

+



# EMPLOYMENT TRIBUNALS

## REMEDY JUDGMENT

### BETWEEN

#### CLAIMANT

MS H SOMMER

V

#### RESPONDENT

SWISS RE CORPORATE  
SOLUTIONS SERVICES LIMITED

HELD AT: LONDON CENTRAL  
(BY CVP)

ON: 29, 30, 31 MARCH & (IN CHAMBERS)  
14 APRIL 2023

EMPLOYMENT JUDGE EMERY  
MEMBERS: MR F BENSON  
Mr T ROBINSON

#### REPRESENTATION:

For the claimant:

Mr J Mitchell (counsel)

For the respondent:

Mr G Mansfield KC & Ms K Balmer (counsel)

## REMEDY AWARD

The claimant is awarded the gross sum of £1,287,014

## SUMMARY REASONS

1. The tribunal provided a verbal remedy judgment to the parties at the end of the remedy hearing, setting out our findings on:
  - a. her likely progression with the respondent and/or another similar role, but for discrimination
  - b. when the claimant will be in a position to recommence work – April 2025
  - c. the type of work she may undertake - we concluded a reasonable mitigation would be to work on a self-employed basis using some of her career-gained skills
  - d. her future earnings capacity - we concluded from April 2025 onwards she will steadily earn more income: from 20% of her income but for discrimination in 2025-6 to 80% from 2028.
  - e. Her losses – we concluded these will cease in 31 March 2031.
2. We specified the amounts we were awarding for injury to feelings, personal injury and aggravated damages, and gave our rationale for making these awards which was based on medical and witness evidence.
3. Time constraints meant that the hearing ended before the parties and Tribunal were able to calculate the financial loss award based on our findings, including her actual future salary, her future losses, interest, ACAS award, and grossing up. The parties were asked to provide calculations, to be agreed if possible.
4. We informed the parties we would make an award for breach of the ACAS Code on disciplinary and grievance processes, that we would consider the percentage and figure once we had calculated the other financial losses relevant to the ACAS uplift award.
5. In the event, the parties provided separate calculations. The Tribunal considered these calculations at a chamber's day.
6. Unfortunately the parties used differing principles and methodologies in their calculations and arrived at different figures. In the absence of the parties, the Tribunal took some time to get to grips with the different calculations.
7. We decided that the respondent's method of calculation of loss was the more reliable calculation, but we considered that the claimant's calculation more accurately reflected her likely salary and bonus following the edt. We accepted that in April 2021 the claimant would have received a bonus but for discrimination, that this was a loss flowing from the discriminatory acts. We did not accept the respondent's argument that this was not recoverable. In April 2023 we used what we understand to be the average pay rise across the respondent of 8.5%. We therefore combined the claimant's and respondent's approaches.

8. We made an award for breach of the ACAS Code of £50,000. We applied the *Slade v Biggs and Stewart* principles; namely:
  - a. We concluded that it was just and equitable to make an award: the claimant's grievance was not properly considered, had it been the issues of concern could have been remedied, and the respondent would not have proceeded with a sham and discriminatory redundancy process.
  - b. We determined the breach of the ACAS Code was a serious one and merits an uplift of 20 – 25%.
  - c. The overall size of the award subject to the uplift is large, and we considered that it was disproportionate to apply this percentage uplift; even bearing in mind its punitive element, it would lead to an excessive award to the claimant, one which we did not consider reasonable.
  - d. Considering the award for personal injury, injury to feelings and aggravated damages, we concluded that an ACAS uplift should not exceed this award, while also bearing in mind that the failures at this stage caused significant harm to the claimant. We felt an award equal to her non-pecuniary injury was just and equitable.
9. We determined that interest should be payable on the applicable awards for past loss of earnings and injury, at a rate of 8%, and not 2% as contended by the respondent. We did not consider that the respondent was correct in dividing injury occurring pre dismissal and post-dismissal and excluding aggravated damages from an award of interest. We awarded interest on these awards for the whole of the period from the injury commencing.
10. We used the current tax year tax figures to calculate estimated future losses.

## **REMEDY AWARD**

### **Award made under the Equality Act 2010**

#### **Financial losses to 13 April 2023:**

Figures based on known salary /bonus increases in R's underwriting team

Salary on termination:	£75,000
2% salary increase April 2021	£76,500
Bonus April 2021	£12,000
Promotion Band D April 2022	£91,000
Bonus (based on Band E)	£14,000
8.5% salary increase April 2023	£98,735

(pro rata to 13 April 2023)

Bonus	£24,000
-------	---------

Gross salary, bonus and benefits apportioned by period (in £):

17 April 21 - 31 March 22: 349 days	73,147
Benefits	3,969
Bonus entitlement 1/4/21	12,000
1 April 22 - 30 March 23: 365 days	91,000
Benefits	4,163
Bonus entitlement 1/4/22	14,000
1 April 23 - 13 April 23: 13 days	3,787
Benefits (4,942 @ 13 days)	160
Bonus entitlement 1/4/23	24,000
Total gross past financial loss	<u>226,196</u>

Net sums by period:

17 April 2021 – 31 March 2022	89,116
Less basic rate tax	(5,025)
higher rate tax	(18,053)
NI	(5,661)
1 April 2022 – 31 March 2023	109,163
Less basic rate tax	(5,025)
Higher rate tax	(27,905)
NI	(6,495)
1 April 2023 – 13 April 2023	27,947
Less tax & NI	
(p/r 2/52 23-24 liability)	(1,763)
LESS PILON payment	(3,625)
TOTAL net income	<b>£153,354</b>

Pension loss EDT to 13 April 2023

Employer's pension contributions at 14% basic salary

14 April 2021 - 31 March 2022	10,241
1 April 2022 - 31 March 2023	12,740
1 April 2023 to 14 April 2023	
£13,822 / 52 x 2	531
TOTAL pension loss	<b>£23,512</b>

**Total past net losses to 13 April 2023****£176,866**Future losses:

14 April 2023 – 31 March 2024	94,948
Benefits	4,332
Less tax	(41,908)
NI	(5,847)
Plus pension	<u>13,291</u>
	64,816

1 April 2024 – 31 March 2025	
2% salary rise	100,710
Bonus	24,000
Benefits	4,332
Less tax	(44,271)
NI	(6,099)
Plus pension	<u>14,099</u>
	78,672

1 April 2025 – 31 March 2026	
Promotion to Band C April 2025	115,000
Bonus	24,000
Benefits	4,332
Less tax	(50,702)
NI	(6,385)
Less 20% future earnings	(17,289)
Plus pension	<u>16,100</u>
	85,056

1 April 2026 – 31 March 2027	115,000
Bonus	24,000
Benefits	4,332
Less tax	(50,702)
NI	(6,385)
Less 40% future earnings	34,498
Plus pension	<u>16,100</u>
	67,847

1 April 2027 – 31 March 2028	120,000
Bonus	24,000
Benefits	4,332
Less tax	(52,952)
NI	(6,485)
Less 60% future earnings	(53,337)
Plus pension	<u>16,800</u>
	52,358

1 April 2028 – 31 March 2029	120,000
------------------------------	---------

Bonus	24,000
Benefits	4,332
Less tax	(52,952)
NI	(6,485)
Less 80% future earnings	(71,116)
Plus pension	<u>16,800</u>
	34,579

1 April 2029 – 31 March 2030	120,000
Bonus	24,000
Benefits	4,332
Less tax	(52,952)
NI	(6,485)
Less 80% future earnings	(71,116)
Plus pension	<u>16,800</u>
	34,579

1 April 2030 – 31 March 2031	120,000
Bonus	24,000
Benefits	4,332
Less tax	(52,952)
NI	(6,485)
Less 80% future earnings	(71,116)
Plus pension	<u>16,800</u>
	34,579

**Total future net loss of earnings and pension** **£452,486**

**Non-financial losses**

Injury to feelings 30,000

Pain suffering and loss of amenity  
(psychiatric injury) 10,000

Aggravated damages 10,000

**TOTAL award** **£50,000**

Agreed award for medical costs **£4,600**

Unfair dismissal award

Basic award 3 x £464 1,392

Loss of statutory rights 500

**TOTAL unfair dismissal award** **£1,892**

**Interest****Past loss of earnings**

Edt to 13 April 2023:  $728 / 2 = 364$  days  
 $\pounds 176,866 / 365 \times 364 \times 8\% =$  14,110

**Personal injury, injury to feelings  
& aggravated damages**

12/12/2017 to 13/04/2023 = 1949 days  
 $\pounds 50,000 / 365 \times 1949 \text{ days} \times 8\%$  21,358

**TOTAL interest** **£35,468**

**ACAS Uplift:** **£50,000**

**Total net award** **£771,312**

**Taxation**

Total net award £771,312

Non-taxable sums:

Non-termination injury to feelings (15,000)  
 interest on injury to feelings (21,358)  
 personal injury general damages (10,000)  
 medical costs (4,600)

Less £30,000 tax free element (30,000)

Total taxable sum 690,354

Personal allowance 12,570

30,160 x 20% 7,540 37,700

29,838 x 40% 19,892 49,730

10,056 x 60% 6,033 16,089

24,860 x 40% 9,944 34,804

582,870 x 100 / 55 476,893 1,059,763

Total gross taxable award 1,210,656

PLUS non-taxable sums 76,358

**TOTAL AWARD** **£1,287,014**

**EMPLOYMENT JUDGE EMERY**

Dated: 3 August 2023

Judgment sent to the parties  
On: 04/08/2023

For the staff of the Tribunal office

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments are published online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.