Case No: 2304998/2020

EMPLOYMENT TRIBUNALS

Claimant: Mr C Goh

Respondent: Asda Stores Limited

Heard at: **London South** **On:** **5 December 2023**
and 15 December 2023 (In chambers)

Before:
Employment Judge Heath
Ms N Styles
Ms N O'Hare

Representation
Claimant: Ms I Brown (Counsel)
Respondent: Mr F Mortin (Counsel)

JUDGMENT

1. The claimant is awarded damages in the sum of **£29,465.88** made up as follows:
    a. £18,500 by way of injury to feeling
    b. £2775 by way of ACAS uplift of 15%
    c. £8,190.88 by way of interest

REASONS

Introduction

1. This was a remedy hearing following the promulgation of our reserved judgment and reasons sent to the parties on 9 June 2023 in which we upheld five complaints of sex discrimination. This judgment and reasons relating to remedy is to be read in conjunction with that liability decision, and we do not repeat that decision.

Procedure

2. We were provided with a 223 page remedy bundle and a remedy statement from the claimant. The claimant gave live evidence and was cross examined by the respondent's counsel. Both counsel provided written skeleton arguments, which they supplemented with oral closing submissions. During the course of the hearing, agreement was reached between the parties as to amounts of, but not entitlement to, loss of earnings. There was insufficient time to give an oral decision, so we reserved our remedy decision. The tribunal was unable to complete its deliberations on the day of the remedy hearing, and required a further day in chambers.

The facts

3. The claimant was assaulted at work by a colleague, who kneed him on the bottom. This caused injury to his coccyx and lower back. It also caused the claimant anger and humiliation.

4. We have set out our findings of fact and conclusions in a liability decision about the progress, or lack of it, of his complaint to the respondent. In a nutshell, he first raised a complaint about the assault on 11 February 2019, and only received an outcome to an appeal against a grievance on 3 June 2020. This was the last act of discrimination which we upheld.

5. From the GP notes in the bundle, it would appear the claimant made no references to difficulties with his mental health when he saw his GP on 14 March 2019 and 16 August 2019.

6. An unsuccessful attempt at mediation took place on 13 December 2019, and a formal complaint was made by the claimant on 23 December 2019. On 14 January 2020 claimant reported to his GP a lack of sleep. He reported that "*Thinks about an incident at work last year where he was assaulted by *******, and work have been slow to take any action*", and that "*From talking through the incident it may be that the stress and anxiety brought on from work is causing him to lose sleep*". He also told the GP that he found work stressful, and the GP discussed whether continuing in the same place of work was worsening his mental health.

7. The claimant saw his GP again on 12 May 2020, and the notes refer to him suffering stress as a result of someone recently having passed away (it is understood that this was the claimant's brother). The notes refer to an ongoing work incident when he was assaulted, and that he was currently appealing against the decision not to proceed with the investigation.

8. The claimant saw his GP again on 18 May 2020, and told them that he was losing sleep due to the case. It appears the GP discussed whether he would not get closure and should try to put matters behind him.

9. As we have noted, the last act of discrimination had been the grievance appeal outcome on 3 June 2020, the ACAS Early Conciliation process was commenced on 22 June 2020.

10. On 6 July 2020, the claimant again saw his GP who noted "*conversation with patient - wanted to clarify dates for employment tribunal regarding injury sustained when attacked at work*". There was no reference here to sleep difficulties.

11. On 7 July 2020, with the assistance of his trade union solicitors, the claimant put in a claim notification form in respect of a personal injury claim against the respondent. The form made reference to the respondent failing to ensure a safe system of work, and being vicariously liable for the employee who attacked him and injured him.

12. On 14 July 2020, the claimant presented his claim to the tribunal.

13. As part of the personal injuries claim, and on instruction from the claimant's personal injury solicitors, a report was prepared by a Dr Dev on 10 November 2020 after seeing and performing a physical examination on the claimant on that day. In the report Dr Dev gave their opinion, including on the issues of causation and prognosis. The report included reference to the following matters:

    a. The claimant had no difficulty with household chores, as his sons cooked for him.

    b. No hobbies were affected by "*The index incident*".

    c. The claimant experienced "*mild psychological symptoms post incident*". He "*experienced stress regarding the incident. He feels the investigation by his workplace has not been done properly*."

    d. The claimant is "*always thinking about the incident and is only able to sleep for 4-5 hours without interruption*".

    e. The claimant has "*ongoing psychological symptoms related to the incident*". Further assessment and possible treatment was recommended by Dr Dev.

14. On 11 March 2021 the claimant spoke on the telephone to a Trainee Psychological Well-being Practitioner, Mr Coudert, employed by Croydon Talking Therapies (IAPT). A follow-up letter from Mr Coudert set out the "***Presenting Problem****: You reported experiencing symptoms of stress and anxiety as a result of the upcoming court case in regards to a complaint you raised at work during which you were kneed from behind your backside and got lifted up by a colleague, causing you to move forward and getting hurt. You said you feel very frustrated about the situation and worried about the court case which has impacted on the quality of your sleep*". The claimant's PQ-9 (a standard measure of depression) score was 7/27, showing symptoms within the mild range. On the GAD-7 (a standard measure of anxiety) he scored 9/21, which also indicated that symptoms in the mild range. It was recorded that the claimant had stated that "*the current circumstances at work and the upcoming court case have*

impacted on your sleep, and said that you find it difficult to sleep as you are often thinking about the court case".

15. On 1 June 2021, on instruction from the claimant's personal injury solicitors, Ms Charalambous, a consultant psychologist, produced a Psychological Report, having assessed the claimant on 20 May 2021. The report includes the following:

    a. The Executive Summary set out that:

        i. The claimant had not suffered from a mental health disorder at the time of the "accident";

        ii. The current diagnosis was that the claimant continued to show signs of stress, anger, ruminations, poor sleep;

        iii. "*On the balance of probability Mr Goh's symptoms are probably due to the index accident*".

    b. Under the heading "Anxiety/Mood disturbance":

        i. The incident affected the claimant's honour, and he felt disrespected and humiliated. A disturbance in his mood persisted of a severe level.

        ii. The claimant believed his employer was not telling the truth and "*they are not listening to his complaint… That "if a lady got kicked by a man it will be a different story"… At present this continues to persist on a severe level*".

        iii. The claimant stated that "*after the incident he suffered with poor sleep and nightmares due to the psychological and physical injuries sustained from the accident*".

        iv. The claimant stated that after the incident "he suffered with ruminations, "*nobody is listening to me*" and "*this shouldn't have happened*". At present this continues to persist on a moderate to severe level.

        v. The claimant did not suffer significantly from depression, flashbacks, hypervigilance or detachment after the incident, but he suffered with acute stress which was diagnosed in January 2021.

    c. Under the heading "Occupational/Activity Affects", it was reported that Mr Goh had a strong work ethic, but at times did not feel like going into work "*due to the feelings of frustration about how work is managing the incident and not wanting to work with the offender. Mr Goh states that work have moved the offender to a different department*".

d. Under the heading "Psychological Problems" it was noted that the claimant did not meet the criteria for Post Traumatic Stress Disorder, Depressive Disorder or situational anxiety. However, he did meet the criteria for Adjustment Disorder.

e. Under the heading "Opinion" Ms Charalambous stated:

> *"12.1. In my opinion Mr Goh suffered with Adjustment Disorder, due to the impact the incident has had on Mr Goh's life. At present it appears that some of Mr Goh's symptoms such as stress, anger, ruminations, poor sleep, continue to persist on a severe level.*
>
> *12.2. Mr Goh's psychological difficulties, in relation to the index accident, can be resolved or improved with the Cognitive Behavioural Therapy (CBT)".* She went on to recommend a course of treatment which would significantly improve his prognosis.

f. The Conclusion was that the claimant experienced a "*work related incident on 08/02/2019. Mr Goh suffered with Adjustment disorder and will benefit from having CBT.*"

16. After some negotiation, the claimant accepted an offer of settlement of £7805 in respect of his personal injuries claim.

17. On 4 November 2021 there was a Case Management Preliminary Hearing in this case. A number of case management orders were made to prepare the case for a final hearing.

18. On 11 November 2021 the claimant saw his GP reported "*ongoing issues with tribunal/court hearing regarding incident related to work & stressed as needs to organise lots of documentation about it… Feels very stressed & unable to go on work. Managers do not cooperate either with amended duties… Not sleeping well*". The claimant was noted to be not keen on taking antidepressant medication or engaging in talking therapy.

19. On 18 February 2022 the claimant had a "*long chat about ongoing tribunal work. Once letter re-impact on mental health – caused stress, worry, poor sleep. Holding letter and email him within the next week*." It also referred to in being unable to work that day due to "*stress, ongoing court case*".

20. On 5 October 2022 the claimant again saw his GP. He was preoccupied with his ongoing court case and complained that he was still being put on the same shifts with a colleague he had problems with. Some other physical health issues were noted.

21. It would appear that the respondent organised some counselling for the claimant. On 30 March 2023 a discharge report from this counselling course was prepared. The report referred to the claimant having an incident of assault which he felt was unresolved, and which would go to a tribunal in April 2023. The claimant said that he was still having to work

with a colleague which exasperated him and filled him within anxiety. The report noted that his first GAD7 score had been 20/21 which had reduced to13/21, indicating moderate levels of anxiety. His PHQ-9 had dropped from 13/27 to 4/27, indicating mild depression. The claimant noted that he scores were "*higher when he thinks about the alleged incident, is working with the colleague or when he is preparing for the tribunal*". The report suggested that no further therapy was needed.

22. During the course of his evidence, the claimant indicated that he had another issue with the respondent. He did not go into the details, but in oral evidence commented that he had "*another issue to do with work that is a big issue, even worse than this. This affected me for over three months of investigation that happened at work… This was separate to this current claim*".

23. We step outside of the chronology to deal with one particular factual issue, as it has not been easy to make solid findings on it, both in terms of what happened and when. This is the issue of the separation, or otherwise, of the claimant and Ms Asante. The assault was not a pleaded act of discrimination, and both parties focussed on this issue as one going to the issue of aggravated damages.

24. Our findings in our liability decision was that there was no apparent effort to separate the two workers between February and July 2019 (paragraph 99). However, at some point in time the respondent did move Ms Asante to the customer services department, though it appeared that they both worked the same shift on a Friday. It is not possible to tell when this was. The claimant told Ms Charalambous in May 2021 that the respondent had moved the offender to a different department. There was also a period of time (again it is impossible to tell when this was, or for how long it was) when the respondent organised their respective shifts so that they did not overlap, though we accept that the claimant may have encountered her in the store if she did shopping at the end of her shift. The respondent also took steps from the beginning of 2023 to ensure that they did not work on the same day, as a trial. This involved the claimant swapping days. The claimant, after a couple of months of this arrangement indicated that he wanted to go back to his usual day of working. We find that the respondent did not disregard the claimant's desire to be separated from Ms Asante, though it did not implement arrangements which met with his satisfaction.

25. We also note "Section E – Liability" of the Claimant Notification Form in which the claimant, in setting out the respondent's failure to establish a safe system of work, states "*Failed to remove the colleague who attacked claimant*".

The law

26. The legislative provisions concerning compensating claimants for unlawful discrimination or victimisation appear at section 119 and 124 of the Equality Act 2010 ("EqA"). These provide:

Section 119
(4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)."

Section 124:

"*(2) The tribunal may-*

a. *make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;*

b. *order the respondent to pay compensation to the complainant;*

c. *make an appropriate recommendation…"*

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate—

Injury to feeling

27. The task for the Tribunal, if an award of compensation is appropriate, is to assess the degree to which the claimant's feelings have been injured by the unlawful discrimination or victimisation.

28. As described in the classic case of *Vento v Chief Constable of West Yorkshire Police (No. 2)* [2002] EWCA Civ 1871:

> "*An injury to feelings award encompasses subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.*"

29. 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).

30. The questions for a tribunal are:

a. Has the claimant proven with evidence that they have suffered an injury to feelings?

b. Was the unlawful discrimination the cause of that injury?

c. What level of award appropriately compensates the injury, without punishing the discriminator? An award should not be so low that it diminishes the respect for the policy of the anti-discrimination legislation. Feelings of indignation at the respondent's conduct should not be allowed to inflate the award,

and "*When assessing compensation, [Tribunals] should keep a sense of due proportion. This involves looking at the individual components of any award and then looking at the total to make sure that the total seems a sensible.*"

(*Prison Service v Johnson* [1997] IRLR 162 and *Ministry of Defence v Cannock* [1994] IRLR 509).

31. Some guidance as to degree of injury relative to the range of degrees of injury seen by the Employment Tribunal is provided by the Presidential Guidance entitled "*Employment Tribunal awards for injury to feelings and psychiatric injury following* De Souza v Vinci Constructions (UK) Ltd *[2017] EWCA Civ 879*" from 5 September 2017, as supplemented by annual addenda thereafter. The upshot of those documents is that they set out "bands" of injury to feelings, and value ranges of compensation attaching to those bands. For a Claim Form presented on 14 July 2020, the bands are:

    a. The lower band (less serious cases): £900 to £9,000;

    b. The middle band (cases that do not merit an award in the upper band): £9,000 to £27,00;

    c. The upper band (most serious cases): £27,000 to £45,000; and

    d. Exceptional cases: sums exceeding £45,00.

Psychiatric personal injury

32. It is open to the tribunal to make an award for personal injury arising from an act of discrimination (*Sheriff v Klyne Tugs (Lowestoft) Ltd* [1999] IRLR 481*)*.

33. Where the injury is a psychiatric one, the respondent can only be liable for injury caused by the discriminatory act. There can be difficulties with apportionment when there is evidence of a number of stressors as well as the discriminatory conduct as found by the tribunal. The correct approach here is set out in *BAE Systems (Operations) Ltd v Konczak* [2017] EWCA Civ 1188 which considered the cases of *Thaine v London School of Economics* [2010] ICR 1422 and *Sutherland v Hatton* [2002] EWCA Civ 76:

> "*What is therefore required in any case of this character is that the tribunal should try to identify a rational basis on which the harm suffered can be apportioned between a part caused by the employers wrong and a part which is not so caused. I would emphasise, because the distinction is easily overlooked, that the exercise is concerned not with the divisibility of the causative contribution but with the divisibility of the harm. In other words, the question is whether the tribunal can identify, however broadly, a particular part of the suffering which is due to the wrong; not*

whether it can assess the degree to which the wrong cause the harm"

Aggravated damages

34. Like injury to feelings, aggravated damages are compensatory, not punitive. Their purpose is to compensate the injured claimant for any aggravation of injury to feelings caused by a respondent who has behaved "*in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination*" (*Alexander v Home Office* [1988] ICR 685). Mr Justice Underhill, then-President of the EAT, considered the bases on which aggravated damages could be awarded in *Commissioner of Police of the Metropolis v Shaw* [2012] ICR 464, and identified three:

    a. Where the *manner* in which the wrong was committed was particularly upsetting (i.e., acts done in a "*high-handed, malicious, insulting or oppressive manner*");

    b. Where the respondent had a discriminatory *motive* (i.e., the respondent's conduct was "*evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound*"); and

    c. Where the respondent's *subsequent conduct* "*rubs salt in the wound*", for example, by unnecessarily offensive conduct at trial.

Interest

35. Regulation 2(1) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (the **Interest Regulations**) obliges the Tribunal, when making an award of damages for race discrimination (among other kinds of awards) to consider whether to include interest on the sums awarded, without the need for any application by a party to the proceedings. The methodology for calculating any such interest awarded is set out in those Regulations.

36. j In particular, Regulation 6 provides:

    "*(1) Subject to the following paragraphs of this regulation-*

        1. *in the case if any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation;*

        2. *in the case of all other sums of damages or compensation… interest shall be for the period beginning on the mid-point date and ending on the day of calculation…*

    (3) Where the tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award,

serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2), it may-
(a) calculate interest, or as the case may be interest on the particular sum, for such different period, or
(b) calculate interest for such different periods in respect of various sums in the award,
as it considers appropriate in the circumstances, having regard to the provisions of these Regulations."

Recommendation

37. The tribunal is given a wide discretion concerning recommendations; there is a focus on practicability both in terms of the effect of the recommendation on the claimant and from the perspective of the employer (*Lycée Français Charles De Gaulle v Delambre* UKEAT/0563/10).

Conclusions

Psychiatric personal injury

38. We observe that assessing causation in psychiatric injury is generally not an easy or straightforward exercise. Determining what caused a psychological state rests heavily on an individual's account of how they subjectively felt at some point in the past. Sometimes a tribunal is looking at this second-hand, in that it will be looking at what a medical expert was told by that individual. To add to the complexity, problems do not exist in a neatly sealed vacuum, but interact in a complex way with a multitude of other matters which one faces in daily life. To make matters even more difficult, human memory is fallible, fluid and subject to powerful biases (as the High Court pointed out in *Gestmin SGPS SA v Credit Suisse (UK) Limited and another* [2013] EWHC 3560). An individual's narrative of what they subjectively felt is likely to change depending on the lens through which they look back.

39. Having said this, the tribunal cannot shirk the responsibility of making conclusions on the evidence it has received just because it is difficult. But having made the observations above, a tribunal probably treads on the safest ground if it firmly anchors itself in the evidence closer in point of time to the alleged injury, and gives significant respect to any expert evidence it receives.

40. This is a case which has, for a time, run side-by-side with a personal injuries case that the claimant brought concerning the assault itself. In that personal injuries case the claimant specifically put his psychological state in issue. His solicitors commissioned not one, but two, medical reports, the latter from a consultant psychologist of considerable experience.

41. Dr Dev's report, though it refers to the claimant's dissatisfaction with the investigation carried out by the respondent, links the psychological impact with "the incident", namely the assault.

42. Ms Charalambous's report makes a couple of references to Mr Goh's unhappiness at not being listened to at work, but again, clearly links the adverse psychological symptoms with the "accident" or "incident".

43. Mr Coudert's report seems to focus more on the upcoming court case stemming from the attack.

44. The GP records suggest the claimant did not consult his GP about his mental health problems until January 2020, when he refers both to the incident at work and the employer's actions. In May 2020, both workplace issues and a bereavement appear to be stressors. The reference in July 2020 is to an injury sustained at work. The notes relating to November 2021 and February 2022 seem to focus more on the tribunal or court case.

45. We conclude that there is insufficient good quality evidence here for us to conclude that the acts of discrimination which we have upheld caused psychiatric injury. We base this on what the claimant appeared to be telling his medical practitioners and medico-legal experts at the time, or closer to the time of the acts of discrimination. This provides a rational basis for concluding that the matters which substantially caused psychological harm were not the acts of discrimination, but the attack that preceded them.

46. Ms Charalambous examined the claimant, listened to what he had to say and concluded that "*On the balance of probability Mr Goh's symptoms are probably due to the index accident*". In seeking to be compensated for psychological injuries in these proceedings, the claimant is effectively asking us to disregard what he told the experts, and to reach a different conclusion to those experts. That is not a path we would chose to follow.

47. We observe also that the claimant's psychological state was specifically put in issue in the personal injury claim, and an expert was instructed to deal with it. As the claimant fairly accepted cross examination, he had "probably" been compensated for this element.

48. In the circumstances, we do not make a separate psychological personal injury award.

Pecuniary Loss

49. To some degree, our conclusions relating to psychological loss are relevant to the issue of pecuniary loss. The claimant claims compensation for days off sick.

50. A period of sickness absence starting in May 2020 is the only period of absence during the currency of the acts of discrimination. We observe that this was not long after his bereavement, which was something noted by the GP along with work issues. It appears that this was around the time he was submitting his grievance appeal to the respondent, and he was expressing concern about being around Ms Asante.

51. On balance, again, we do not consider that there is sufficient good quality evidence linking the discrimination with the absence in circumstances where the claimant was later, in his dealings with the medico-legal experts, focussing more on the assault itself. We also note the correspondence in time with his unfortunate bereavement.

52. The next few sickness absences in December 2020, January 2021 and April 2021 are for entirely unrelated physical health issues. The next "stress" related absence was from 11 November 2021, days after the Case Management Preliminary Hearing, when he told his GP he was worried about organising the documentation for his case. The GP notes on reasons for stress related absence from 8 July 2022 do not really assist, though this was around the time he settled his personal injury claim. The GP notes around the time of his stress related absence from 5 October 2022 make reference to his concerns about the court case.

53. These latter absences are further in time from the period of discrimination, and there is little strong evidence linking them to the discrimination as opposed to the stress of litigation. This latter matter is what appears to cause the absences rather than the discrimination.

54. In the circumstances, we do not award the claimant pecuniary loss in respect of absences from work.

Injury to feeling

55. We remind ourselves that an award for injury to feeling is compensatory in nature, rather than punitive and that we must focus on the injury to the claimant's feelings, rather than the manner of discrimination.

56. The claimant has set out in his remedy statement the effect of the discrimination on his feelings, and to an extent we have made some observations in our liability judgment which touch on the issue (eg. paragraph 102). He has also produced some "character references" from family and colleagues.

57. In broad terms, the evidence suggests (and we accept) that the discrimination has had a significant effect on the claimant, and permeated his home and work life. A number of witnesses remark on the claimant as being a hard-working, friendly man who got on well with his colleagues who appreciated his sense of humour. His demeanour at work and home changed. There is clearly evidence of injury to the claimant's feelings, which therefore allows for an award to be made.

58. In assessing which Vento band this injury lies, and where within that band, we have had regard to the following matters;

    a. The course of discriminatory treatment took place over a lengthy period of time, from the assault of 8 February 2019 (not in itself an act of discrimination) through to the conclusion of the grievance

appeal on 3 June 2020. This is not to focus on the discriminatory act, but throughout this period (or at least from around 2 weeks after the assault) the claimant had a justified sense of grievance that his allegations were not being taken seriously or being treated with the importance they merited. This sense of outrage persisted for almost a year and a half.

b. The discrimination affected the claimant's self-esteem in the workplace. He had a justified sense that he was not being valued as an employee. He felt ignored and he considered that his safety in the workplace was not a matter of importance for his employer.

c. His colleagues (Ms Kanaharajah, Ms Taruc, Ms Haley, Ms McDonnell and M Forma) note a number of changes in the claimant. He appears to be stressed, quiet, and depressed at work in marked contrast to the good humoured man he once was.

d. The claimant's family have noted the impact on his homelife. His fiancée and children note his stress, anxiety, unhappiness, depression, insomnia, short-temperedness and sense of helplessness. Again, this is out of character for the claimant.

e. We have had regard to the quantum reports referred to by the parties and those in *Harveys Division L. 7 B.* A notable feature in this case, is the length of time over which the discrimination took place. We do not focus on this in terms of the actions of the employer, but rather note that this is the period in which the claimant experienced a range of negative feelings related to having his serious complaints ignored and mismanaged for reasons we have found as being discriminatory.

59. Ms Brown urges us to award injury to feeling at the lower end of the upper band. Mr Mortin argues for an award at the mid-to-upper end of the lower band. We consider that somewhere towards the mid point of these respective positions is appropriate, having regard to the factors identified above. We consider that an award in the middle of the middle band is appropriate, and set the level at £18,500.

Aggravated damages

60. Both counsel appeared to agree that the subsequent conduct of the employer is the avenue for consideration of this award, and that it focusses on the separation, or otherwise, of the claimant and Ms Asante.

61. We have made findings above about this issue. In short, we have not found it easy to make findings about what was or was not done. What we have found, however, is that the respondent did take steps to separate the two workers, first by moving Ms Asante to the customer service desk, then by moving the workers to shifts that did not overlap, and then to working different days. It was clear to us that the claimant was not satisfied that

any of these steps were sufficient, but the evidence suggests to us that the respondent was making attempts to address his difficulties. It was not simply ignoring them. It was not "rubbing salt into the wound" but failing to find a solution that met with the claimant's satisfaction.

62. We also note that the failure to separate is a matter that the claimant raised in his personal injuries case, and his lawyers and he negotiated a settlement of his personal injuries claim. There is an argument that at least an element of this aspect of the claimant's remedy argument has been dealt with already.

63. In the circumstances, we do not award aggravated damages.

ACAS uplift

64. The essence of the claimant's complaint is that his complaint about an assault at work, and sex discrimination, which turned into a formal grievance, was not dealt with adequately in a number of ways by the respondent.

65. The respondent, fairly, accepts that our liability decision at paragraphs 103-105, 97-100, 112 and 115, 122, 14 and 126 set out how we found the process was mismanaged.

66. Again, the claimant argued for a 25% uplift, while the respondent submitted that no more than 10% would be appropriate. Yet again, the tribunal pursues a middle ground.

67. This was a case where complaints were not taken seriously, were the subject of wholly unreasonable delay, and decisions were not made about fundamental core complaints. Nonetheless, the employer did take some action. 25% would represent the worst and most egregious failures to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures. The respondent's failures here cannot be said to be the worst examples of failure to follow the Code.

68. We also take into account that the failures to follow an adequate grievance process is, largely, the act of discrimination that the claimant complains of. We are compensating him for the injury to feeling he has suffered as a result of that discrimination. We feel the need to tread carefully to avoid doubly compensating him by, effectively, increasing compensation down the ACAS uplift route.

69. We also provisionally came to a percentage which seemed appropriate, and then performed a sense check to see how the overall compensation figure would be affected. We were satisfied that the provisional percentage we had come to did not lead to a manifestly excessive total award, or ran the risk of under-compensating the claimant.

70. We have therefore concluded that an uplift of 15% should be applied in this case.

The figures, interest and adjustments

71. We have concluded that interest should start to run from 11 February 2019. We are aware that this was the date of the assault, and that the tribunal received evidence that an investigation should have taken place within two weeks. However, we concluded that nothing was done for a significant period following the assault. There are reasonable grounds to conclude that nothing was done from the moment the assault occurred.

72. We accept the calculations put forward by the claimant on calculating interest, and do so as follows:

Date of first act of discrimination 2019	**11 February**
Number of day between first act and remedy hearing	**1,758**
Interest rate	**8% p.a**
Accrued Interest: 8/365.25 x 1758	**38.5%**

73. We therefore reach our final figures in the following way:

Injury to feelings	**£18,500**
ACAS uplift 15%	**£2775**
Running total	**£21,275**
Interest 38.5% on running total	**£8,190.86**
GRAND TOTAL AWARD	**£29,465.88**

74. We have stepped back and taken a look at the total award, having made these final calculations, and we consider it to be an appropriate one in all the circumstances.

Recommendation

75. In the claimant's counsel's skeleton argument it was set out that the claimant seeks a recommendation that:

    a. The respondent provides him with a written formal apology as to the handling of his complaints;

    b. Future complaints be dealt with without undue delay and treated with the seriousness merited by their subject matter.

76. The respondent made no submissions about this aspect of the case.

77. In respect of the apology, we consider that it would be practicable for the respondent to provide this (if it has not done so already). There is a continuing employment relationship, and this could well go towards ameliorating the sense of injustice felt by the claimant. It is difficult to see how the respondent is disadvantaged in any way by a recommendation in these terms, which would obviously be confined to findings and conclusions made by this tribunal. The recommendation is not sought, and not made, for an apology by any particular person.

78. The second recommendation is more problematic. One would expect that the respondent would deal with any future complaints without undue delay and to treat them with the seriousness they deserve, without the tribunal recommending such. But there is the problem that assessing what might be "undue" delay and treatment in accordance with the seriousness of the subject matter could be difficult. Leaving such a recommendation hanging over the respondent does not seem appropriate, and could lead to further difficulties in assessing compliance.

Employment Judge **Heath**

21 December 2023

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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/