



EMPLOYMENT TRIBUNALS

Claimant:
Mr D Bean

v

Respondent:
NSL Limited

Heard at: Reading

On: 18 January 2024

Before: Employment Judge Anstis
Ms C Baggs
Mr J Appleton

Appearances

For the Claimant: Dr A Loutfi (counsel)

For the Respondent: Miss I Bayliss (counsel)

REMEDY JUDGMENT

1. The respondent must pay the claimant £7,126.75 as compensation for unfair dismissal.
2. The respondent must pay the claimant £10,000 as compensation for injury to feelings for disability discrimination, plus interest of £3,778.63 on this award.

REASONS

INTRODUCTION

1. This hearing has been convened to consider the remedy to which the claimant is entitled as a result of our liability decision. The remedy claimed is financial compensation. By the time of the hearing the parties agreed that given our liability decision the compensation to be awarded was a basic award for unfair dismissal, an injury to feelings award for disability discrimination and interest on that injury to feelings award.
2. The parties agree that on the basis of our liability decision the correct amount of the basic award is £7,126.75, so that is what we will award. This agreement is without prejudice to the respondent's position on its outstanding appeal against our liability decision.
3. What remains is the question of compensation for injury to feelings. This is to compensate for the hurt feelings suffered by the claimant as a result of the disability discrimination that we found occurred, which in summary was:

- the respondent's PCP of not allowing employees to be accompanied at investigation meetings by a companion of their choice (which was indirect disability discrimination and a failure to make reasonable adjustments),
 - the respondent's PCP of requiring (or expecting) investigation meeting notes to be signed at the end of the meeting (which was indirect disability discrimination, a failure to make reasonable adjustments and, as described in our liability judgment, when enforced an act of disability-related harassment), and
 - the comment in the grievance outcome letter that the document the claimant had to sign was "*very short just over a couple of pages*" (which was an act of disability related harassment)
4. There was no finding that the claimant's dismissal was an act of disability discrimination. Reference should be made to our liability judgment for a full description of the discrimination for which we are awarding compensation.
 5. The parties agree (for different reasons) that we should make an award of injury to feelings as a global award to cover all the discrimination found, without seeking to distinguish between the different findings of disability discrimination or attribute different, individual, awards to each finding. That is what we will do.
 6. These written reasons are produced at the request of the claimant, made at the hearing.

THE FACTS

7. The only oral evidence we heard was from the claimant. In cross-examination Miss Bayliss sought primarily to distinguish between descriptions by the claimant of matters arising in consequence of his dismissal and matters arising in consequence of the discriminatory acts we have found. This was a distinction that Dr Loutfi accepted the claimant found difficult to make. Ultimately the claimant's description of his difficulties was not substantially disputed, but we need to be clear about what difficulties were caused by discriminatory acts and what difficulties were caused by other matters, such as his dismissal.
8. On that basis, we accept the following matters raised by the claimant (references to paragraph numbers are to the paragraph numbers of the claimant's witness statement):
 - 8.1. It was "*extremely stressful and humiliating*" to be expected to sign the investigation notes "*particularly in the presence of managers who were well aware of my difficulties*" (para 5).
 - 8.2. Concerning the PCP of not allowing a companion of the individual's choice in an investigation meeting "*I was visibly distressed and I pleaded with [the relevant manager] to let my wife stay to support me during the*

meeting ... my wife had to comfort me before leaving the room ... I was clearly upset". It was "an extremely stressful situation" (paras 6, 15)

- 8.3. In relation to the question of the notes being "very short", "*I felt as though my disability was being mocked*" and "*I was left feeling stupid because I could not read two pages of notes, and it reminded me how I felt trying to manage at school and in other parts of my adult life*". The comments "*left me distraught ... I felt humiliated and stupid, and it brought back lots of negative feelings that I had buried over the years which shattered my self-esteem again*" (para 14).
9. That is not a comprehensive statement of the effects, but those were particular passages of evidence that Dr Loutfi drew our attention to in her closing submissions, and we accept them as representative of the distress the claimant felt in relation to the acts of discrimination.
10. Having said that, the most substantial difficulties (and in particular the most lasting difficulties) the claimant had do not arise from the acts of discrimination, but from his dismissal. For instance, para 19 of his witness statement says:
- "I was devastated to lose the job that I loved ... Following dismissal my mental health deteriorated and I went from being a positive, social person to having a low mood and not wanting to be around others I feel very ashamed that I have been dismissed and resisted going into Windsor to avoid questions ... about why I did not work for the respondent any more. Eventually I visited my GP ..."*
11. That whole paragraph is expressly set out on the basis that the cause of his difficulties was his dismissal, not the acts of discrimination we have found.
12. At para 23 the claimant speaks of being hospitalised due to diabetes, and of a possible link between that and the events set out in his claim, but it is clear that whatever the rights and wrongs of that it can only be a consequence of his dismissal, not the earlier acts of disability discrimination.
13. Dr Loutfi placed some emphasis on a note of a medical consultation that claimant had with his GP on 1 August 2019. This consultation seems to range across a number of matters (including his new job) but taken together with para 19 we do not see that anything mentioned there can be attributed to the disability discrimination.

THE LAW

The statutory basis of compensation

14. The tribunal's power to make an award of compensation arises from s124(2)(b) of the Equality Act 2010. S124(6) provides (via s119) that the compensation is to be based on the principles applicable to proceedings in tort and that it may include compensation for injured feelings. The objective is "*as best as money*

can do it, the application must be put into the position [they] would have been in but for the unlawful conduct" (Ministry of Defence v Cannock [1994] ICR 918).

Injury to feelings and the Vento bands

15. The IDS Handbook on Discrimination at Work sets out general principles on the award of compensation for injury to feelings at paras 37.63 & 37.64:

"In Prison Service and ors v Johnson 1997 ICR 275 ... the EAT summarised the general principles that underlie awards for injury to feelings:

- *awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party,*
- *an award should not be inflated by feelings of indignation at the guilty party's conduct,*
- *awards should not be so low as to diminish respect for the policy of the discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches,*
- *awards should be broadly similar to the range of awards in personal injury cases,*
- *tribunals should bear in mind the value in everyday life of the sum they are contemplating, and*
- *tribunals should bear in mind the need for public respect for the level of the awards made.*

Since the Johnson case was decided, tribunals have been given a helping hand in applying these principles as they relate to the level of the award. In Vento v Chief Constable of West Yorkshire Police (No.2) 2003 ICR 318, CA, the Court of Appeal set down three bands of injury to feelings award, indicating the range of award that is appropriate depending on the seriousness of the discrimination in question ... The Court also described some of the elements that can be compensated under the head of injury to feelings. According to Lord Justice Mummery, injury to feelings encompasses 'subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on'."

16. In Vento, Mummery LJ said:

"Employment Tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.

- i) *The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.*
- ii) *The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.*
- iii) *Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.”*

and

“There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case.”

17. The parties agree that the second addendum to the Presidential Guidance on compensation for injury to feelings that applies to this case, meaning that the applicable lower band is £900 to £8,800 and the middle band is £8,800 to £26,300.

DISCUSSION AND CONCLUSIONS

The correct Vento band and the award within that band

18. Neither side suggest that this is a case where the award should fall within the upper Vento band. The claimant says it is a middle band case. The respondent says it is a lower band case.
19. The injury to feelings we are compensating is injury to feelings arising from a short series of incidents of a similar nature over a relatively short period of time. They were hurtful at the time. The claimant describes, and we accept, the humiliation that he felt. Miss Bayliss characterised the hurt as “momentary”. If this is meant as having no lasting medical consequences, we agree. There is no evidence that the discrimination caused the claimant any form of medically recognised harm. If this is meant as something that existed and was overcome in a moment, we do not agree. We accept the claimant’s evidence of difficulties with dyslexia dating back to school days. We also accept that his discriminatory treatment by the respondent would have brought these memories back. That would have a lasting or lingering effect which, while not medically recognised or warranting a particular diagnosis, would (and did) exist.

20. The view of the tribunal is that this moves the award of injury to feelings outside the lower band and into the middle Vento band. However, while acknowledging the hurt that the claimant has suffered, the hurt due to the discrimination does not warrant an award at more than the lower end of the middle band. The claimant has had the support of friends and family and has been able to try to rebuild his life and find other work. The greatest element of damage that has arisen has been from his dismissal, which was not an act of discrimination. In those circumstances the award should be at the lower end of the middle Vento band, and we consider the appropriate award is £10,000.

Interest on the award

21. On hearing our decision on the compensation for injury to feelings, the parties agreed that the interest due on that compensation was £3,778.63, and that is what we award by way of interest. As before, this agreement is without prejudice to the respondent's position in respect of its appeal.

Employment Judge Anstis

Date: 19 January 2024

Judgment and Reasons

Sent to the parties on: 12/02/2024

For the Tribunal Office

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/>