



EMPLOYMENT TRIBUNALS

Claimant: Mr L Hammersley

Respondents: 1. Warren Taylor t/a R & M Consultancy
2.R & M Consultancy Limited

Heard at: Manchester, by CVP **On:** 12 October 2023

Before: Employment Judge Holmes (sitting alone)

Representatives

For the claimant: In Person

For the respondents: No appearance or representation

RESERVED JUDGMENT

It is the judgment of the Tribunal that:

1.The correct respondent to these claims is the first respondent, and the second respondent is dismissed from the proceedings.

2. The claimant was at the material time, i.e between 21 March 2022 and 30 August 2022, a person with a disability.

3.The first respondent unlawfully discriminated against the claimant by dismissing him because of something arising in consequence of his disability, contrary to s.15 of the Equality Act 2010.

4. The claimant is entitled to compensation. The Tribunal makes the following awards:

a.) Loss of earnings

Date of dismissal – 30 August 2022

Loss to date of hearing: £18,694.14

Future loss to 31 December 2023 : £4,611.84

Total: **£23,305.98**

b.) Injury to Feelings

The Tribunal makes an award in the middle band of Vento in the sum of:

£12,00.00

5. The claimant is entitled to interest upon these awards.

Past loss of earnings: £18,694.14 ; mid – point is 204 days

£18,694.14 x 8% for 204 days = £835.85

Injury to feelings

£12,500 x 8% x 408 days = £1117.80

Total interest: **£1,953.65**

6. The first respondent made unlawful deductions from the claimant’s wages in the sum of **£1,906.02**, which sum he is ordered to pay him. This is a net sum and the first respondent is responsible for accounting to HMRC for any tax and national insurance due upon it.

7. The first respondent failed in breach of reg. 15 of the Working Time Regulations 1998 to pay the claimant his holiday pay in the total sum of **£215.38** which sum he is ordered to pay him. This is a gross sum and the respondent is responsible for deducting and accounting to HMRC for any tax and national insurance due upon it.

8. The final hearing listed for 29, 30 and 31 May 2024 is vacated.

REASONS

1. By a claim form presented on 15 December 2022 the claimant brought claims of disability discrimination and for unlawful deductions from wages and failure to pay holiday pay.

The respondents and the history of the claims.

2. The claimant presented the claims against “R & M Consultancy”, and gave as their address Demmings House, Brookfield Industrial Estate, Chealde, SK8 2PN. His ACAS early conciliation certificate was in the name of R & M Consultancy Limited, of the same address. The claim form was accordingly served at that address on 30 December 2022, without the word “limited”.

3. There is a limited company of that name (Company No. 1301649). The Demmings House address was its registered office until 17 October 2022, when it was changed to Goyt Mill, Upper Hibbert Lane, Marple SK6 7HX.

4. No response to the claims was received, and on 17 March 2023 a preliminary hearing was held by Employment Judge Leach. The claimant attended, but no one appeared for the respondent. The Employment Judge had searched Companies House, and noted the change of registered office. He also noted that there were other R & M companies, two “service” companies. The claimant referred to his dismissal letter, which came from “R & M Consultancy”, without the word “limited”, a point which was noted by the Employment Judge, who also noted that this letter failed to carry the company’s registered number or registered address. He therefore amended the name of the respondent to “Warren Taylor trading as R & M Consultancy”, and added R & M Consultancy Limited as a second respondent. The claims were then served, being sent to the Goyt Mill address on 28 March 2023. The respondents were also informed of a further preliminary hearing for case management by telephone by letter sent to Goyt Mill on 27 June 2023, and were provided with the necessary access code.

5. The effect of the amendment was to make Warren Taylor personally a respondent. The claim had originally been served upon what was merely a trading name, and without the addition of the word “limited” R & M Consultancy was not a legal entity. The amendment clarified that the claims were being made against Warren Taylor personally, and not any limited company. That was highlighted by the fact that the limited company was added as a second respondent.

6. Warren Taylor is a director of the second respondent , and he gives, as his correspondence address at Companies House, the registered office at Goyt Mill . R & M Consultancy, in some guise, and under the direction of Warren Taylor , still appears to be active. Warren Taylor, however, has not responded to the claims. This is despite, following the further preliminary hearing before Employment Judge Aspinall on 27 June 2023 in which neither respondent (having failed to file any response by the new deadline of 25 April 2023) participated, the Tribunal in its Orders set out how the respondents may be permitted to participate in the hearing, in terms of remedy. The hearing was then listed for today, and of which the respondents were notified by letter (sent by post to Goyt Mill) on 6 July 2023.

7. The respondents did not contact the Tribunal to provide an email address , so were not provided with the link to today’s CVP hearing.

8. Finally, the claimant pointed out , as was clear from the bundle, that his payslips bore the name “R & M Technology Limited”. This company was dissolved on 20 May 2023. He did not wish to amend to bring any claim against this company, which may simply have been a payroll provider. Without more, there is no reason to suppose that this company was the claimant’s employer.

9. Having discussed these issues with the claimant, he wished to proceed against Warren Taylor, and the Employment Judge agreed. If Mr Taylor wished to dispute that he was the employer of the claimant, it was for him to respond to the claims, and assert who or what the correct employer should be. In any event, whilst the two money claims made by the claimant can only be brought against the employer, the discrimination claims can proceed against any individual alleged to have perpetrated the acts of discrimination. On that basis, therefore, Warren Taylor would have a potential personal liability for such acts, and would remain a respondent even if he was not the employer.

10. The claims therefore proceed against the first respondent, and will be dismissed against the second respondent.

11. The claimant had, in compliance with the Orders of Employment Judge Aspinall, prepared and sent into the Tribunal a bundle for use in this hearing. He gave evidence, confirming the two witness statements he had made, and the contents of a medical report that he was relying upon to establish disability.

12. Having heard the evidence, read the documents in the bundle, and considered the submissions, the Tribunal finds the following relevant facts:

12.1 The claimant has had a diagnosis of autism since 2005. He was assessed in February 2017 as having high functioning Autism Spectrum Disorder (ASD, previously known as Asperger Syndrome). In the report dated 17 February 2017 from Dr Stephanie Andrews which was included in the bundle, the claimant's symptoms were:

A difficulty knowing how to act in social situations

A strong dislike of and disinterest in small talk

Problems specifically with group conversations

Having a limited understanding of when people are being sarcastic or joking; taking what people say literally

Finding it very hard to read other people's emotional states, body language, and facial expressions

Feeling 'terrified' if someone he did not know tried to talk to him, such as on the bus

Generally avoiding other people and occasions where people might talk to him

Difficulty understanding social cues and rules, such as how to manage someone joining or leaving a conversation

Difficulty using the telephone, especially at work where he did not know who was calling

Speaking in a monotone voice, which also means that it is difficult for others to interpret what he was saying; often people thought that he was being sarcastic when he was in fact being serious

Difficulty knowing how to comfort someone if they are upset, although caring greatly for them

A tendency to talk about his interests for a long time, such as World of Warcraft

Struggling to socialise unless there is a task involved which he could focus up on, such as computer games

12.2 Further, the claimant had and has strong preference for structure and predictability, as well as a need for certain routines. He required a number of fixed routines which he was not able to change once they were established. For example, he decided which bus to get to work when he started working (not with the respondents), and when he realised that it made him a few minutes late for work each day, he did not feel able to get the earlier bus. Instead, he changed his working hours to accommodate the buses he had chosen.

12.3 The claimant started working for the first respondent on 21 March 2022. He told him he had autism and did not like having to be with lots of people. He was best in smaller groups or one to one. He had a 6 month probation period. All went well, no one told him there were any problems with his performance. He was told to do work on occasions for other “sister” organisations of the respondent at the same premises.

12.4 In August 2022 he was finding work stressful because (i) he was being pushed by his manager to become an employee of a sister organisation called Veritas. He did not want to move and was suspicious as to why the respondent was trying to get him to move. It was also stressful because (ii) his line manager was often rude to him and when for example he asked for detail of his annual leave he was told he didn't have any but just to take leave if he needed it and not tell HR (he has a text message to show this, which was in the bundle) and (iii) the line manager was dismissive of his inability to cope well with strangers or bigger groups and on one day the manager pulled out of a meeting they were to attend together and made the claimant attend on his own. This was in a room with around 20 people and he did it but was very uncomfortable and stressed.

12.5 During August his stress increased so that he went to his doctor and was signed off unfit for work due to work related stress on 26 August for one month. On 30 August the claimant sent his sick note (in the bundle) to Kate Shimmin of HR at 3pm. At 6pm, three hours later, he got an email telling him his employment had been terminated.

12.6 The letter (which is undated but was sent on 30 August 2022) is in the bundle, and reads:

I am writing to you regarding the failure of your probationary period due to performance and I have been forced to terminate your contract with us.

Your employment has been terminated because of performance related issues, such as:

- Failure to complete required tasks which meant you were unable to meet the deadlines provided to yourself from management*
- Inability to communicate your difficulties with tasks which contributed to you being unable to fulfill your job role*
- Failure to comply with your contract and company policies such as holiday requests and lateness.*

As you are aware, during the course of your probationary period you had a number of

informal conversations in connection with your performance and we have tried hard to support you to be able to improve your performance. Unfortunately, we have not seen the required performance needed for this role.

12.7 He was devastated by “being terminated” and believes it was because he went off sick. His sickness absence was because of the stress that he was caused by his condition of ASD, and the respondent’s failure to make reasonable adjustments for it. To the extent that he may have struggled with any of the respondent’s procedures, or with lateness, these too arose out of his ASD.

12.8. The claimant never been unemployed in 11 years but since his dismissal has lost all confidence. He was forced to give up his flat, and has lost his home and independence. He has moved back in with his mother.

12.9 He has been unable to work, and has been in receipt of benefits. He was unable to maintain his payments of child support. He does not socialise and remains unfit for work. He wants to be well enough to work and in April 2023 started a programme to rebuild confidence called Ingeus, through the Job Centre where he is supported by a key worker. She has written an undated letter, (which is in the bundle) in which she expresses the view that he had been “massively impacted” by what happened and the way he was treated, and that this has had a negative impact on his mental health, and his day to day life, and this has exacerbated his anxiety and depression. She concludes, however, by saying that she feels that , with support, he will be ready to return to employment by the end of the year.

12.10 Although the termination letter states that the claimant was entitled to one month’s notice, and was due two days holiday, and that these payments would be added onto the claimant’s final payslip, he did not receive them.

12.11 The claimant’s salary was £28,000 per annum, £2,333.33 per month gross. His net monthly earnings for the two months preceding his dismissal were £1906.02. He worked a 5 day week.

Discussion and findings.

i)Disability.

13. Whilst the respondents have not responded, the claimant must still prove his case. For his claim of disability discrimination, he must first establish that he has, and had at the material time, a disability within the definition in s.6 of the Equality Act 2010.

14. To do so, the claimant must satisfy the Tribunal that he had an impairment, physical or mental, which had an adverse and substantial (which means “more than trivial”) affect upon his ability to carry out day to day activities. Further the condition must have lasted, or be likely to last, for more than 12 months.

15. The Tribunal is quite satisfied that the claimant has established that he was a person with a disability. Normal social interaction is a day to day activity, as is communicating with persons by telephone, and meeting new people. Responding to change is a day to day activity, and these are all areas in which the claimant has difficulty. The claimant’s

evidence and that in the diagnosis report of February 2017 demonstrate sufficiently serious effects of the condition upon his day to day activities to satisfy the definition, and he was at the material time, a person with a disability.

ii)The claims.

Discrimination arising from disability under Section 15 Equality Act 2010 .

16. The claimant says he was dismissed because he was absent. He was absent because of the stress , and he was stressed because of his autism. That means his dismissal arose out of his disability and he says that is discrimination. The Tribunal agrees. Even if his absence was not the real reason for his dismissal, and his performance issues were, if those too were related to his ASD, this claim would similarly succeed. As the respondent has not, however, defended, to prove what the reason was, given the promixity of the dismissal to the claimant informing the respondent of his further absence, the Tribunal accepts that this absence was the reason for his dismissal, and hence he was dismissed because of something arising in consequence of his disability.

17. The claimant contends that the respondent knew of his condition, and the respondent has not participated to dispute that, but under s.15 it would be for the respondent to plead and run lack of knowledge as a specific defence, which he has failed to do. This claim succeeds.

Unpaid wages / unauthorised deduction from wages section 13 Employment Rights Act 1996.

18. The claimant says his notice pay of £1906.02 is properly payable to him and that the respondent admits that, because it put that in his letter of termination. He says he was never paid those wages and he claims them now. This claim succeeds.

Holiday Pay

19. The amount that the respondent admitted in the termination letter the claimant was owed for holiday was 2 days. It has not been paid, and this claim too succeeds.

Compensation.

i)Disability discrimination.

a)Loss of earnings.

20. The discrimination comprised of dismissal, so the claimant seeks, and is prima facie entitled , to recover his loss of earnings arising from his dismissal. He has not been able to find other employment since, and remains out of work. Whilst he is under a duty to try to mitigate his loss, and it would be for the respondent to specify what he has failed to do to achieve this, the Tribunal accepts his, and his support worker's evidence, of the continuing devastating effect of the dismissal upon him, and upon his ability to gain new employment. That he is in receipt of benefits is a good indication that it is accepted by the DWP that he is unable to find other work.

Middle band – (cases that do not merit an award in the upper band) £9,900 to £29,600

Upper band – (the most serious cases) £29,600 to £49,300

25. The Tribunal's task is to decide into which band the award should fall, and then where within that band it would appropriate to make the award. Whilst this was a "one – off" act of discrimination, such as may justify an award within the lower band, the Employment Appeal Tribunal has made it clear (**Base Childrenswear Limited v Otsshudi UKEAT/0267/18/OJ**) that there is no rule that a Tribunal cannot make an award in the middle band for even a "one off" act of discrimination. At para. 36 HHJ Eady QC (as she was then) said this:

"36. Moving on to the ET's assessment of injury to feelings in this case, it is right to say that, in deciding whether the case should fall within the low or middle Vento bands, an ET might think it relevant to have regard to whether the discrimination in question formed part of a continuing course of conduct (perhaps a campaign of harassment over a long period) or whether it was only a one-off act. That said, each such assessment must be fact and case specific. It is, after all, not hard to think of cases involving one-off acts of discrimination that might well justify an award falling within the middle or higher Vento brackets, or other cases involving a continuing course of conduct that are properly to be assessed as falling within the lower band. Simply describing discrimination as an isolated or one-off act may not provide the complete picture and I do not read the Vento guidance as placing a straightjacket on the ET such that it must only assess such cases as falling within the lower band. The question for the ET must always be, what was the particular effect on this individual complainant?"

26. The Tribunal looks, therefore, upon the effect upon this claimant. It was considerable. It has been described by him , and corroborated by his key worker, as "devastating". He lost not only his job, but, as a consequence , his home, having to move back in with his mother at the age of 32, his ability to support his child, and his confidence in general. It has been a considerable setback, and after 11 years of solid employment, he has had to take over a year to begin to get back to where he was.

27. All that , the Tribunal considers does take this case out of the lower band, and justifies an award in the middle band, which starts at £9,900. That said, the Tribunal's award is not meant to be punitive, and must be proportionate. The Tribunal considers that the appropriate award is £12,500.

The money claims.

28. These are straightforward. The notice pay that the claimant was entitled to was £1906.02, and that will be the award of the Tribunal. That is the net sum, and it should be paid to the claimant , with the respondent accounting to HMRC for any tax and national insurance due upon it.

29. In relation to the holiday pay claim, the claimant worked a 5 day week, so a day's pay was £28,000 ÷ 52 ÷ 5 = £107.69 , which x 2 = £215.38, and that will be the amount that the Tribunal orders the respondent to pay, but this is a gross sum, so tax and national insurance will need to be deducted from it.

Interest.

30. The claimant is entitled to interest on the awards for discrimination. The Tribunal awards interest on different bases for different types of award. In relation to past financial losses , the award is made from the mid – point date and ending on the date of calculation, which is the date of the hearing. In relation to awards for injury to feelings, the starting date is the date of the discrimination and the and date is the date of calculation again. The interest rate is 8%. The number of days between 30 August 2022 and then hearing date is 408.

31. Thus the interest calculation is:

Past loss of earnings: £18,694.14 ; mid – point is 204 days

£18,694.14 x 8% for 204 days = **£835.85**

Injury to feelings

£12,500 x 8% x 408 days = **£1117.80**

Total interest: **£1,953.65**

[No interest is payable for future loss]

Employment Judge Holmes

DATE: 13 October 2023

JUDGMENT SENT TO THE PARTIES ON

Date: 20 October 2023

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2410037/2022

Lyle Hammersley v Warren Taylor trading as R & M Consultancy

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 20 October 2023

"the calculation day" is: 21 October 2023

"the stipulated rate of interest" is: **8%**

Mr P Guilfoyle
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.