



EMPLOYMENT TRIBUNALS

Claimant

Mrs S Messum

Respondents

1. Bradford Management Services Ltd
2. Dr Gul Nawaz Akbar

Heard at: Leeds Employment Tribunal On: 23 June 2023
Before: Employment Judge Davies
Mr G Corbett
Ms Y Fisher

Appearances

For the Claimant: In person
For the Respondent: Mr Willoughby (counsel)

JUDGMENT having been sent to the parties on 27 June 2023 and written reasons for the remedy judgment having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction and issues

1. This was the remedy hearing to determine the remedy payable to the Claimant, Mrs S Messum, following her successful complaints of unfair dismissal, unauthorised deduction from wages, pregnancy/maternity dismissal and harassment related to sex against the First and Second Respondents. The Claimant again represented herself and the Respondent was represented by Mr Willoughby of counsel.
2. The Tribunal heard evidence from the Claimant and from her husband, Mr Messum Tafzeel-Nisar.
3. The parties agreed that the basic award payable to the Claimant was £1185 and that the wages payable to her were £1451.86. The Claimant had secured a better paid job when her employment ended, so she did not suffer any loss of earnings following her dismissal. The issues for the Tribunal to determine were therefore:
 - 3.1 What compensation should the Claimant be awarded for loss of statutory employment rights?
 - 3.2 What compensation should the Claimant be awarded for injury to feelings caused by the found acts of discrimination/harassment?
 - 3.3 How much interest on compensation for discrimination should be awarded?

- 3.4 Did the Respondents unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance procedures and, if so, should the Claimant's award be uplifted? By how much, up to 25%?

Findings of fact

4. The Tribunal noted that not all of the Claimant's complaints of discrimination and harassment were upheld. We reminded ourselves that the upheld complaints were about removing the Claimant's HR duties from her following her return to work in May 2020 until her employment ended in February 2021; inviting her to 2 disciplinary meetings during her pregnancy/maternity leave; and dismissing her. We considered what injury to feelings had been caused by those matters. We took into account the findings in the liability judgment, the Claimant's witness statement for the liability hearing and her oral evidence at the remedy hearing. We made the following additional findings.
5. The Tribunal noted that in her oral evidence the Claimant was reluctant to give any detail about her injured feelings, and gave the impression of downplaying them. In that context, her husband's evidence that she is a reserved person and not one to parade her feelings was important; just because she was not talking about them did not mean that the Claimant's feelings were unaffected. In those circumstances, we took particular note of the Claimant's written evidence in her original statement, the documentary evidence from the time, including the GP notes; and the evidence of the Claimant's husband.
6. The Tribunal found that the Claimant was stressed and upset throughout her maternity leave because of the attempts to arrange disciplinary meetings. It was unusual for the Claimant to go to her doctor, but she was sufficiently stressed and upset to do so three times in 2019, in April, May and September. She was worried that her stress and anxiety would affect her unborn baby and was struggling mentally. At a vulnerable time, when she was sick and expecting a baby, she was upset, stressed and worried. After the baby was born, she continued to struggle mentally. The Respondents' attempts to meet her intruded into a visit from her family, who live overseas and whom she had not seen for some time. It intruded into her time with her newborn.
7. When she returned to work, she felt "small and scared" all the time, from May 2020 until February 2021. She was not sleeping, and she constantly felt angry and stressed. Her husband described her worrying about being demoted. By the time she resigned, she felt "hopeless and defeated."
8. On the other hand, as Mr Willoughby rightly submitted, the Claimant was not seeing her doctor or taking medication following her return to work. She did not have to take time off work because of her stress or anxiety. She was able to look for a new job and she was able to start that new job straight away after her employment ended. She did not face anxiety and uncertainty about whether she would find new work. On the contrary, she found a better paid job, with a reputable employer and better prospects.
9. We do not repeat the findings from the liability judgment about the disciplinary and process followed by the Respondents, but we referred to those in considering whether to award an ACAS uplift.

Legal principles

10. An award of compensation in a discrimination case is designed to put the individual so far as money will allow in the position she would have been in but for the discrimination.
11. Awards for injury to feelings are compensatory, not punitive. The aim is to compensate the Claimant fully for the proven, unlawful discrimination for which the Respondent is liable. The crucial consideration is the effect of the unlawful discrimination on the Claimant. The Tribunal will have regard to the well-established bands of compensation for injury to feelings: see *Vento v Chief Constable of West Yorkshire Police (No 2)* [2003] IRLR 102, and to the relevant Presidential Guidance on Employment Tribunal Awards for Injury to Feelings. In this case, the 2021 Guidance applies. The applicable bands are:

Lower band (less serious cases):	£900 - £9,100
Middle band (cases that do not merit an award in the upper band):	£9,100 - £27,400
Upper band (the most serious cases):	£27,400 - £45,600

Only in the most exceptional cases would the award be capable of exceeding £45,600.
12. The Tribunal applied the Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803. The applicable rate of interest is 8%.

Application of law to the facts

13. The Respondents said that the Claimant should be awarded £350 for loss of statutory employment rights; the Claimant said it should be £500. The aim of the award is to try to compensate for the fact that it will take an employee two years to acquire some valuable employment rights and the impact of that. The Tribunal considered that £500 was a more appropriate figure. That represents around two weeks' pay for the Claimant.
14. There was no dispute that an award in the middle *Vento* band was appropriate to compensate the Claimant for her injured feelings in this case. The Tribunal concluded that £18,000 was the appropriate sum – in the middle of the middle band. As set out in the findings of fact above, the Claimant experienced real distress, anger and worry, over a period from April 2019 and again from May 2020 to February 2021 (and, to some extent, since). This was at a time when she was expecting a baby and then had her newborn to care for. That squarely put her in the middle band. On the other hand, she did not need medication or time off work. She was angry and upset but not unwell. She was able to look for a new job and went immediately into a much better employment situation. Those factors pointed away from an award at the top end of the middle band. Having regard to the findings of fact and Tribunal awards more generally, the Tribunal concluded that £18,000 was the appropriate sum.
15. The Tribunal concluded that it was appropriate to award interest on the compensation for injury to feelings. The harassment started in April 2019 but did not

continue throughout the Claimant's maternity leave. The Claimant's HR duties were removed from her in May 2020 and that extended until the termination of her employment. The Tribunal decided that it was just and proportionate to take 11 May 2020 as the start date for the interest overall. Interest was therefore awarded for a period of 1137 days, up to the remedy hearing, at the rate of 8%.

16. The Tribunal concluded that there was a wholly unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance procedures, as spelt out in detail in the liability judgment. To highlight just a few points, elements of the disciplinary process were fabricated; there was no attempt to investigate or follow a fair process, rather, the Second Respondent was manipulating matters behind the scenes; the Claimant was purportedly given a warning after the "investigation" was concluded, without any disciplinary hearing being held; there was a wholly unreasonably delay in dealing with her appeal against that warning, which was not accounted for by the COVID pandemic or pressure of work; the appeal was not properly addressed when Mr Bilal Akbar purported to deal with it, he simply asked three questions and then failed entirely to address the substance of the Claimant's appeal. In those circumstances, the Tribunal had no hesitation in concluding that the Respondent acted unreasonably and that a maximum uplift of 25% should be awarded. We took into account the overall size of the award and the impact of the uplift in doing so. This was a most egregious case, involving elements of fabrication and dishonesty. That makes a maximum award appropriate.

**Employment Judge Davies
16 August 2023**