THE EMPLOYMENT TRIBUNALS

Claimant: Mr M Kassem

Respondent: North Tees and Hartlepool NHS Foundation Trust

Heard at: Teesside Justice Hearing Centre **On:** 30 and 31 January and 1 February 2024

Before: Employment Judge Morris

Members: Mr S Moules
Mr S Wykes

Representation:
Claimant: Ms B Criddle, one of His Majesty's Counsel
Respondent: Ms L Quigley of Counsel

JUDGMENT ON REMEDY

The unanimous judgment of the Employment Tribunal is that pursuant to subsection 124(2)(b) of the Equality Act 2010, and as agreed between the parties, the respondent shall pay to the claimant compensation totalling £431,768.03, which comprises the following elements:

Award	Amount £
Past loss of earnings (net)	77,108.21
Future loss of earnings (net)	88,307.50
Past medical expenses (non-taxable)	865.00
Future medical expenses (non-taxable)	3,623.35
Injury to feelings (non-taxable)	44,000.00
General damages for personal injury (non-taxable)	45,000.00
ACAS uplift	64,740.77
Interest on the award of compensation	71,637.33
Grossed up amounts for past and future loss of earnings	293,196.52
Less interim payment on account of injury to feelings and general damages	-50,000.00

REASONS

Representation

1. The claimant was represented by Ms B Criddle, KC. The respondent was represented by Ms L Quigley of Counsel.

Context

2. As is recorded in the Reserved Judgment on Remedy in this case, which was sent to the parties on 24 February 2023, the Tribunal limited that Judgment to the principles in issue rather than making the detailed calculations that would be required to finalise remedy. It adopted that approach in the hope that it would enable the parties to undertake the necessary calculations and agree figures between themselves but, if not, noted that a further remedy hearing would be necessary.

3. The claimant then lodged an appeal against certain of the decisions made by the Tribunal as recorded in its Reserved Judgment on Remedy and subsequently applied, out of time, that the Tribunal should reconsider aspects of that Judgment and make further findings as to remedy.

This hearing

4. This hearing was to address the above two matters of reconsideration and further findings as to remedy. The representatives made lengthy oral submissions by reference to written skeleton arguments, which addressed those matters and contended for different approaches to be adopted. The Tribunal fully considered the submissions made and brought them into account in coming to its decisions in relation to those two matters.

5. The Tribunal having then announced those decisions orally in each of the above respects, which was again limited to the principles in issue rather than making detailed calculations as to the remedy to be awarded, the parties took some time to undertake the necessary calculations and ultimately agreed the amounts recorded in the above Judgment.

6. The word “agreed” in the above Judgment is used in that sense that, the Tribunal having set out the approach and the principles to be applied, the amounts of the several awards set out above were ultimately agreed between the parties and not to suggest that the parties were agreed as to the approach and principles to be adopted in assessing those awards.

NOTE

Developments after the hearing

7. After the Judgment of the Tribunal was announced on 1 February 2024 the hearing concluded. As the Tribunal had requested, by email of 2 February the claimant’s solicitors provided a written record of the agreed compensation.

8. By email of 5 February 2024 the solicitors then explained that "an error had been made in the calculation of the grossing up of past and future losses of earnings and the ACAS uplift on the same." That email continued, "We are in the process of calculating the correct grossing up figure as a matter of priority, and we anticipate that this will be completed by 8 February. We ask accordingly that no judgment on remedy is issued until we have been able to furnish the ET with the correct figure, which we will seek to agree with the Respondent."

9. Revised figures were not submitted by that date of 8 February. Instead, by email of 9 February, the claimant's solicitors informed the Tribunal that they were "still in the process of finalising the re-calculation of the correct grossing up figure."

10. In the absence of any further contact from the claimant's solicitors, the Tribunal wrote to the parties on 15 and 22 February essentially seeking progress. The respondent's solicitors replied on 26 February stating, amongst other things, "The figures provided to the Tribunal at the end of the recent remedy hearing had been agreed and we believed them to be correct. We have not, to date, seen any recalculated figures from the Claimant's representative and so cannot comment further until we have seen then."

11. The Tribunal had been misled by the email of 5 February from the claimant's solicitors into thinking that this recalculation was principally a matter of mathematics and that the correct calculation would be undertaken swiftly, as had been indicated in that email. When the claimant's solicitors replied later that same day, 26 February, however, it became apparent that that understanding of the Tribunal was far from correct. Rather, it was explained that there had been a further meeting with the claimant, revised calculations had been provided to his Counsel on 8 February, she had replied on 15 February, the solicitors had replied to her on 23 February and there was further correspondence between them that day. These interactions notwithstanding, it was explained that there, "remains an issue on which clarification is sought from Counsel" following which the solicitors anticipated being "in a position to take instructions from the Claimant to provide finalised revised spreadsheets and a revised calculation breakdown to the Respondent, and in turn the Tribunal with re-calculated figures."

12. In these circumstances, which it is repeated are both unacceptable and far from the understanding of the Tribunal following receipt of the email from the claimant's solicitors dated 5 February 2024, it has been decided that this Judgment must be promulgated.

13. If either the parties wishes to apply for reconsideration of that Judgment they are aware that they are entitled to do so accordance with rules 70 to 72 of the Employment Tribunals Rules of Procedure 2013; as would have been required in any event even if this had been a simple matter of mathematics as had been the original understanding of the Tribunal.

EMPLOYMENT JUDGE MORRIS

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 29 February 2024

Reasons

Reasons for the principles and approach to the calculation of remedy figures as are recorded in the above Judgment having been given orally at the hearing, and no request having been made at the hearing, written reasons in relation to those matters will not be provided unless a written request is presented within 14 days of the sending of this written record of the Judgment

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