense of Ms Shields. An award below the middle of the bottom band seems to us to strike a fair balance bearing in mind the factors we have taken into account. We concluded that a sum of £4000 was appropriate.

Ms Newton

41. We accepted that the remarks made about Ms Newton were highly offensive and that she was distressed when she heard about the remarks. We also considered that her presentation to the Tribunal was histrionic and exaggerated. We did not accept that, as she claimed at the remedy hearing, she thought about the remarks every day. We concluded that she was considerably more vulnerable in relation to the remarks than Mr Austin was as she was younger

and junior to him both in terms of position within the respondent and length of tenure.

42. Although Ms Newton's engagement with the respondent was short so the period when she would have had colleagues who were aware of these remarks was short, it is the sort of rumour which a person might justifiably fear would follow them. Looking at the fact that there a further act of unlawful harassment in addition to that involving Mr Austin, and the enhanced effect on Ms Newton's feelings of the matters we have identified, we concluded that an award somewhat in excess of the middle of the bottom band of Vento was appropriate and we made an award of £7000.

Interest

43. It was open to either party to request a remedy hearing regardless of the claimants' outstanding appeal. If the respondent had had a concern that interest was increasing as the period of time since the liability judgment grew, it could simply have asked that the matter be listed for remedy. We did not reduce the period for which interest is calculated on the basis that the unrepresented claimants did not themselves ask for such a hearing.

44. On the other hand, it seemed to us that that there was some force in the respondent's submission that interest should only run from the date the claimants experienced hurt feelings, which could have been no earlier than their date of knowledge of the offensive remarks made about both of them by Ms Shields, ie 13 February 2020.

45. We accordingly awarded interest for the period 13 February 2020 to 25 May 2023. At 8% per annum this was a total of 26.24%. For Mr Austin, this amounted to a further £1050 to the nearest pound and for Ms Newton another £1827.

Employment Judge Joffe

12th June 2023

Sent to the parties on:

12/06/2023

For the Tribunal Office: