



EMPLOYMENT TRIBUNALS

Claimant: Mr Mohammed Yusuf Ali

Respondent: Network Rail Limited

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 23 July 2023

Before: Employment Judge Barrett

Members: Mrs Legg
Dr Ukemenam

Representation

Claimant: Mr David Lemer, Counsel

Respondent: Ms Katya Hosking, Counsel

REMEDY JUDGMENT

The judgment of the Tribunal is that: -

1. The Respondent shall pay the Claimant the sum of £66,790.02, comprising:
 - a. £43,832.47 in respect of past loss of earnings;
 - b. £12,000 in respect of injury to feelings;
 - c. £10,957.55 in respect of interest.

REASONS

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-face hearing was not held, because it was not practicable, and all issues could be determined in a remote hearing.

Introduction

1. By a judgment sent to the parties on 20 October 2022, the Claimant succeeded in complaints that his dismissal amounted to an act of discrimination arising from disability contrary to s.15 Equality Act 2010 ('EqA') and for wrongful dismissal. His complaints of unfair dismissal and failure to make reasonable adjustments were dismissed.

The remedy hearing

2. The remedy hearing took place over one day by CVP. The Claimant was represented by Mr Lemer of counsel and the Respondent by Ms Hosking of counsel.
3. The Tribunal was provided with a schedule of loss, a counter-schedule from the Respondent, a remedy witness statement from the Claimant, and a bundle of evidence numbering 211 pages.
4. At the outset of the hearing the parties jointly submitted that this was a case where a complex calculation of pension loss was necessary, and for reasons outside their control it had not been possible to obtain the relevant information needed to make that calculation. The Tribunal agreed to defer determination of the issue of loss of pension. A separate case management order contains directions in respect of that issue.
5. Mr Lemer raised the possibility of asking the Tribunal to also defer determination of the amount of injury to feelings damages to allow the Claimant time to obtain further medical evidence that might support a personal injury element to this award. Ms Hosking objected on the basis that such investigation could and should have been conducted prior to the hearing and the matter had been raised too late. In his closing submissions, Mr Lemer confirmed that the Claimant did not pursue personal injury damages and that the injury to feelings award could properly be decided on the available evidence.
6. The issues for determination at the hearing were agreed to be:
 - 6.1. What loss of earnings has the discrimination caused the Claimant?
 - 6.2. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job? If not, for what period of loss should the Claimant be compensated?
 - 6.3. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
 - 6.4. Unless compensated for as part of the remedy for discrimination, what financial loss has the Claimant incurred as a result of being dismissed in breach of his entitlement to notice?
7. The Claimant was cross-examined by Ms Hosking regarding the impact of his dismissal and the steps he had taken to obtain alternative employment.
8. The parties made helpful submissions on remedy.

- 8.1. Mr Lemer submitted on behalf of the Claimant in relation to loss of earnings that he had taken all reasonable steps to mitigate his losses from the time of his dismissal to the present date. It was for the Respondent to establish he had failed to mitigate. The Claimant had specialised skills and it was difficult to get another job using those specific skills. He made a substantial number of job applications in a variety of fields in 2019 and 2020, which the Respondent recognised and accepted. He had been able to persuade his father to employ him and earned a salary at his father's company between 2020 and 2022. Notwithstanding that employment, he continued to apply for other jobs in an attempt to find employment on a commensurate salary with that which he had earned at the Respondent. The frequency with which he made applications for further jobs reduced over the course of 2021. It was necessary to take into account from March 2020 that the jobs market was affected by the Covid lockdowns. The Claimant was working for his father, which reduced the time he had available to make applications. His father-in-law, who he was close to, was dying from pancreatic cancer. All these circumstances affected his ability to make multiple job applications and should not be held against the Claimant. In 2022, there was not the same frequency of job applications. At the beginning of 2022, he had applied for a role with the British Transport Police and from April 2022 operated on the basis that he would be offered the job, but unfortunately in November 2022 he found out he had not passed the vetting process. It was suggested by the Respondent that the Claimant could have challenged the vetting decision, but it was clear that the decision had been taken on the basis that the Claimant had three points on his driving licence and therefore he was not going to get the job. He took all appropriate steps with respect to that role. He sought alternative employment and commenced a new job with Occasion Luxury Travel, and when that job subsequently ceased, he made further job applications. Drawing all this together, the picture was of someone who tried very hard over a significant period of time to obtain employment both at a lower level and at the same level he had been on with the Respondent. Given how difficult the Claimant had found it to secure a new job, the Tribunal should award six to nine months' future loss of earnings.
- 8.2. In relation to injury to feelings, Mr Lemer submitted that it was a middle band *Vento* case and invited the Tribunal to make an award of £15,000. Two factors were relied upon as bringing the case to that level on the *Vento* scale. Although dismissal was a one-off act, the Tribunal was invited to take into consideration the effect on the Claimant's feelings of the disciplinary process leading up to the dismissal which took over a year. The dismissal itself had a long-lasting impact which was demonstrated by medical letters adduced by the Claimant. Although it was acknowledged that there were other factors (i.e., factors causing stress) in the Claimant's life at the time, it was the Claimant's unchallenged evidence that the dismissal had impacted on his self-esteem. The impact of the dismissal was exacerbated by the effect it had on the Claimant's disability.
- 8.3. On behalf of the Respondent, Ms Hosking reminded the Tribunal that the power to award damages under s 124(6) EqA reflected the ordinary principles of compensation in the law of tort and that the Claimant had a duty to mitigate his loss. That meant as long as his losses persisted and

were claimed for, he was under a duty to find employment attracting the same or greater salary as he had been paid by the Respondent. The Respondent submitted that the appropriate period of compensation was two years. During 2019 and 2020, the Claimant had applied for plenty of jobs. That demonstrated both that there were vacancies available, and that the Claimant was willing to look widely not just at jobs suited to his specific skills. However, in the first half of 2021 he had applied for only six roles and in the second half of 2021 only two roles. Covid could not explain the reduction in applications because he had found vacancies to apply for throughout 2020. He had accepted in cross-examination that he had not been looking at the same rate. He was on furlough in July, August and September 2021 so it was not the case that his time was taken up working for his father during this period. By July 2021 at the latest, two years after dismissal, he was no longer really trying to find a job matching his pre-dismissal salary. Making only two job applications in six months amounted to an unreasonable failure to mitigate his loss. If the Tribunal was not with the Respondent, it was submitted in the alternative that there was a further failure to mitigate during 2022. It had been unreasonable of the Claimant to rely on the British Transport Police job when he had known there were a number of hurdles to surmount before the offer could be confirmed. He made no job applications between February and December 2022, which amounted to an unreasonable failure.

- 8.4. On the issue of injury to feelings, Ms Hosking submitted that an award should be made at the top end of the lower *Vento* band. This was a one-off incident of discrimination. It was not a serious incident such as would fall into the middle band. It was not a matter of grossly humiliating or offensive or public treatment. The dismissal had been found to be a harsher sanction than was objectively justified, albeit still within the range of reasonable responses. As a final written warning would have been justified, the discrimination lay in the difference between those two outcomes. Mr Lemer's submission that the pre-dismissal period was relevant could not be right because the process would have been identical had it led to the justified outcome of a final written warning. What happened during that process, difficult as it had been for the Claimant, could not be relevant to the effect of the act of discrimination. In relation to the effect on the Claimant's diabetes, his problems with blood glucose control predated the dismissal and were indirectly the cause of the dismissal rather than the other way around. As set out in the liability judgment, the driving incident for which the Claimant was dismissed was the first indication that his diabetes management was declining after a long period of stability. A medical letter dated 26 July 2019 showed that his blood glucose control was slipping over the year July 2018 to July 2019, preceding the dismissal. There was no medical evidence to suggest that the dismissal in July 2019 changed the course of the pre-existing decline. It was suggested that the Claimant had found it hard to disentangle in his memory whether his weight gain and decline in diabetes control had pre or post-dated the dismissal. The Respondent accepted that it was common for a victim of discrimination to suffer stress and anxiety such as the Claimant described in his witness statement, but it was not accepted that there was sufficient medical evidence to show that the dismissal had caused depression or clinical anxiety. There were other significant stressors affecting the Claimant in the

period since his dismissal, including the birth of his children and his father-in-law's cancer. The Claimant placed reliance on a later medical letter dated 17 July 2023, but this was written a year after the consultation to which it related, and the contemporaneous notes had not been made available. The letter was not consistent with the contemporaneous evidence relating to diabetes management and did not take into account stressors other than the dismissal, and therefore was not reliable evidence of the effect of the dismissal. Without attempting to minimise the stress and anxiety the Claimant had experienced, this was a one-off incident that did not fall into the middle *Vento* band.

9. At the end of the hearing, it was agreed between the parties that it would be sensible to defer a grossing up calculation on the Claimant's award for loss of earnings and injury to feelings damages until after the pension loss issue had also been determined. The figures given in this remedy judgment in respect of compensation for loss of earnings and injury to feelings are therefore subject to grossing up, which element will be calculated and paid separately following the next hearing (or settlement).
10. Counsel further confirmed that there was no dispute between them on the figures for pre-dismissal and mitigation earnings contained in the schedule of loss.

Findings of fact

11. The Claimant was dismissed without notice on 11 July 2019. In his role as Senior Technical Officer for the Respondent, he received a gross annual salary of £38,773.28, which equated to a net weekly pay of £567.43. His contractual notice period was six weeks.
12. On 24 July 2019, the Claimant attended an appointment with Dr Vijayaraghavan at the Barts Health NHS Trust Diabetes Service for Newham, who wrote a follow-up letter two days later. She noted that the Claimant had recently lost his job as a result of an episode of hypoglycaemia when he was driving a vehicle, and that *"He is obviously quite upset by this"*. Additional stressful factors were also recorded, in that the Claimant and his wife were expecting their first child and that his grandfather had been diagnosed with cancer. The latter contained a mistake; in fact, it was the Claimant's father-in-law who had received a cancer diagnosis.
13. The letter went on to state that,

'He has previously had very good blood glucose control. He admits things have slipped a little bit over the last year. He has gained a significant amount of weight and has limited exercise. He checks capillary blood glucose three to four times a day and these are usually under 10mmol/L. He has been having frequent hypoglycaemia.'
14. This was consistent with the evidence we heard at the liability stage, namely that the 14 February 2018 episode of hypoglycaemia when driving occurred at a time when the Claimant's diabetes control was beginning to slip after a long period of stability.
15. The letter also mentions that the Claimant had confused his quick-acting and basal insulin. The Claimant says this was a mistake and he had never got the two different medications confused, which evidence we accept.

16. The Claimant further says, and we accept, that he continued to gain weight after his dismissal. Prior to dismissal, the weight gain was caused by a lack of exercise as the Claimant had gone from an active role to desk-based work and then a period of suspension. After his dismissal, he began to emotionally overeat because he was stressed and upset.
17. The Claimant also says that his dismissal exacerbated problems with his diabetes management. We have concluded on reviewing Dr Vijayaraghavan's letter that while the dismissal may have caused stress and additional weight gain which affected the Claimant's diabetic symptoms to some extent, the substantial problems with his diabetes management pre-dated (and indeed were relevant to) his dismissal. By way of example, the Claimant had suffered further hypoglycaemic attacks between 14 February 2018 and his dismissal on 11 July 2019.
18. The Claimant has given unchallenged evidence, which we accept, that his dismissal affected his self-esteem, caused him to lose confidence, and put stress on his relationship with his wife, as well as affecting him financially.
19. The Claimant began applying for new jobs from 30 August 2019, when he unsuccessfully applied for a role as a performance analyst at Transport for London. His remedy witness statement contains a chronology of the jobs he applied for, the accuracy of which was not challenged by the Respondent, and which we accept. He applied for three roles in September 2019, one role in October 2019, four roles in November 2019 and seven roles in December 2019.
20. One of the December 2019 applications was for a job as a sales rep at his father and uncles' company, Amez Limited, in which he was successful. The Claimant pleaded with his father to create a role for him.
21. The sales rep role commenced in February 2020. It paid a gross annual salary of £30,000 (£2,500 a month), equivalent to £460.36 per week net. This was £107.07 per week less than the Claimant had earned when he was working for the Respondent. The Claimant found the role unfulfilling because he was unable to use his technical skillset and did not enjoy sales and marketing.
22. The Claimant continued to look for alternative work. He applied for ten roles in January 2020, five in February 2020 and seven in March 2020. In March 2020, the Claimant also undertook some charity work in Gambia, which he felt was beneficial to his outlook as he had been feeling depressed and anxious.
23. Between April 2020 and September 2021, the Claimant was placed on furlough leave. His salary reduced to £2,000 per month gross, equivalent to £383.92 weekly net (£183.51 per week less than at the Respondent). He returned to work from furlough in October 2021.
24. Meanwhile, the Claimant continued to apply for jobs. During the remainder of 2020, he applied for one job in April, one in May, four in June, two in July, one in August, two in September, one in November and three in December. Despite the impact of the coronavirus pandemic, he was able to find a range of opportunities to apply for. He applied for jobs within his preferred sector, railways and transport, and outside that sector. He applied for engineering roles relevant to his technical skill set and non-specialist positions such as administrator and customer service

assistant. The Respondent makes no criticism of the efforts which the Claimant made to find work in 2019 and 2020.

25. In 2021, the Claimant applied for one role in January, two in February, one in March, one in June, two in September and one in December, a total of eight applications with just two being made in the second half of the year. The Claimant accepted in cross-examination that he was not looking for vacancies during this period at the same rate as he had during the previous year.
26. The Claimant explained that the diminution in his job-seeking activities was because his second child was born on in July 2021 and his father-in-law passed away from pancreatic cancer in November 2021. The period leading up to his father-in-law's death had been difficult as they were very close. From October 2021, he was also busy with work at his father's company, having returned from furlough. We accept that the Claimant's description of these events was accurate; we go on to consider the impact they had on his ability to seek work in the 'conclusions' section below.
27. In January 2022, the Claimant applied for a role as a sales executive, but was not successful. On 13 February 2022, he submitted an application to become a student officer with the British Transport Police. This was a role he was excited about and hoped might be the start of a new career. He was invited to complete an online test, which he passed on 28 February 2022.
28. In March 2022, the Claimant's employment at Amez Limited was terminated. The company was struggling in the aftermath of the pandemic and could no longer afford to employ him.
29. The Claimant attended an interview for the British Transport Police role on 3 April 2022, and the following day received a conditional offer subject to a fitness assessment, medical assessment and vetting.
30. The Claimant passed the British Transport Police fitness assessment on 7 May 2022 and the medical examination on 25 May 2022. He was told that the training period for the role required full-time attendance for 18 weeks. The Claimant's wife was due to give birth to their third child in November 2022 and he knew he would need time off around the birth. He therefore asked to defer his provisional start date until January 2023, which was agreed.
31. On 5 July 2022, the Claimant attended a private healthcare appointment with Dr John at the Thames View Health Centre. On 17 July 2023, in response to a request from the Claimant in the lead-up to this remedy hearing, Dr John wrote a follow-up letter describing what happened at that appointment a year previously. He wrote:

'The above named patient, who is not registered at this practice came in to see me privately on the 5th July 2022 due to depression and anxiety after losing a job in 2020. He is a known diabetic, who is on insulin and unfortunately at the time the stress, this affected his blood glucose levels and was suffering with recurrent hypo attacks and hyperglycaemia. This impacted his mental health causing him to feel frustration, anger, loneliness and depression and anxiety as well as rejection. We discussed supporting him and managing his sugar through his insulin and at the time he was offered citalopram 20mg for him to consider. He was offered counselling as well and I also asked him to review with his GP and his

specialist to consider an insulin pump due to his fluctuating blood sugar levels. He agreed he would monitor this and seek help from his GP. Naturally the impact of him losing his job was quite profound on his blood sugars as well as his mental health.'

32. The Tribunal accepts on the basis of this letter that in July 2022, three years after his dismissal, the Claimant was exhibiting some symptoms of depression and anxiety and was also still struggling with his diabetes management. However, in relation to causation, we place less weight on Dr John's letter than the earlier letter from Dr Vijayaraghavan. The Claimant was not registered at Dr John's practice, and it seems unlikely that Dr John had access to the full medical records which would have shown the Claimant's diabetes control slipping at least a year prior to the dismissal. Dr John makes no reference to the other significant factors in the Claimant's emotional life at the time, namely the death of his beloved father-in-law and having two very young children and another on the way.
33. The Claimant was vetted by the British Transport Police on 16 September 2022. One of the questions on the vetting questionnaire was whether he had any endorsements on his driving licence within the past 5 years. He declared the 3 penalty points he had on his licence because of the 14 February 2018 incident. This was the first indication he had that a clean driving licence might be a requirement of the role; he had met all the advertised necessary requirements. On 25 November 2022, the Claimant was informed that he had failed the vetting process and therefore the conditional job offer was withdrawn.
34. The Claimant was offered the opportunity to appeal the vetting decision but took the view that as he did not meet a specific requirement of the role, he would do better to re-apply in 2023 when his 5-year driving record would be clean again.
35. The Claimant had not applied for any other jobs since the British Transport Police vacancy in February 2020 and was without a salary the period from March to December 2022. Following the negative vetting decision, he applied for five roles in December 2022. One of these was for a four-month temporary position as a Sales and Marketing Manager for a local car rental company called Occasion Luxury Travel. He was successful in that application and commenced in the role in January 2023.
36. The Occasion Luxury Travel job paid £2,083.33 gross per month, equivalent to £404.33 net weekly. This was £162.97 per week less than he earned at the Respondent. The Claimant's fixed-term contract ended on 6 May 2023. Since then, he has applied for three further roles, and he continues to look for work. He also has childcare responsibilities for three children under four, while his wife works full-time.

Conclusions

Loss of earnings – legal principles

37. An award of compensation for financial losses will be assessed under tortious principles (see s124(6) and s119(2) EqA). The aim of compensation is to put the claimant in the position, so far as is reasonable, that she would have been had the tort not occurred (*Chagger v Abbey National plc* [2010] IRLR 47). The sum is not determined by what the tribunal considers just and equitable in the

circumstances as is the case for an unfair dismissal award (*Hurley v Mustoe (No 2)* [1983] ICR 422).

38. The Claimant has a duty to mitigate his losses, by taking reasonable steps to put himself into a position where he is able to earn an income at or above the level he would have earned had he not been dismissed by the Respondent. The burden of proof to show there was a failure to mitigate lies with Respondent: *Fyfe v Scientific Furnishings Ltd* [1989] ICR 648. It is for the Respondent to adduce evidence of any alleged failure to mitigate and for the Respondent to establish on the balance of probabilities that the Claimant has acted unreasonably. The Claimant does not have to prove that he has acted reasonably: *Cooper Contracting Ltd v Lindsey* [2016] ICR D3. A failure to look for or apply for jobs may be relied on as evidence for unreasonableness: *Hilco Capital Ltd v Harrington* [2022] EAT 156 at para 39 (in that case, the claimant had applied for no jobs at all). The tribunal will consider:
- 38.1. What steps the Claimant should have taken to mitigate his losses;
- 38.2. Whether it was unreasonable for the Claimant to have failed to take any such steps; and
- 38.3. If so, the date from which an alternative income would have been obtained, and the amount of that income.

Loss of earnings – discussion and conclusions

39. We considered that the Claimant acted reasonably in 2019 and 2020 by looking for vacancies and applying for jobs at a reasonable rate and by taking lower paid employment at his father's company in the meantime. The Respondent correctly made no criticism of the steps the Claimant took to mitigate his losses during this period.
40. The Respondent does criticise the Claimant for applying for six roles in the first half of 2021 and only two roles in the latter half of 2021. We accepted the Respondent's submission that it would have been reasonable for the Claimant to have looked for and applied for more vacancies during this period. Therefore, we went on to consider whether the Claimant acted unreasonably by failing to apply for more roles in 2021.
41. Overall, looking at all the circumstances we concluded that the Claimant had not acted unreasonably during 2021. He was in employment with Amez Limited, and therefore drawing a salary that partly mitigated his loss of earnings and enabled him to provide for his family. His second child was born in the July of that year. He went through a difficult time leading up to the death of his father-in-law in the November. From October onwards he was working full-time, having returned from furlough. While it would have been a reasonable step to apply for a greater number of jobs, we considered that, in the context of the other factors affecting his ability to make job applications, the Claimant's failure to take that step was not unreasonable.
42. Therefore, we made no deduction to the Claimant's damages for loss of earnings in respect of a failure to mitigate in 2021.

43. We went on to consider whether there was an unreasonable failure to mitigate during 2022. The Claimant did not make any job applications between February and December 2022. From 4 April 2022, he knew he had a conditional offer of employment with the British Transport Police subject to passing a number of further stages of the recruitment process. From March 2022, he was no longer in employment with Amez Limited and no longer drawing a salary at all.
44. We concluded that it would have been a reasonable step for the Claimant to continue to apply for work during 2022. We had two reasons for reaching that conclusion. First, the Claimant had no guarantee that the British Transport Police would make a firm offer as he knew he had to pass further assessments and checks to secure that role. Second, even if the British Transport Police application had worked out, he would not have commenced in the role until January 2023. In circumstances where he had no income at all from March 2022, it would have been reasonable to apply for other work, even of a temporary nature, to mitigate his ongoing losses in the meantime.
45. We next considered whether the Claimant's failure to apply for work during the period from March to December 2022 was an unreasonable failure. We concluded that it was unreasonable. This was not a decline in the rate of job applications due to family circumstances, as had occurred during 2021, but a complete halt to the process of looking for alternative work. The absence of any job applications during this period amounted to unreasonableness (*Hilco Capital Ltd v Harrington*). It was also unreasonable for the Claimant to assume that the British Transport Police job would necessarily fill the gap, and indeed it transpired that the Claimant did not pass the vetting stage.
46. Having concluded that there was an unreasonable failure to mitigate loss from March 2022, we went on to consider the date from which alternative income would have been obtained and the level of that income. That is necessarily a speculative exercise. We took into account the difficulties that the Claimant has experienced in seeking alternative employment, but also the fact that he has managed to obtain two roles at a lower salary level and pass the interview process for the British Transport Police job. By way of a broad-brush assessment, we reached the following conclusions.
 - 46.1. Had the Claimant taken reasonable steps to seek alternative employment, he would have secured a position by 1 April 2022, paying less than he earned with the Respondent but on a par with the British Transport Police role he applied for. We estimated that this alternative role would have paid £25,500 gross per annum, which equates to £410.81 net weekly. The difference in net pay between this and the Claimant's job with the Respondent would have been £156.62 a week.
 - 46.2. Had the Claimant continued to take reasonable steps to seek advancement in that role or an alternative job at a higher rate of pay, he would have reached parity with the salary he would have been earning at the Respondent within a year, so by 1 April 2023.
47. The Claimant's losses therefore ended on 1 April 2023, and we made no award in respect of future losses.

Loss of earnings – calculations

48. The Tribunal’s calculations of the Claimant’s net loss of earnings are as follow:

Loss of earnings between dismissal (11 July 2019) and hypothetical new employment (1 April 2022).	142 weeks x loss of £567.43 per week.	£80,575.06
Loss of earnings between hypothetical new employment (1 April 2022) and hypothetical pay parity (1 April 2023).	52 weeks x loss of £156.62 per week.	£8,144.24
Less earnings in mitigation at Amez Limited (February 2020 to March 2022).	Sum taken from Claimant’s schedule, agreed by Respondent.	(£39,630.56)
Less earnings in mitigation at Occasion Luxury Travel Limited between start of employment (1 January 2023) and hypothetical pay parity (1 April 2023).	Payslips for January, February and March 2023: 3 x £1,752.09.	(£5,256.27)
TOTAL		£43,832.47

Vento award for injury to feelings – relevant legal principles

49. Section 119(4) Equality Act 2010 provides that the Tribunal can make an award to damages to compensate for injured feelings. It is conventional to assess such awards by reference to guidance in the case of *Vento v Chief Constable of West Yorkshire Police (No.2)* [2003] ICR 318, in which the Court of Appeal set out three bands for injury to feelings compensation. At the time this claim was presented, the financial parameters of the bands were as follows:

- 49.1. A lower band of £900 to £8,800, appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence;
- 49.2. A middle band of £8,800 to £26,300, for serious cases that do not merit an award in the highest band; and
- 49.3. An upper band of £26,300 to £44,000, for the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment.

50. An injury to feelings award is intended to compensate the claimant for the anger, distress and upset caused by the unlawful treatment they have been subjected to. The purpose is to compensate the claimant, and not to punish the respondent. Therefore, the focus is on the actual injury suffered by the claimant and not the gravity of the acts of the respondent (see *Komeng v Creative Support Ltd*

UKEAT/0275/18/JOJ). The Tribunal must compensate for the harm which it is satisfied, on balance of probabilities, was caused by the act or acts of discrimination (see *Essa v Laing Ltd* [2004] ICR 746). One factor which may be relevant to the assessment of damages is the personal characteristics of the claimant, including any pre-existing vulnerability which affected the subjective experience of discrimination (sometimes referred to as the 'egg-shell skull' principle). It is also relevant to consider whether the discrimination resulted in the loss of employment. In *Voith Turbo Ltd v Stowe* [2005] ICR 543 at [7], McMullen J took the view that a discriminatory dismissal could not properly be classified a less serious one-off or isolated incident.

Vento award for injury to feelings – discussion and conclusion

51. The Tribunal accepted Ms Hosking's submission that when looking at injury to feelings, it was the injury flowing from the dismissal that was relevant and not the stress and anxiety the Claimant suffered during the disciplinary process. That is for two reasons. First, the claim was pleaded on the basis that the dismissal itself was an act of discrimination arising from disability, not the preceding disciplinary process. Secondly, Ms Hosking was correct in her analysis that had a final written warning been issued as an alternative to dismissal (as a proportionate step in light of the link to disability) then the preceding events would have occurred in the same way.
52. On that basis, we have given weight, but limited weight, to the problems the Claimant told us he suffered with his diabetes management in the aftermath of his dismissal. We relied on the letter from Dr Vijayaraghavan, together with findings made at the liability stage, to conclude that the Claimant would have suffered from a decline in his blood glucose management in any event. We accepted that the additional stress arising from the dismissal and continued weight gain due to emotional overeating after the dismissal were factors which contributed to a limited extent to the Claimant's difficulties in stabilising his diabetes.
53. We preferred Mr Lemer's submissions as to the appropriate *Vento* band. We unanimously concluded that this was a middle band *Vento* case. Although the dismissal was a single event, and the Respondent did not seek to humiliate or belittle the Claimant in any way, the impact on the Claimant was nonetheless severe. His employment with the Respondent was vocational. He had trained there, developed specialist skills and enjoyed the work. We have accepted that the Claimant's self-esteem was damaged by the dismissal.
54. We further accepted that the dismissal was one factor, amongst others, that contributed to the Claimant experiencing symptoms of anxiety and low mood. To that extent, we placed reliance on Dr John's letter. However, as Dr Johns did not review the Claimant's full medical records and the other stressors in his life, we lacked a sufficient basis to conclude that the dismissal caused the Claimant to suffer from a diagnosable mental illness.
55. Overall, looking at the impact on this individual Claimant given his personal characteristics, we have concluded that an award of **£12,000** in respect of injury to feelings is appropriate.

Interest

56. Interest accrues on the award at a rate of 8% per annum pursuant to regs.2 and 3 of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996.
- 56.1. In relation to injury to feelings, pursuant to reg.6(1)(a) interest runs from the discriminatory conduct complained of, namely the dismissal on 11 July 2019. Interest over the 210 weeks to the date of the remedy hearing amounts to 32.3%. The interest on injury to feelings damages of £12,000 is £3,876.92.
- 56.2. In relation to past pecuniary losses, pursuant to reg.6(1)(b) interest runs from the midpoint between the date of termination and today's hearing and amounts to 16.2%. The interest on past loss of earnings of £43,832.47 is £7,080.63.
57. Total interest is therefore **£10,957.55**.

Wrongful dismissal

58. Compensation for loss of six weeks' notice pay is included in the compensation for loss of earnings as set out above.

Employment Judge Barrett
Date: 8 August 2023