



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms P Hargreaves

v

Reactive Solutions FM Limited

Heard at: Liverpool

On: 11 December 2023

Before: Employment Judge Johnson

Members: Mr R Cunningham
Ms A Eyre

Appearances

For the Claimants: unrepresented

For the respondent: did not attend

JUDGMENT

- (1) Following the decision made in the Tribunal's judgment on liability dated 1 June 2023, the respondent shall pay the claimant the sum of **£44,489.17 (Forty-Four Thousand, Four Hundred and Eighty-Nine Pounds 17 Pence only)** in full and final settlement of the successful complaint of disability discrimination and as discussed in the paragraphs below.
- (2) This judgment is calculated on the following basis, applying the relevant principles under sections 119(2) and 124(6) of the Equality Act 2010 as described below:

Loss of claimant's wages arising from discrimination	
A. From April 2022 to October 2022 1. Period where failure to make reasonable adjustments caused or contributed to claimant's ability to secure alternative employment = 7 months	Subtotal/Total

<p>2. Months' gross pay received by respondent before dismissal = £2291.67 gross</p> <p>3. Calculation for gross pay during the relevant period in (1) is therefore: (£2291.67) x 7 = £16,041.69</p> <p>4. Less pay received from alternative employment during this period with Saga (2 months x £1625.00) + Avios (1 month x £1750) = £5,000</p>	
Subtotal	£11,041.69
Additional losses arising from discrimination and in support of attempts to mitigate loss	
<p>Training in animal care with IMDT = £350.40</p> <p>First Aid Certificate = £59.20</p>	
Subtotal (other losses)	£409.60
INJURY TO FEELINGS (Sections 20 & 21 Equality Act 2010 – failure to make reasonable adjustments in relation to disability discrimination complaint)	
<p>1. £30,000 (<i>Within higher part of middle band in accordance with 'Vento' – see Vento v Chief Constable of West Yorkshire Police (No2) [2003] IRLR 102</i>)</p> <p>2. Interest calculated using mid point of period from 1 June 2021 (being dated when we find adjustments should have been completed), and calculation date (being 11 December 2023), and using the permitted annual interest accrual rate, (0.08%): $924/2 \times 0.08 \times 1/365 \times £30,000 = £3,037.88$</p>	
Subtotal (Injury to Feelings)	£33,037.88
Grand total	£44,489.17

REASONS

Introduction

- (1) The Tribunal considered the provisions of the Equality Act 2010 ('EQA'), section 124(2)(b) of which, included compensation as being a potential form

of remedy where there has been a successful complaint of disability discrimination.

- (2) We also noted that section 119(4) EQA allowed for an award for injury to feelings.
- (3) The purposes of these awards was to put the claimant (Ms Hargreaves), in a position that she would have been, had the discrimination not taken place. Accordingly, the remedies in this case should be compensatory.
- (4) Accordingly, only those losses caused by the unlawful act will be recoverable.

Discussion of evidence and the causation of Ms Hargreaves' losses

- (5) The Tribunal noted that this was a case where we had not found at the liability hearing in May/June 2023 that her dismissal was caused by any of the alleged discrimination within the list of issues before us. But, while this might be the case, we found that by failing to carry out the recommendations made by Access to Work in March 2021 (before Ms Hargreaves' employment was terminated at the beginning of April 2022), the respondent had placed her in the open labour market without the skills and adjustments that she would reasonably have expected to have received by this date. Indeed, in making this judgment, we determined that these adjustments should have been completed by 31 May 2021.
- (6) This failure on the part of the respondent placed Ms Hargreaves in a much more disadvantageous position than she would have been, had the Access to Work recommendations been completed in good time.
- (7) Ms Hargreaves' evidence was both credible and reliable in relation to this matter (and indeed throughout the hearing today). The training which was recommended by Access to Work would have enabled her to apply new skills and adapt to new equipment to her existing job with the respondent. This was a job which she had become very familiar with, competent in and where her skills and hard work were relied upon by the respondent's directors/managers.

- (8) The provision of the relevant training would have given Ms Hargreaves the confidence in managing her progressive condition in relation to its impact upon her attending the workplace and to reduce its impact upon her ability to work.
- (9) As it was, she was left in her final year of employment with the respondent, to do the best she could, to deal with a busy workload, without the relevant adjustments being put in place and with her eyesight deteriorating. She therefore managed her difficulties by working longer and longer hours, which while to her credit, served to increase her levels of stress and potentially this exacerbated the rate of deterioration of her vision.
- (10) Ms Hargreaves' evidence, accompanied with documentary evidence provided at the hearing, convincingly explained how once she was dismissed, she not only had to deal with the additional challenges of seeking alternative employment while managing a progressive visual impairment, but without the necessary training having been given. Had she received all of the necessary training and support before she was dismissed, she would have been able to maximise her opportunities to secure the best possible position commensurate with her previous experience.
- (11) Despite these setbacks, Ms Hargreaves gave very credible evidence about her commitment to, her stoicism and determination to find alternative employment. Indeed, rarely has this Tribunal encountered a person so willing to explore any possible job opportunity and the emotional load this has placed upon her, and her family has been significant. Mr Murray, Ms Hargreaves' partner gave concise but relevant evidence on this matter, together with the support she has provided in terms of securing better paid income for the family as well as the support he has given to his partner in finding alternative work too.

The schedule of loss and impact of the discrimination

- (12) Having considered the evidence before the Tribunal today, we reminded ourselves that only those losses caused by the unlawful act can be

awarded. Taking this into account, we also noted the broad discretion afforded to Tribunals in relation to the determination of remedy and the level of award to impose.

- (13) Ms Hargeaves' employability had been affected by the failure to make reasonable adjustments and the respondent's unfortunate decision to terminate her employment meant that she was looking for alternative work without them having complied with their duty to make the reasonable adjustments required by Access to Work and without the additional skills required to support her in finding new employment to eliminate or mitigate her ongoing loss of earnings.
- (14) Some considerable efforts had been made to obtain alternative work and although Ms Hargreaves did find some work with Avios and then Saga, these involved the use of facilities which could simply not support her reduced vision and she reasonably looked for alternative employment via the agency Forrest who engaged her on a 6 month contract with another employer and who helped her manage her condition within the workplace. Unfortunately, the contract could not be renewed following the initial 6 months and Ms Hargreaves has been looking at alternative employment, including being self employed and obtaining relevant training. She still finds it a challenge however, to find suitable work.
- (15) Based upon the evidence available to us, we felt that 7 months was the appropriate relevant period where her employability was significantly affected by the failure to provide reasonable adjustments and before the duty must rest with an alternative employer.
- (16) As this was a case which did not involve a successful complaint relating to a failure to follow an ACAS Code of Practice, an uplift under the relevant legislation is not capable of being awarded.
- (17) The training courses however, were in support of Ms Hargreaves seeking to mitigation her ongoing losses and can be claimed.

- (18) The costs for accommodation do not fall within a loss arising from the discrimination itself, but from the cost of pursuing the claim. No application for costs has been made against the respondent in relation to this matter nor a request for payment from the Tribunal.
- (19) The claim for student loans payments which were missed through unemployment cannot form part of the losses claimed. Ms Hargreaves would have paid these from her gross earnings and had she been unable to pay them due to a drop in pay, she should have sought a pause in payments until such time as she was in receipt of earnings above the relevant repayment threshold.
- (20) The injury to feelings award is of course, something which can be claimed. The Tribunal felt that Ms Hargreaves' evidence gave convincing evidence of the anger, distress, upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression this treatment caused her.
- (21) The Tribunal did consider imposing an award within the upper band. However, we noted that Ms Hargreaves had limited the level of her claim for this loss and that the top band dealt with the most serious cases of discrimination such as prolonged harassment and her case did not fit into this sort of description. Nonetheless, we did find that the failure to make reasonable adjustments was inexcusable, significant and despite encouragement from Ms Hargreaves, was simply not taken seriously by their managers. She witnessed repeated failures over a prolonged period and was left feeling increasingly unsupported. Ms Hargreaves had explained the impact and progressive nature of her condition and despite this, her employer ignored her increasing hours of work so that she could manage her workload.

Conclusion

- (22) Consequently, Ms Hargreaves is entitled to the compensation explained within the judgment above.

Employment Judge Johnson

Date: 11 December 2023

Sent to the parties on:

14 December 2023

For the Tribunal Office

Public access to employment tribunal decisions

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2402777/2022**

Name of case: **Miss P Hargreaves** v **Reactive Solutions FM Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 14 December 2023

the calculation day in this case is: 15 December 2023

the stipulated rate of interest is: **8% per annum**.

For the Employment Tribunal Office