



EMPLOYMENT TRIBUNALS

Claimant

Mr D Stubbs

Respondents

(1) Electronic Wholesale Suppliers
(Guildford) Limited
(2) Mrs C Noon

v

Heard at: Reading Employment Tribunal

On: 9 January 2024

Before: Employment Judge Anderson
B Osborne
C Juden

Appearances

For the Claimant: J Lanigan (counsel)

For the Respondent: G Nicholls (counsel)

REMEDY JUDGMENT

1. The first and second respondents are ordered to pay the claimant the sum of £22,178.95 in compensation for harassment, calculated as follows:
 - 1.1. Financial loss of £8565.89.
 - 1.2. Interest on financial loss of £1165.85.
 - 1.3. An award for injury to feelings of £9000.
 - 1.4. Interest on injury to feeling of £2447.21.
 - 1.5. Aggravated damages of £1000.
2. The compensation payment should be made by the respondents, who are jointly and severally liable for the full amount, to the claimant, within 14 days of the date that this judgment is sent to the parties.

Background

1. At a hearing on 16, 17 and 18 October 2023 the tribunal found that the claimant had been harassed by the respondents on the grounds of his disability, over the period 17 August 2020 to 3 September 2020. A hearing to determine remedy was listed for 9 January 2024.

The hearing

2. The parties filed a joint bundle of documents which included a witness statement from the claimant. The claimant filed a schedule of loss. Both counsel filed skeleton arguments. The claimant gave evidence on oath at the hearing.
3. The claimant claims financial loss, injury to feelings, aggravated damages and an ACAS uplift of 25% and interest.
4. Oral judgment was given at the hearing. The claimant requested written reasons.

Findings

5. The claimant resigned from his employment with the first respondent on 7 September 2020.
6. The claimant applied for four jobs in September 2020.
7. The claimant commenced employment with Impulse, an engineering company, as a Stores Person on 5 October 2020. He initially worked two days a week and this increased to three in 2022.
8. The claimant's annual wage when employed by the first respondent was £24,000, equating to a monthly gross figure of £2000, and net of £1654. Monthly pension contributions were £104.36. The parties were in agreement on these figures.

Law

9. 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.
10. In *Vento v Chief Constable of West Yorkshire Police (No.2) 2003 ICR 318*, CA was Lord Justice Mummery 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.

11. These bands have been adjusted for inflation since that judgment and, for the purposes of this case, are £900 to £9000 for the low band, £9000 to £27000 for the middle band and £27,000 to £45,000 for the higher band.

Submissions

12. Ms Nicholls said that there was no finding of unfair dismissal and from the judgment it appears that this is a case where any award should be for injury to feelings rather than financial loss. She said that if the tribunal was not in agreement, then the claimant had found work very quickly, he is in work similar to the work he had with the first respondent and he has chosen to work part time. It may have been difficult for him to find full time work whilst caring for his son. The respondents should not have to fund the difference. When asked about the difference in his current and previous employments he did not say that he had lost all trust and confidence with those in authority and was uncomfortable in that work environment, but that he did not have to carry out deliveries or work face to face with customers in his current job. Ms Nicholls invited the tribunal to find that it was not the proven acts of harassment that caused him not to be able to return to the electrical supplies industry. The fact that the claimant had been in work since his resignation did not support his suggestion that he struggles in a work environment, His increase in working days from two to three in 2022 was because that work became available to him when a colleague was off sick. No evidence has been provided to show that he was only able to work two days a week for two years because of the harassment. There is no evidence given in the medical documents supplied that the claimant was so affected by the harassment that he was only able to work part time. Ms Nichols said that loss should be limited to three months which was, in the respondents' view, an adequate amount of time in the job market at the relevant time, in which the claimant might have been expected to obtain full time work. Ms Nicholls said that the duration of the proven harassment was very short and the emails, though clunky and harassing, are attempts to obtain information about the claimant's disability. Injury to feelings awards are not meant to be punitive. An award in the upper end of the lower Vento band is appropriate and the respondents say that should be no more than £7,500. This is not a case that warrants aggravated damages. The approach taken by the respondents to the claimant's grievance was appropriate for a small employer, a detailed response was provided and there was no breach of the ACAS code. Interest should not be awarded and if it is, the interest rate claimed by the claimant of 8% is too high.
13. Ms Lanigan said that of course the claimant ought to be compensated for losses flowing from proven acts of harassment. The contemporary written evidence, particularly the grievance letter of 7 September 2020, shows that it was the harassment that led to the claimant's resignation. The tribunal found at paragraph 38 of the liability judgment that his reasons for submitting his grievance were genuine and that a number of the acts that were found to be

proven harassment were acts that were likely to damage trust and confidence between the parties. The claimant is to be commended for quickly finding part time work. The claimant was clear that he could not have worked more than two days per week rising to three in 2022. The tribunal should consider the significant impact the harassment had on the claimant, as evidenced by his answers in cross examination. As there is no separate claim for personal injury then medical evidence is not necessary. The medical evidence provides helpful background information, and the claimant gave compelling oral evidence. Despite the claimant's long standing mental health difficulties he was working full time for the respondent so it was plainly the experience of harassment that tipped him over the edge into the position that he could not trust the respondents. Ms Lanigan said, on injury to feelings, that when one looks at the nature of the treatment he suffered, and taking into consideration his ongoing mental health difficulties, it was not surprising that the harassment will have had a profound and long lasting effect. This was not a one off, there were a number of instances which created an intimidating and hostile environment. Looking at the nature of the emails and the striking threat to terminate his employment it is not surprising there was a devastating impact on the claimant. The tribunal should focus on the impact of the harassment and an appropriate award is £30,000. On aggravated damages, the treatment was high handed and oppressive. No apology was offered. An ACAS uplift was warranted because the respondents did not follow procedures and the response came from the person accused of harassment, Cate Noon.

Decision and Reasons

Financial Loss:

14. Ms Nicholls, for the respondent, said that there were no clear findings of causation in relation to financial loss in the liability judgment as that was not how the case had been put. The claimant said that his resignation was due to harassment. The tribunal set out in its findings on automatic unfair dismissal, a claim which it did not uphold, that it found that the claimant had resigned because of a number of acts, which the tribunal concluded were acts of harassment (paragraphs 56 and 74 of the liability judgment). It is the tribunals view that in principle, financial loss flowing from the claimant's resignation is recoverable, as his resignation was the result of proven harassment on the grounds of his disability.
15. The claimant claims financial loss from resignation on 7 September 2020 up until the date of the remedy hearing (9 January 2024) and for the next year. This is on the basis that he has been so affected by the harassment he suffered that he has been unable to work full time and will not be able to do so within the next year. The respondents dispute this claim. Ms Nicholls said that the evidence was that this was a decision made by the claimant, not as a result of harassment, but for his own separate reasons.
16. The claimant's written and oral evidence is that he has been unable to work full time or that he was unable to work full time because of the impact of the respondents' actions during 17 August to 3 September 2020. He has not provided any medical evidence to support this and there is no evidence that the claimant has sought medical assistance or, for example, counselling to deal

with what he says are the ongoing effects of the respondents' harassment, namely a drop in confidence, a worsening of his anxiety and depression and inability to manage a full working week. While the burden is not on the claimant to prove that he has not failed to mitigate his losses, the tribunal is persuaded by Ms Nicholls submissions that the claimant could have sought and obtained full time work and chose not to do so. It does not find, on the evidence, that he was unable to do so because of the harassment he suffered. The tribunal agrees that the work he is doing is similar in nature to the work he did for the respondents. The claimant sought and obtained work within a few weeks of his resignation. He has provided job applications for jobs he applied for at this time (September 2020) of varying hours including one of up to 30 hours. The tribunal is also aware that there were domestic circumstances, not related to this case, which may have meant that the claimant was not in a position to work full time during all or some of the period from his resignation up until this hearing.

17. However, the tribunal does not agree with the respondents that in the work climate at that time, with ongoing covid restrictions, that it is reasonable to conclude that a comparable full time job could have been obtained within three months of his resignation. It also accepts that the claimant was impacted by the treatment he received by the respondents and may not have felt ready to return to full time work in the weeks immediately after his resignation. The tribunal awards financial loss, being the difference in wages that the claimant would have earned if he remained in employment with the first respondent and the actual wages earned, for the period from his resignation until 17 May 2021, this being the time when most covid restrictions were lifted and businesses were fully re-opening. It is the tribunal's decision that by the end of that period, being eight months after his resignation and particularly where, towards the end of that period businesses would have been planning to re-open, the claimant could have obtained full time work, had he chosen to do so.
18. No submissions were made by the parties about how long the claimant would have remained in employment with the first respondent but for the harassment. The tribunal notes that there had clearly been issues throughout his period of employment by the first respondent, but it also noted that the claimant has remained in stable employment for the last three years. The tribunal has not limited financial loss on the grounds that employment with the first respondent might have ended around the time of resignation in any event.
19. Evidence of the claimant's earnings since his resignation from employment with the first respondent was included in the bundle. Using this information and the agreed figures for his monthly wage from the first respondent, Ms Nicholls and Ms Lanigan calculated the financial loss for the period 8 September 2020 to 17 May 2021 to be of £8565.89, and interest at 8% for that period to be £1165.85. The tribunal accepted these figures.

Injury to Feelings.

20. Ms Lanigan made submissions on the sustained and lengthy campaign of harassment against the claimant in support of his claim for an award of £30,000 for injury to feelings. In fact, the period during which this took place was a little over two weeks, it concerned one matter, the claimant's sickness absence and

the reason for it, and was an ongoing conversation between the two parties. But for the reasons set out below, the tribunal would agree with Ms Nicholls' submission that such acts would warrant an award in the bottom Vento band of around £7,500. However, the tribunal has also taken into account that the claimant was a particularly vulnerable individual, due to being father to two disabled children, one of whom was suffering from a terminal illness. The second respondent was aware of these facts when she was engaged in correspondence with the claimant during the period 17 August 2020 to 3 September 2020. The respondents, as Ms Lanigan submitted, must take the claimant as they find him, and for this reason it has decided that an award of £9000 is the appropriate award for injury to feelings. It does not agree that this was a case where an award in the top Vento band is warranted, and as set out above has not been persuaded that there is clear evidence that the claimant suffered a major and long term effect on his mental health because of the harassment.

21. Ms Nicholls and Ms Lanigan calculated interest at 8% on this payment for the period 8 September 2020 to 17 May 2021 to be £2447.21. The tribunal accepted this figure.

Aggravated damages

22. The claimant has asked for an award of £5000 in aggravated damages. The respondent says that this is not a case where such damages are warranted. Aggravated damages can be awarded where the manner in which the wrong was committed was particularly upsetting or as set out in *Commissioner of Police of the Metropolis v Shaw 2012 ICR 464, EAT*, acts were carried out in a 'high-handed, malicious, insulting or oppressive manner'. There are other grounds for the award of aggravated damages but those are not relevant to this case.

23. It is the tribunal's view that the manner in which the second respondent conducted the correspondence with the claimant between the 17 August 2020 to 3 September 2020 was particularly upsetting to him. Although the case of *Shunmugaraja v Royal Mail Group Limited ET/1601036/17*, relied on by Ms Lanigan, has limited similarities with this case, the tribunal agrees and finds that being disbelieved as to his reasons for absence and his disability were the cause of distress to the claimant, and that the tone of the emails from Mrs Noon was high-handed. For this reason, the tribunal makes an award of £1000 in aggravated damages.

ACAS Uplift

24. The claimant claims a 25% uplift on damages on the grounds that his grievance was mishandled. The tribunal's judgment on liability was that the claimant was harassed between and including 17 August 2020 to 3 September 2020. He submitted a grievance on 7 September 2020. The claim as pleaded did not include a claim that the grievance had been mishandled and the schedule of loss included in the liability hearing bundle did not refer to an ACAS uplift. No evidence was heard on this during the liability hearing. Both counsel made submissions as to whether the grievance had been properly conducted or otherwise. The tribunal declines to make an award in respect of an ACAS uplift

where no evidence on the conduct of the grievance was before it at liability stage and none of the witness were cross examined on the matter. While the grievance was discussed at that hearing, the matter of whether it was conducted in accordance with policy was not.

25. Interest is payable on both financial loss and injury to feelings at the standard rate of 8%.
26. Where the second respondent, who is the person that carried out the proven acts of harassment, is a director of the first respondent, it is the decision of the tribunal that the respondents will be jointly and severally liable for the full amount of the compensation ordered.

Employment Judge Anderson

Date: 19 January 2024

Sent to the parties on: 7 February 2024

For the Tribunal Office