EMPLOYMENT TRIBUNALS

Claimant: Miss C Cash

Respondent: Cooperative Bank Plc

Heard at: Manchester **On:** 27/28 March 2023

Before: Employment Judge Leach
Mr Egerton
Mr Gill

REPRESENTATION:

Claimant: In person
Respondent: Miss Kight, Counsel

JUDGMENT having been sent to the parties on 4 April 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. On the first day of this hearing, Miss Kight told us that the respondent admitted liability. We set out what this means.

   1.1 The claimant's disability. The respondent had already accepted that at all relevant times, the claimant had a disability for the purposes of section 6 of the Equality Act 2010 (EQA). The claimant had (and still has) the impairment called Chronic Fatigue Syndrome/Myalgic Encephalomyelitis ("CFS").

   1.2 The respondent accepts that it applied a Provision Criterion or Practice (PCP) of attending the workplace in order to carry out work.

1.3 The respondent accepts that this PCP put the claimant at a substantial disadvantage by reason of her disability.

1.4 The respondent accepts that it should have made a reasonable adjustment of allowing the claimant to work from her home and that should have been applied with effect from 13 January 2021. In failing to do this, it accept that it was in breach of its duty under section 20 EQA.

2. This admission meant that we then focussed on the issue of remedy. We heard evidence from the claimant and then submissions from both parties. In reaching our decisions, we considered these and relevant documents. References below to page numbers are to a bundle of documents that had been prepared for this hearing.

Remedy

3. Our judgment on remedy is in 3 parts:-

3.1 Financial loss

3.2 1.1 Injury to feelings

3.3 Recommendation.

Financial Loss

4. The claimant's financial losses are limited to fuel expenses that the claimant incurred in travelling to work during the period when the reasonable adjustment should have been made.

5. We made an award of **£1,367.68**. This is the amount that the claimant claims in a revised Schedule of Loss at page 371 of the bundle.

6. We considered Ms Kight's submissions that the savings the claimant could have made to her travel expenses (fuel costs) should be seen as a benefit from home working rather than an expense. We decided not to accept it. The respondent has admitted that the home working should have begun on 13 January 2021. Had it started on that day, the claimant would not have incurred those costs.

7. Ms Kight was also critical of the fact that the respondent had not provided ant documentary evidence of these expenses. However we listened to the claimant's evidence at the hearing and considered her calculation of fuel costs. It was clear to us that the claimant had not attempted to embellish these costs. We accepted her evidence that she travelled by car daily and decided her claim is reasonable.

Injury to feelings

8. We set out below the principles and guidance that we applied to our task of determining a remedy for injury to feelings:

8.1 We considered and applied the “Vento” bands, as updated by the Presidential Guidance and annual uplifts.

8.2 We made an award for injury to feelings in order to compensate the claimant fully but not to punish the respondent and we have ensured that we have not increased on inflated the award by any feelings of indignation at the respondent’s conduct (having read the relevant documents in readiness to determine liability).

8.3 We took account of the value in everyday life of the amount awarded and the need for public respect for the level of the award made. In doing so we have sought to ensure that the award is not so low as to diminish respect for the rights of employees under the Equality Act 2010 but that the award is not excessive either.

9. We made reference to the following passage from the judgment in the Vento case (Vento v. Chief Constable of West Yorkshire Police (No 2) 2002 EWCA Civ 1871:

> ‘*It is self evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise… Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury.’*

10. Turning to the award that we made in this case:

10.1 We considered and compensated at an appropriate level for the injured feelings that the failure to make the reasonable adjustments caused the claimant. We are clear that the claimant’s feelings were injured with negative impacts on her.

10.2 We considered and were satisfied that, by reason of her impairment, this claimant has less resilience than other employees may have had in similar circumstances and therefore the injury to her feelings will have been greater. On the other hand, the claimant’s emotions, her disturbed sleep and the resultant fatigue would have been affected to some (but a lesser) extent anyway by her, due to her ongoing CFS condition.

10.3 We considered the time span over which the failures occurred, the number of opportunities that the respondent had to recognise and comply with its duty to make reasonable adjustments as well as the seniority of those who said “no” to the claimant. We accept that was particularly frustrating and hurtful.

10.4 We considered the sense of injustice that we accept the claimant felt; we find that fuelled her frustration, stress and unhappiness. It is not disputed that other employees were working from home. We are sure that many of those were doing so because of their own health issues/disabilities (particularly having been shielding from Covid) but we are also sure that others did not have these clinical needs. The fact that claimant was told that she could not work from home when several of her colleagues were doing just that, was insensitive and was upsetting to the claimant.

10.5 We also took into account the security of employment that the claimant had. She was not under threat of dismissal. She did not suffer a loss of income.

11 Taking all these factors into account, we decided that the appropriate Vento band (as updated) to apply in this case is the middle band and near (but just below) the middle of that band. We made an award for injury to feelings of **£15,000**.

<u>Interest and financial total</u>

12 We went through with the parties the calculation of interest and agreed that as at the date of Judgment, this amounts to **£2824.28.**

13 This means that the total amount of financial compensation awarded (including interest) is **£19191.96.**

<u>Recommendation</u>

14 We raised with the parties that we were considering making a recommendation under section 124(3) Equality Act 2010. Having considered the submissions from the parties on this, we decided that it was appropriate to make a recommendation as follows:

14.1 That, on or before 27 September 2023, the employees listed/described at paragraph 4 below receive the following training:-

14.1.1 Training about the condition of CFS, including what the condition is and how it impacts on those who have the condition;

14.1.2 Training about an employer’s obligations (and potential liabilities) under the Equality Act 2010, with a particular emphasis on the duty to make reasonable adjustments.

14.2 The recommendation is for the training described above to be

provided to those employees identified in a Schedule that has been shared with the parties.

15 Our reasons for this recommendation include a sense by us, from what we have heard and read, that there has been a reluctance in parts of the respondent organisation to accept liability in this case including at a senior level. We note particularly that liability was not admitted before the commencement of this final hearing.

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16 We accept that training on equality issues may occur on a regular basis within the respondent organisation. Even so, this recommendation is for training with a particular emphasis on reasonable adjustments.

17 We do of course expect compliance with the recommendation but we also hope that the recommendation (to be trained, informed and educated) will be welcomed by those receiving the training.

Employment Judge Leach

23 May 2023

REASONS SENT TO THE PARTIES ON

2 June 2023

FOR THE TRIBUNAL OFFICE

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