



EMPLOYMENT TRIBUNALS

Claimant

A Freke

Respondents

(1) R Vikal
(2) Emma Victoria Limited t/a
Shapins Clinic

v

Heard at: Reading by CVP

On: 21 December 2023

Before: Employment Judge Anderson
C Baggs
F Wright

Appearances

For the Claimant: In Person

For the Respondent: E Afriyie (consultant, Peninsula)

REMEDY JUDGMENT

1. The claimant was underpaid wages in the sum of £1522.05. The second respondent must make a payment of £1522.05, less any deductions for tax and national insurance, to the claimant, within 28 days of the date that this judgment is sent to the parties.
2. The first and second respondents are ordered to pay the claimant the sum of £19,305.61 in compensation for sexual harassment, calculated as follows:
 - 2.1 Financial loss of £2305.61.
 - 2.2 An award for injury to feelings of £17000.
3. The compensation payment should be made by the respondents, who are jointly and severally liable for the full amount, to the claimant, within 28 days from the date that this judgment is sent to the parties.

REASONS

Background

1. At a hearing on 12 and 13 October 2023 the tribunal found that the second respondent had underpaid the claimant by £1522.05 and that the respondents had sexually harassed the claimant. A remedy hearing was listed for today.
2. The parties submitted a joint bundle of documents. This included a schedule of loss from the claimant. No witness statements were filed. Ms Afriyie said that she did not wish to cross examine the claimant. Nevertheless, the claimant gave evidence on oath as the tribunal had some questions. Both parties made submissions and judgment was given orally at the hearing.

Submissions

3. The claimant made submissions about the impact of the first respondent's behaviour on her career and mental wellbeing.
4. Ms Afriyie said that the claimant was not entitled to anything more than statutory sick pay while she was on sick leave. She said that the claimant was not entitled to claim bonus and commission as part of her financial loss as those benefits were not contractual. She said that the respondent's position on the injury to feelings claim was that it should be at the top end of the low Vento band as the acts were not of a very serious nature.

Law

5. Equality Act 2010, s124 Remedies: general
 - (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).
 - (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.
6. In *Vento v Chief Constable of West Yorkshire Police (No.2) 2003 ICR 318, CA* Lord Justice Mummery's identified three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury. These comprised:
 - a top band of between £15,000-25,000: to be applied only in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment. Only in very exceptional cases should an award of compensation for injury to feelings exceed £25,000
 - a middle band of between £5,000-15,000: for serious cases that do not merit an award in the highest band, and

- a lower band of between £500-5,000: appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. The Court said that, in general, awards of less than £500 should be avoided, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.
7. These bands have been adjusted for inflation since that judgment and, for the purposes of this case, are £990 to £9900 for the low band, £9900 to £29600 for the middle band and £29,600 for the higher band.

Decision and Reasons

8. The claimant claims £2305.61 for lost earnings during the period 27 September 2022 to 8 December 2022 when she was on sick leave. She claims the difference between her regular monthly pay (basic pay plus commission and tips) less statutory sick pay received. She calculated this figure based on an average of her wage in the months before she commenced sick leave. The respondent did not dispute the calculation and the tribunal has accepted it. The tribunal does not agree with Ms Afriyie that because the claimant did not have a contractual right to full pay when on sick leave or to tips and commission, that these are not payable. This loss clearly flows from the discrimination in that the claimant was on sick leave because of the sexual harassment and therefore the sexual harassment was the cause of her loss. She has provided evidence (in the final hearing bundle) through pay slips that she received commission and tips regularly.
9. The claimant claims an award of £20,000 for injury to feelings. The tribunal considered that the findings made in its judgment on 13 October were of a significant period of sexual harassment, with incidents of harassment occurring from April to September 2022, the duration of the claimant's employment. Of particular note was the incident where the first respondent turned up at the claimant's hotel when she was on a training course. The claimant provided evidence that she had undergone counselling from November 2022 to January 2023 because of the harassment, and it is clear that she gave up a job in her chosen field, with good career prospects, because of the first respondent's behaviour. The tribunal did not have a witness statement before it from the claimant about the ongoing effect the harassment has had on her, and it did not have regard to the witness statement from the claimant's current employer which was in the remedy bundle, as it was undated, and the witness did not attend the hearing. The only information given on ongoing effects were in the claimant's submissions, which did not allow for cross examination. Ms Afriyie said the award should be at the top end of the low Vento band, which is £9900. She said this was because the harassment was not very serious.
10. Having taken all of the matters set out above into consideration and having had regard to the level of awards made in other discrimination cases, the tribunal decided to award £17,000 in compensation for injury to feelings. This takes account of the seriousness and sustained nature of the allegations which it found to be proven, but also acknowledges that there was little information about the long lasting effects of the harassment.

11. The tribunal makes a total compensatory award, comprising of awards for financial loss and injury to feelings, of **£19,305.61**. The award is made jointly and severally against both respondents, the first respondent being the sole director of the second respondent.

Employment Judge Anderson

Date: 22 December 2023

Sent to the parties on: 25 January 2024

For the Tribunal Office