



EMPLOYMENT TRIBUNALS

Claimant: Ozgul Coban

First Respondent: Manes Partners Limited

Second Respondent: Alper Ozceylan

Heard at: CVP

On: 17 August 2023

**Before: Employment Judge Ms R Freshwater
Tribunal member Mrs S Blunden
Tribunal member Mrs K Knapton**

Representation

Claimant: Mr Aggrey-Orleans (counsel)

Respondent: Mrs Letts (Tribunal Representative)

RESERVED JUDGMENT ON REMEDY

1. The respondents are ordered to pay the claimant the following compensatory awards:
 - (i) Loss of earnings £10,034.29 net.
 - (ii) Injury to feelings £9,100.00
2. Interest of £1998.13.
3. The total award to be paid by the respondents to the claimants after compensation and interest is **£21,132.42**.

REASONS

Introduction

1. This is our judgment on remedy, following a liability hearing which took place on 24 - 27 April 2023. We upheld a complaint of direct disability discrimination and discrimination arising out of disability.

Hearing and procedure

2. This was a public, fully remote, hearing by way of CVP. The hearing took one day.
3. The tribunal heard submissions from both representatives, and oral evidence from Mrs Coban and Mr Ozceylan.
4. Judgment was reserved.

Preliminary issues

5. At the start of the hearing, the respondent's representative noted that there were no witness statements in the bundle prepared for the remedy hearing. It was noted that the tribunal had directed that the claimant should submit any documents relied upon for remedy by 8 August 2023 and that these would have been included in the bundle. The claimant's representative submitted that the witness statement submitted by the claimant for the liability hearing should stand in this hearing. In addition, the claimant referred to various documents from the original bundle.
6. The tribunal confirmed that both parties had the original bundle, and allowed time for it to be obtained for the claimant. Time was also allowed for the second respondent to discuss the bundle with his representative.
7. The respondent did not, ultimately, seek an adjournment of the proceedings or seek to persuade the tribunal that the previously submitted evidence ought not to be used at the hearing.
8. The tribunal considered that it was fair to continue. This was on the basis that no new evidence was being introduced into the proceedings. It would have been ideal for all the material to be in one bundle, but no prejudice was identified by either party. There was sufficient time during the hearing for both parties to be reminded of the content of the earlier bundle. It would not be proportionate to delay the case any further. In any event, it is permissible for the tribunal to hear oral evidence in circumstances where a witness statement has not been served.
9. The respondent also noted that part of the remedy claim related to an uplift because the claimant said that the respondent had failed to investigate and provide an outcome to a grievance that the claimant had submitted. The respondent did not accept that a grievance had ever been made by the claimant. No submissions or evidence had been received on this point during the liability hearing. The claimant's representative submitted that this was an issue for the remedy hearing, and pointed to the agreed list of issues which set this point out as a matter of remedy.
10. The tribunal decided to deal with the point during evidence at the remedy hearing when any necessary findings of fact could be dealt with. Oral evidence could be taken, despite the fact that no witness statement covered the point. The issue raised was not a new one, and it had been agreed between the parties previously that it would be an issue of remedy.

The law

Compensation

11. Any award of compensation will be assessed under the same principles as apply to claims in the County Court (see s124(6) and s119(2) of the Equality Act 2010).

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The central aim is to put the claimant in the position, so far as is reasonable, that he or she would have been had the unlawful conduct not occurred (Ministry of Defence v Wheeler [1998] IRLR 23 and Chagger v Abbey National plc [2010] IRLR 47).

12. A claimant is expected to take reasonable steps to mitigate the losses they suffered as a result of the unlawful conduct. The burden is on the respondent to prove that there had been a failure to mitigate such losses (see Fyfe v Scientific Furnishing Ltd [1989] IRLR 331).
13. The respondent must show not just that the claimant failed to take a reasonable step but that this failure was unreasonable (see Wright v Silverline Car Caledonia Ltd UKEATS/0008/16).
14. A tribunal should therefore consider: (1) What steps the claimant should have taken to mitigate his losses (2) Whether it was unreasonable for the claimant to have failed to take any such steps (3) If so, the date from which an alternative income would have been obtained

Remedy for injury to feelings.

15. 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)
16. The general principles that apply to assessing an appropriate injury to feelings award have been set out by the EAT in Prison Service v Johnson [1997] IRLR 162, para 27:
 - 16.1. Awards are compensatory in nature and should be just to both parties. They should compensate fully without being punitive.
 - 16.2. Awards should not be too low as that would diminish respect for the policy of anti-discrimination legislation. On the other hand, awards should be restrained.
 - 16.3. Awards should bear some broad general similarity to the range of awards in personal injury cases.
 - 16.4. Tribunals should take into account the value in everyday life of the sum they have in mind, by reference to purchasing power or earnings.
 - 16.5. Tribunals should bear in mind the need for the public to respect the level of awards made
17. In Vento v Chief Constable of West Yorkshire Police (No 2) [2003] IRLR 102, the Court of Appeal identified three broad categories or bands (i.e. lower, middle and upper) into which an award for injury to feelings shall fall, save in exceptional cases. The ranges of award for each of these bands is updated each year by means of an Addendum to Presidential Guidance which was issued on 5 September 2017. The relevant guidance for present purposes is the Fourth Addendum to Presidential Guidance (applicable to claims presented on/after 6 April 2018) which sets out the following ranges of award for the three Vento bands: a lower band of £900 to £9,100 (less serious cases); a middle band of £9,100 to £27,400 (cases that do not merit an award in the upper band); and an upper band of £27,400 to £45,600 (the most serious cases), with the most

exceptional cases capable of exceeding £45,600.

Aggravated damages

18. Aggravated damages may be awarded where the discriminator has acted in a high handed, malicious or insulting manner in relation to the discriminatory act itself or the way it was dealt with (see *Singh v University Hospital NHS Trust EAT/1409/01*). In *Commissioner of Police of the Metropolis v Shaw* [2012] IRLR 291 the following three categories were identified: (i) the manner in which the wrong was committed, (ii) the motive of the discriminator, and (iii) the subsequent conduct of the employer including the way that a grievance was investigated or proceedings conducted.

ACAS uplift

19. Under section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 a tribunal has the power to increase by up to 25% any compensatory award it makes in relation to relevant proceedings where it finds that an employer has failed unreasonably to comply with a relevant ACAS Code of Practice (which in this case is said by the claimant to be the ACAS Code of Practice on Disciplinary and Grievance Procedures) and it considers it just and equitable to do so.

Interest

20. Interest for injury to feelings awards is calculated from the date of the act of discrimination complained of until the date on which the tribunal calculates the compensation (see Reg 6(1)(a) IT(IADC) Regs 1996).
21. Injury for other awards is calculated from the mid-point of the date of the act of discrimination complained of and the date the tribunal calculates the award (Reg 6(1)(b) IT(IADC) Regs 1996). The mid-point date is the date half way through the period between the date of the discrimination complained of and the date the tribunal calculates the award (Reg 4 IT(IADC) Regs 1996).

Findings

22. The claimant's condition was exacerbated as a result of the discrimination we have found occurred. She said that it took her one to two months after her employment came to an end to feel well enough to look for a new job. We found her evidence to be credible. She did not attempt to exaggerate what had happened, and was very measured in her account. We also accept that she was waiting to receive her P45 from the first respondent, which never arrived. This would, in our experience, have made it very difficult to obtain employment. We therefore do not think that it was unreasonable for her to have found a job within 6-7 months. We are satisfied that Mrs Coban was looking for work through LinkedIn and agencies. She commenced her new employment on 1 June 2022.
23. The claimant did not submit a grievance. She submitted a letter before claim dated 2 December 2021. This is apparent from the fact that the document relied upon by the claimant to amount to a grievance was sent by her solicitor to the respondent. That document clearly states that the solicitors: "act for Ozgul Coban ('the Claimant') in respect to her claim to the employment tribunal against Manes Partners Limited ('the Respondent') and Alper Ozceylan for disability discrimination." The letter goes on to say: "Please treat this as a letter of claim prior to the issue of legal proceedings at the employment tribunal." There is no

mention within it that the intention was to submit a grievance. We do not find that the letter amounts to a grievance.

24. The claimant was not provided with any written particulars of employment.
25. Whilst clearly unpleasant for the claimant, the discriminatory acts done in this case were not done in an exceptionally upsetting way.
26. There was no discriminatory conduct that was evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound. Instead, the conduct in this case stemmed from a lack of care and attempt to understand the claimant's condition.
27. The trial was not conducted in an unnecessarily oppressive manner. As we have said before, Mr Ozceylan was evasive in his answers but we do not think that this amounts to oppressive behaviour or a failure to treat the complaint seriously. He was entitled to defend the claim, and not all of the claimant's complaints were upheld by the tribunal.

Conclusions

28. The claimant should be awarded compensation for the loss of earnings between 9 November 2021 until 31 May 2022. Her pay during that time would have been £49.43 per day net. The period in question was 203 days. Therefore, the total amount is £10,034.29 net.
29. The detriment suffered falls within the lower band of *Vento*, at the top end of that band, in the Fourth Addendum (which is applicable in this case). The award for injury to feelings is therefore £9100. The reason for this finding is that the evidence provided to us was that claimant was affected for a relatively short period of time. She cried for two days and felt low for about a month. She lost confidence in herself, but when she was well enough (after 1 – 2 months) she felt able to look for work again. The claimant felt undermined by what had happened and was embarrassed to tell people what had happened.
30. No ACAS uplift is appropriate in this case, because we have found that the claimant did not submit a grievance.
31. No reason was put forward for the failure to provide written particulars of employment. The maximum award of 4 weeks salary is appropriate in this case. The relevant weekly salary is £396 per week. Therefore the total amount is £1,584.
32. No award is made for aggravated damages.
33. The claimant is entitled to interest for the award relating to loss of earnings. The first act of discrimination is 8 November 2021 and the date of the remedy hearing is 17 August 2023. This is 647 days. The midpoint is equivalent to 323 days. $£10,034.29 \times 8\% / 365 = £2.20$ per day. $£2.20 \times 323 \text{ days} = £710.60$
34. The claimant is entitled to interest for the award relating to injury to feelings. The first act of discrimination is 8 November 2021 and the date of the remedy hearing is 17 August 2023. This is 647 days. $£9,100 \times 8\% / 365 = £1.99$ per day. $£1.99 \times 647 \text{ days} = £1,287.53$.

Date 19 October 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
20 October 2023

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FOR EMPLOYMENT TRIBUNALS