



EMPLOYMENT TRIBUNALS

Claimant: Mrs Harrington

Respondent: Scrivens Ltd

Heard at: Southampton (by CVP) **On: 4, 19 October 2023**

Before: Employment Judge Scott
Tribunal Member Sinclair
Tribunal Member Knight

Representation

Claimant: In person

Respondent: Ms Whelan, Xpert Support

JUDGMENT

1. The Respondent must pay to the claimant compensation for discrimination of £24,661.89 comprising:
 - a. £3360.79 for loss of earnings (of which £289.77 is interest)
 - b. £21,301.10 for injury to feeling (of which £3801.10 is interest)

REASONS

1. The Claimant has been successful in her discrimination claim in part.
2. .The Claimant seeks a payment for financial losses for the period where she received Statutory Sick Pay rather than contractual pay. The parties agreed that the gross figure for loss of earnings was £3071.02.
3. Interest applies to this figure at a rate of 8% from the midpoint between the discriminatory act (10 June 2021) and the date of the hearing (19 October 2023). That is a period of 861 days inclusive. Accordingly, the interest has been calculated as follows;

$$\frac{861}{2} \times 0.08 \times \frac{1}{365} \times 3071.02 = £289.77$$

4. The total figure the Claimant is awarded for financial loss is therefore £3360.79.
5. Turning then to the question of injury to feelings, the Claimant seeks a payment in the middle *vento* band but did not indicate a suggested amount. The Respondent submitted that the matter was less serious and should be within the lower *vento* band as Ms Harrington has been able to work throughout, and has continued to work for the same employer, and that she was provided with the support she requested. The Respondent proposed a figure of £3000.
6. The Tribunal reminds itself that following the case of *Komeng v Creative support ltd UKEAT/0275/18/JOJ*, the focus is on the actual injury suffered by the claimant and not the gravity of the acts of the respondent
7. Applying the general principles in *Prison Service v Johnson [1997] IRLR 162*, the Tribunal considers that the award should:
 - a. Compensate the Claimant fully without punishing the Respondent
 - b. That any feelings of indignation of the Respondents conduct should not inflate the award.
 - c. Awards should not be so low as to diminish respect for anti-discrimination policy and should take account of the everyday value of the sum, and of public respect to the award.
8. The Tribunal reminds itself that the matters compensated for by an injury to feelings award encompass subjective feelings of upset, worry, anxiety, mental distress, humiliation, unhappiness, stress and depression as set out in *Vento v Chief Constable of West Yorkshire Police (No2) [2003] IRLR 102*.
9. This is a claim where the Claimant has been successful under a number of heads of claim, and experienced discrimination from at least February 2021 when her request for reasonable adjustments should have been implemented until the adjustments were finally put in place on 24 May 2022. That is a period of 15 months.
10. The Tribunal has found that the Claimant was subject to harassment on five separate occasions where the Respondent's actions created a hostile, degrading and humiliating environment for the Claimant.
11. Furthermore, the Claimant was expected to travel to work with colleagues despite her concern for her own and colleagues safety, and that she was a burden on those who drove her.
12. The Claimant was also required to work at a branch where she had highlighted that the layout was unsuitable for her to manage her condition and the Tribunal is satisfied that would have had a detrimental effect on her.
13. The discrimination experienced by the Claimant cannot be said to be an isolated incident, not only did it occur over an extended period of time, but the Claimant experienced unlawful discrimination from three different people within her line management chain.

14. The Claimant has been found to be a credible witness and claims to have experienced anxiety as a result of her treatment, and claims her treatment exacerbated her underlying condition as stress and anxiety are triggers for her seizures. The Claimant provided clear oral evidence about the significant impact this period had on her wellbeing.
15. The Tribunal accepts the Respondent's submission that the Claimant continues to work for the Respondent and has remained in employment throughout, however the Tribunal balances against this that the Claimant also had significant periods out of work, and the significant impact on the Claimant.
16. The Tribunal concludes that this is a serious case which should properly be assessed within the middle Vento band. Assessing the injury to the Claimant in the round, taking into account that she was able to continue working, and that she has received treatment for the anxiety she had suffered, the Tribunal awards the Claimant £14000 for injury to feelings.
17. The Claimant seeks an uplift of 25% due to the failure of the Respondent to follow the ACAS grievance procedure. The Claimant submitted a written grievance and accordingly, the Tribunal accepts that the uplift can apply to this case.
18. The Respondent argues that an uplift of 25% would be disproportionate given that it has been accepted that the reason for the failure to give the Claimant a grievance hearing was due to expediency.
19. The Tribunal has considered the ACAS code and the Respondent's response to that Grievance. The Tribunal has considered the impact of the discriminatory conduct within the grievance outcome when reaching a decision on the level of the award for injury to feeling, accordingly that conduct will not be taken into account when considering any uplift to avoid double counting.
20. There were no written records held for the investigation stage, and Mr Ellis was unable to provide detail in oral evidence about the investigation that had been undertaken. However, he acknowledges that he sought no additional information from the Claimant on the basis that he felt her grievance was more detailed than he would usually receive from other employees. In so doing the Tribunal concludes the Respondent:
 - a. Failed to treat the Claimant in a similar way to other employees
 - b. Failed to gather evidence from all sides.
21. The Tribunal has accepted that the Respondent dealt with the grievance without a hearing due to expediency however, the Respondent admits to not corresponding with the Claimant during the grievance process. The Tribunal concludes the Respondent failed to keep the Claimant updated on the progress and procedure being applied to her grievance.
22. The Respondent accepts that there was no grievance hearing, accordingly,

step 4 of the ACAS code has not been complied with in any way.

23. The Respondent notified the Claimant of the outcome of the grievance in writing. That letter contained no reference to the failure to hold a hearing, nor did the letter detail the investigation that had taken place.
24. Mr Ellis in evidence had confirmed the reason the grievance was dismissed was because he knew that the requested change to the Claimant's work pattern would be put in place. The Claimant was given no indication that this was the case, and it was not put in place for a further two months.
25. The Tribunal considers that the Respondent did not apply the ACAS code to the grievance investigation in any meaningful way. The Tribunal heard evidence from Mr Ellis that Scrivens is a large employer with branches throughout the UK and the Tribunal concludes it is reasonable to expect the Respondent to have complied with its own procedure and with the ACAS code. The Respondent's response to the grievance did not provide the Claimant with reassurance that her grievance had been considered in a fair and impartial way. The Tribunal also accepts that Ms Harrington did not consider it had been considered fairly. The Tribunal finds that was a reasonable conclusion on the facts of this case.
26. Accordingly, the Tribunal applies an uplift of 25% to the Claimants award on the basis of failure to comply with the ACAS code.
27. Turning to Interest, the Claimant is entitled to interest at 8% on the payment for injury to feelings. In this case the acts of discrimination started with the failure to make reasonable adjustments which the Tribunal concluded should have been made in February 2021 and lasted until 24 May 2022. Accordingly, the Tribunal applies interest from 1 February 2021 until 19 October 2023, when the Tribunal met to deliberate and reach its decision on remedy. That is a period of 991 days. The calculation of interest is as follows:

$$991 \times 0.08 \times \frac{1}{365} \times 17500 = \text{£}3801.10$$

28. Accordingly, the Tribunal awards a payment to the Claimant for injury to feelings of £21,301.10 comprising an award of £17500 (inclusive of the 25% uplift) and £3801.10 of interest.
29. The Claimant did not seek a personal injury payment.

Employment Judge Scott
Date: 18 December 2023

Judgment sent to the Parties on 09 January 2024

For the Tribunal Office

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