



EMPLOYMENT TRIBUNALS

Claimant

Mr L Johnston

Respondent

Telecom Service Centres Ltd trading
as Webhelp UK Trading

Heard at: Leeds by Teams

On: 27 September 2023

Before: Employment Judge Davies
Ms H Brown
Mr G Wareing

Appearances

For the Claimant:

In person

For the Respondent:

Mr Maxwell solicitor

REMEDY JUDGMENT having been sent to the parties on 27 September 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 hearing to determine the remedy to be awarded to the Claimant following his successful complaint of indirect race discrimination. These reasons should be read alongside the Tribunal's reserved judgment dated 3 July 2023, the remedy judgment dated 27 September 2023 and the reconsideration judgment dated 21 November 2023.
2. At the remedy hearing the Claimant again represented himself and the Respondent was represented by Mr Maxwell. The Tribunal heard evidence from the Claimant and, for the Respondent, from Mr McKenna. We had the original hearing file of documents.
3. The issues for the Tribunal to decide were:
 - 3.1 In accordance with s 124(4) and (5) Equality Act 2010, should a declaration or recommendation be made?
 - 3.2 What financial losses did the discrimination cause the Claimant, in particular:

- 3.2.1 How long would the Claimant have stayed if he had been given the job?
- 3.2.2 What would the Claimant's earnings have been up to 26 September 2022 (when his new work started) at the latest if he had been given the job?
- 3.2.3 Would he have earned a signing on/retention bonus?
- 3.2.4 What is the chance the Claimant would have been given the job?
- 3.2.5 What was his income in fact during the period from 31 January 2022 until 26 September 2022?
- 3.3 What injury to feelings did the discrimination cause the Claimant and what compensation should be awarded for that?
- 3.4 Should interest be awarded? How much?

Findings of fact

- 4. The Claimant started his new job on 26 September 2022. He did not seek an award of financial compensation for the period after that date. He was on Universal Credit when he applied for the role with the Respondent. That continued when he did not get the job. The total amount of Universal Credit he received between 11 February 2022 and 26 September 2022 was £6,065.95.
- 5. The Claimant has a varied CV. He has done many different jobs, in more than one sector, over the years. He does not have any formal qualification in customer service and his most recent roles explicitly involving customer service were more than ten years ago. Most of his recent experience is in the film industry and then teaching English. He was not working between March 2020 and January 2022 (part of which included the COVID lockdowns). He was applying for work for at least 4 or 5 months before he applied for the role with the Respondent. He applied for 2-3 jobs per day. He was not offered any of those roles.
- 6. Although the Claimant was evidently skilled at answering questions and could, when questioned, give examples of occasions he said he had been required to show call handling skills, there was no evidence on the face of his CV that he could demonstrate exceptional customer call handling skills, one of the requirements of the role. It did not seem to the Tribunal that the Claimant had really worked in a call handling or contact centre role before, although he had dealt with customers on the phone. He did not have experience in the telecoms and mobile industry.
- 7. The Respondent's records indicate that around 10% of those who apply for its call handling roles are successful in being offered them. Mr McKenna was not able to say what proportion of those who are selected for interview are offered roles. For this particular recruitment exercise, there were 2197 applicants for 135 roles. That was a 6% success rate. The Respondent normally makes around 10% more offers than it has roles, to allow for those who decline the role or do not start for one reason or another. The roles are for the life of the particular campaign. The average length people stayed in these particular roles was around 5 months in 2022.

8. The Tribunal found that if the Claimant had been offered the role with the Respondent, he would have accepted it and his start date would have been 7 February 2022. The Claimant's salary would have been £20,000 gross and he would have been paid a bonus of £1,500. Using those figures, his net earnings from 7 February 2022 to 26 September 2022 would have been £11,831.82,
9. After January 2022 the Claimant continued to apply for jobs. Around thirty of the roles he applied for were in customer services or contact centres. He did not secure any of those roles. He was interviewed for a small number. His current role is doing clerical work.
10. The Claimant gave detailed evidence in his witness statement about the impact of the discrimination on him. He described feelings of bewilderment, anger and depression, problems sleeping and difficulty in moving on from what had happened. The Tribunal found that the Claimant's evidence in his written statement was somewhat overstated, and was written with hindsight, with a view to his claim for compensation for injury to feelings. For example, he said in his written statement that he was unable to look for work for a number of weeks because of the impact of the discrimination on him, but his job search record showed that he had applied for his next job very shortly afterwards, on 2 February 2022. The Tribunal found his explanation that he was distinguishing between merely applying for a job and making a proper, considered, application unconvincing. We noted that he had not seen a doctor or been diagnosed with depression or any mental health condition and had not been prescribed with any medication. Again, we accept that at times during the pandemic it was difficult to access medical care, but we considered that the fact that the Claimant had not pursued medical attention at the time was a reflection of the level of the impact on him, not just the difficulty in accessing medical care.
11. The Tribunal found that the Claimant was upset by being told that the interview could not proceed because he lived in Northern Ireland. He felt "down" but was not clinically depressed. It preyed on his mind for a number of weeks and had some effect on his sleep. He was, however, able to carry on making sustained efforts to find work after a couple of days. The Tribunal accepted the Claimant's evidence that the effect of the discrimination was exacerbated by his experiences of being a Northern Irish person living in Northern Ireland, and a feeling of having a "lifetime of being a second class citizen." Those feelings had particularly come to the fore because of the events surrounding Brexit. That was the context in which the discrimination took place and that heightened the Claimant's reaction to the discrimination. Nonetheless, the Tribunal found that this was a relatively short-lived period of feeling upset, cross and, at times, down, with some difficulty sleeping.

Legal principles

12. An award of compensation in a discrimination case is designed to put the individual so far as money will allow in the position he would have been in but for the discrimination. Future loss may be calculated on a percentage basis to reflect the chance that the unlawful act would have happened lawfully in any event: *Abbey National plc v Chagger* [2010] ICR 397 CA. The correct approach when the Tribunal decides that there is only a chance the Claimant would have secured the future income, and the Claimant has earned other sums that have to be deducted from their loss, was set out by the Court of Appeal in *Ministry of Defence v Wheeler* [1998] ICR 242, CA. The Tribunal should calculate what the future earnings would have been, deduct any sums in fact earned and then apply the percentage reduction.
13. 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 2022 Guidance applies. The applicable bands are:

Lower band (less serious cases):	£990 - £9,900
Middle band (cases that do not merit an award in the upper band):	£9,900 - £29,600
Upper band (the most serious cases):	£29,600 - £49,300

Only in the most exceptional cases would the award be capable of exceeding £49,300.
14. 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 the law to the facts

15. The Tribunal made a declaration of discrimination in the liability judgment. We found that a recommendation would not be appropriate because the Claimant did not get the job and does not work for the Respondent. We could not identify a recommendation that would obviate the adverse effect of the discrimination on him.
16. If the Claimant had been offered the job he would have earned £11,831.82 in the period between 7 February 2022 and 26 September 2022. The Tribunal found that the Claimant would have remained in post for that period. Although that is longer than the average tenure, we found that the Claimant would have stayed that long. He had been looking for work for a long time and was particularly attracted by the home working nature of the role. During the same period, the

Claimant received income of £6,065.95 by way of Universal Credit. The difference is £5,765.87.

17. The Tribunal found that there was a 25% chance that the Claimant would have been offered the job if he had not been ruled out because he lived in Northern Ireland. The Respondent's 6% and 10% figures relate to the proportion of applicants who are offered roles. However, the Claimant had been selected for interview. The Tribunal concluded that this mean his chances of success were higher than 6-10%, because he had already passed the first hurdle. However, we noted that his CV did not provide evidence of recent customer service or call handling/contact centre work. While he might be able to fashion answers based on his CV, identifying relevant examples and evidence, that was not the same as recent work in a customer service/contact centre role and he would not be able to disguise that fact. We noted that he had been applying for 2-3 roles per day for 4-5 months and had not been offered a role, and we noted that it took him a further 8 months to obtain work. That included other customer service type roles for some which he was interviewed. That all indicates that it was difficult for the Claimant to find work and that the mere fact that he had got through to the interview stage did not mean that he would inevitably have been offered the job. The Tribunal did consider that the Claimant was likely to interview reasonably well. He is an articulate and intelligent man. Weighing all of those matters, in particular his record of job-seeking in the months before and after January 2022, we concluded that there was a 25% chance that he would have got the job.
18. That means that the losses of £5,765.87 should be reduced by 75% to reflect the 25% chance of the Claimant getting the job. The Claimant's financial losses are therefore £1,441.47.
19. Turning to compensation for injury to feelings, the Tribunal's findings of fact are set out above. We reminded ourselves of the *Vento* guidelines and the bands applicable in the Claimant's case. The focus is on the impact on the Claimant. We noted that this was a one-off incident with relatively low level impacts lasting for a relatively short period. We accept that the Claimant continues, in his words, to be "irked" and indeed that is reflected in his pursuit of this claim. However, we found that the gravamen of the injury to feelings really took place in those first few weeks. In our view this case plainly falls within the lower band: £990 to £9,900. Although it is a one-off incident in the context of a job interview, we concluded that the level of injury to the Claimant's feelings was more than the lowest end of the spectrum. We concluded that it fell within the middle of the lower band and we valued it at £5,000.
20. There was no dispute that the period for which interest should be awarded on injury to feelings was 604 days. Interest on financial losses is awarded for half that period, namely 302 days. The interest rate is 8%. The amount of interest payable was therefore £95.41 on financial losses and £661.92 on injury to feelings.

Case Number: 1801956/2022

**Employment Judge Davies
21 November 2023**