



EMPLOYMENT TRIBUNALS

Claimant: Mr T Myles

Respondent: Leadec Limited

Heard at: Liverpool (in chambers)

On: 15 August 2023

Before: Employment Judge Ainscough

REPRESENTATION:

Claimant: not in attendance

Respondent: not in attendance

JUDGMENT

The respondent's application dated 22 June 2023 for reconsideration of parts of the Remedy Judgment sent to the parties on 21 March 2023 is refused.

REASONS

Aggravated Damages

1. The Tribunal found at paragraph [111] of the Remedy Judgment that the dismissal manager took advantage of the fact that the claimant would not know the correct policy which applied to the claimant's employment. At paragraph 14 of the claimant's substantive witness statement, he said this:

"Mr Dickinson did ask me about the policies, and I told him that I was dyslexic and I could only read little words, and that I knew things from the pictures. He just carried on reading his papers, he didn't do anything when I said that, like it made no difference."

2. At paragraph 11 of the claimant's remedy statement, he stated:

"I felt terrible and worthless, to me it was like blank pieces of paper, and they weren't doing anything to help me, and I didn't know what was on the paper."

3. At paragraph 13 of the remedy statement the claimant said:

“In that meeting, I felt like I was being treated like a child. I was scared, really scared, I’ve never been that scared before. I didn’t know what was going on because no-one was talking with me, to me/at me but not with me. I felt intimidated and I just seized up and froze. All I could say was about my reading and what happened on the day because I couldn’t understand what was going on, I couldn’t process it all in my head.”

4. At paragraph 15 of the remedy witness statement the claimant said:

“I remember the HR woman just sitting there looking at me, and even after I said I couldn’t read, she just stared at me, all the time, in a really bad way, like I was bad, and she just scared me.”

5. The Tribunal therefore concluded that Mr Dickinson deliberately took advantage of the claimant's disability despite being told by the claimant of his difficulties in understanding the meeting. It is clear from the claimant's evidence that he knew this was happening, but no-one was seeking to help him and was therefore aware that the dismissal manager was not interested in anything the claimant had to say.

6. It was the claimant's case that he was told by the appeal manager that his forklift licence belonged to the respondent, and he could not use it post dismissal.

7. At paragraph 21 of the claimant's witness statement the claimant said:

“At the end of the meeting I asked about my licence and he told me that because it was Leadec’s, I couldn’t use it. The licence was for using a counterbalanced forklift only, and it expired in 2020. I took Dobson at his word and didn’t use it but that meant I had no papers to show that I could use a counterbalance forklift.”

8. At paragraph 25 of the remedy statement the claimant said this:

“We’re not a rich family, no-one has the money to lend me to pay to do a forklift course. The forklift trainers at Leadec were paid by Leadec, so the trainer was alright taking extra time to help me. Sandra applied to all the supermarkets for me and I only got an interview with Tesco. I had to sit a test and I couldn’t finish it, I tried it and asked for more time. He let me finish as best I could, but I didn’t hear anything afterwards. I tried for a cleaning job, but was told I lacked experience, when I said I was willing to learn, I was told no.”

9. At paragraph 30 the claimant said this:

“I would like a job like the one I had, I don’t want my reading to be thrown back in my face. I want to be well, I want to feel happy again, I want to feel proud again and know I can provide for my family. Sometimes, when I think of how much my family has done for me since I was sacked, I still don’t feel I deserve their love. I am getting better though. I try not to think about Leadec because it brings me down, and when I was getting the knockback on those jobs for my reading, brought it all back. In my head I should still be working as a bailer.”

10. The Tribunal took these statements as evidence of the claimant's awareness that because Alan Dobson had told him he could not use his forklift licence he had to apply for jobs which he could not do. In particular, the claimant was not even able to get past the recruitment stage because of his difficulty in reading and writing. The claimant states clearly that receiving a knockback on those particular jobs, because he was not able to use his forklift licence, brought all the hurt and upset back. It is for this reason that the Tribunal has awarded aggravated damages.

11. The Tribunal noted the evidence that the claimant gave at the remedy hearing that whilst he was glad that the respondent had apologised, the apology was in response to the Liability Judgment. The Tribunal concluded that the timing of the apology, on the morning of the remedy hearing, made it disingenuous.

Claimant's Medication

12. The Tribunal acknowledges that there was an error at paragraph [9] of the Remedy Judgment. There was not an increase in the claimant's medication following the visit to his GP in February 2019. This error will be corrected in any subsequent Certificate of Correction.

13. However, in the same paragraph the Tribunal found that there was no discussion between the claimant and his GP about losing his job.

14. Similarly, at paragraph [10] of the Remedy Judgment, the Tribunal found that at the appointment on 1 April 2019 the GP increased the claimant's medication to 150mg because the claimant was of low mood caused by a road traffic accident.

15. The rationale for the injury to feelings award at paragraphs [71-78] of the Remedy Judgment does not refer to any increase in medication as a reason for the level of the injury to feelings award.

16. Instead, at paragraph [75] the Tribunal found that it was the respondent's failure to make reasonable adjustments, despite knowledge of the claimant's disability, that led to the level of the award.

17. The Tribunal quotes the case of **Austin** because that claimant too had a strong bond with where they worked, and that claimant also felt safe in the role and found the new job search difficult.

18. Similarly, the Tribunal refers to the case of **Mattu** where the claimant lost their career. This happened to the claimant. He had his licence taken off him and he had to apply for jobs he could not do, or in fact get further than the recruitment stage because of his difficulty in reading and writing.

Personal Independence Payment

19. The Tribunal reiterates its findings at paragraph [84] of the Remedy Judgment in regard to the Personal Independence Payment. This is a payment that is paid to those who have a disability which disadvantages them on a day-to-day basis. It helps that person pay for extra services to minimise that disadvantage. It is not income based and the Tribunal determines that this should not be deducted from any income based award.

20. The fact that the claimant was only in receipt of it because of his dismissal is coincidental. The claimant could have applied for this payment prior to his dismissal and been in receipt of the same whilst working. It is not paid as income to a claimant. The claimant is not placed in a better position than he would have been but for his dismissal.

21. Notwithstanding the parties agreement that the Personal Independence Payment should be deducted from the claimant's actual financial losses, the Tribunal has determined that this payment should not be deducted from any part of the claimant's compensation.

22. For each ground, the respondent has made the point that these issues were not dealt with at the remedy hearing and it did not have an opportunity to address the Tribunal on these points. The Tribunal notes that there were many issues that the parties did not address the Tribunal upon, but that the Tribunal had to make findings upon in order to deal with the claimant's claim in accordance with the overriding objective. It is not for the Tribunal to remind professionally represented parties of all the points that they need to make submissions upon.

Employment Judge Ainscough
Date: 26 September 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
16 October 2023

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