EMPLOYMENT TRIBUNALS

Claimant: Mr B Lokkason

Respondent: Superbowl UK Newport Ltd.

HELD AT: Newport **on:** 22nd February 2024
(and in Chambers 13.03.24)

BEFORE: Employment Judge T. Vincent Ryan
Ms L. Thomas
Mr. P. Pendle

REPRESENTATION:

Claimant: Mr Wild, Solicitor
Respondent: Ms J Williams. Counsel

RESERVED REMEDYJUDGMENT

The unanimous remedy Judgment of the Tribunal, pursuant to the Reserved Liability Judgment signed on 24 April 2023 and sent to the parties on 25 April 2023 (the Liability Judgment) is that the Respondent shall pay to the Claimant the sum of £27,089.72, which sum is not subject to recoupment provisions, made up as follows:

1. Financial losses attributable to the disability discrimination found:

   1.1. Loss of earnings 8th December 2019 – 28th June 2020: £6,434.08 and

   1.2. employers' pension contributions for that period: £207.32

   1.3. totalling: £6,641.40

2. Uplift to financial losses for the Respondent's unreasonable failure to follow an applicable ACAS Code, assessed at 12.5% of £6,641.40: £830.17, such that the uplifted financial loss award amounts to £7,471.57.

3. Interest on the said financial losses of £7,471.57, incl. uplift, from the halfway date from the loss being occasioned to the date of this remedy hearing, 109.5

weeks (08.12.19 – 22.02.24 being a period of 219 weeks): £1,258.15 such that compensation for financial losses amounts to:

3.1. Losses £6,641.40

3.2. Uplift £ 830.17

3.3. Interest £1,258.15

3.4. Totalling £8,729.72

4. Damages for Injury to Feelings: £12,000.00

5. Uplift for the Respondent's unreasonable failure to follow an applicable ACAS Code, assessed at 12.5%: £1,500.00, such that the uplifted damages amount to £13,500.

6. Interest on said damages of £13,500 for Injury to Feelings from the date of the incident giving rise to the findings of Disability Discrimination (discrimination "arising" from disability, & Harassment, and not failure to make reasonable adjustments for reasons explained below) as set out in the Liability Judgment, namely 19.08.19 – 22.02.24 (a period of 4.5 years): £4,860.00 such that damages for Injury to Feelings amount to:

6.1. Damages £12,000.

6.2. Uplift £ 1,500.

6.3. Interest £ 4,860.

6.4. Totalling £18,360.

7. Summary of award:

7.1. Financial losses (inclusive of Uplift and interest) £8,729.72

7.2. Damages (inclusive of Uplift and interest) £18,360.00

8. TOTAL: £27,089.72

REASONS

1. Introduction: this reserved Remedy Judgment is pursuant to a Reserved Judgment on Liability signed on 24 April 2023 and sent to the parties on 25 April 2023 (referred to as the Liability Judgment). The Remedy Judgment is based upon the findings of fact and judgment contained, mentioned, or referred to in the Liability Judgment, supplemented insofar as is relevant by additional findings of fact at the Remedy Hearing, consideration of submissions made by both parties

on law and facts, the applicable law in relation to remedy, and then application of law to the totality of facts found. For the avoidance of doubt the Tribunal confirms that it has not reconsidered, varied or revoked, any of the findings confirmed in the Liability Judgment. The Liability Judgment is the foundation upon which the Remedy Judgment is built. The Remedy Judgment will not recite at any length the findings of fact, or rationale for the Liability Judgment.

1.1. Witnesses:

1.1.1. The Claimant (C) gave evidence under cross examination further to his written witness statement specific to the remedy hearing, containing forty-one numbered paragraphs and a statement of truth.

1.1.2. In support of C, Mr Jordan Kettlety provided a written witness statement comprising ten paragraphs and a statement of truth; Mr Kettlety affirmed the truth of his evidence before the Tribunal and was not subjected to cross examination; his evidence is unchallenged.

1.2. Documents:

1.2.1. The Respondent (R) provided an electronic remedies hearing bundle comprising 169 pages with an effective hyperlinked index. I thanked Ms Williams and asked that our appreciation be passed on to whomsoever prepared the bundle in accordance with Practice Directions.

1.2.2. Ms Williams, for R, also provided electronic copies of the cases of Wardle v Credit Agricole Corporate and Investment Bank [2011] EWCA Civ 545 (WARDLE) and Shittu v South London & Maudsley NHS Foundation Trust [2022] EAT 18 (SHITTU), which authorities were taken into account in our deliberations.

1.2.3. Mr Wild for C provided a 7-page written submission and a copy of Chagger v Abbey National PLS & Anor [2009] EWCA Civ 1202 (CHAGGER), which authority was taken into account in our deliberations.

1.3. Adjustments: prior to the liability hearing, and for the purposes of this litigation, the Tribunal commissioned a report from an Intermediary in the light of C's autism. The recommendations contained in that report were followed at both the liability and remedy hearings. The Tribunal, and respective advocates, also followed best practise in accordance with the Equal Treatment Bench Book of which at least the Tribunal reminded itself in preparation for the hearing. Ms Williams had conduct of the liability hearing and was therefore familiar with the adjustments required for the remedy hearing. Mr Wild has a professional relationship with his client; he did not represent C at the liability hearing. I am satisfied that in so far as there were any minor difficulties in communications at this hearing they were easily overcome; I am referring only to typical requests at any given time for one or more of those who were speaking to slow down, and for people not to talk across each other.

1.4. The Hearing: the hearing commenced at approximately 10:00; evidence was heard throughout the morning finishing at 13:15, whereupon we adjourned for

lunch. Submissions commenced at 14:15. The Tribunal adjourned for its deliberations at 15:20. The parties requested written reasons and therefore that judgment be reserved. I explained that, owing to other commitments, there would be a slight delay before any reserved judgment was promulgated and apologised in advance for any inconvenience caused. The Tribunal deliberated immediately following the hearing and concluded their deliberations and calculations in chambers on 13 March.

2. The Issues: in the situation where R was found to have discriminated against C because of something arising from his disability, harassment, and a failure to make reasonable adjustments in accordance with its statutory duty, the issues were agreed as being:

2.1. what, if any, financial loss was sustained by C in consequence of the discriminatory conduct?

2.2. To what extent if any did C sustain injury to his feelings? What, if any, damages ought to be awarded in respect of injury to feelings?

2.3. Ought either award, compensation for losses or damages for injury, be subject to any uplift or reduction to reflect an unreasonable failure on the part of either party to follow the provisions of an applicable ACAS code, namely ACAS Code of Practise 1, Code of Practice on Disciplinary and Grievance Procedures.

2.4. What amount of interest does any award of compensation, and any award of damages attract?

2.5. If the total award exceeds the £30,000 tax free threshold, what is the grossed-up award due, such that C is compensated for his true net loss and damage, cancelling out any tax burden upon him.

3. The Facts:

3.1. The findings of fact set out in the Liability Judgment are confirmed.

3.2. C's employment record for the tax years 2007/08 – 2019/20 according to HMRC records is at page 130 of the hearing bundle (and all page references refer to that bundle unless otherwise specifically mentioned). Apart from the period 2011/12 – 2014/15, when there are no employers recorded, C worked for nine tax years as shown. The dates of each employment are correctly shown in that document.

3.3. Prior to his employment with R, C's longest period of employment was some 18-months in the employment of Tesco Stores Limited. C resigned from that employment having failed to secure a promotion that he felt he was qualified to undertake and had deserved. This was his happiest period of employment to date, by his own account. In hindsight he regrets that he resigned from that employment.

3.4. C was employed by R from 21 January 2019 until 8 December 2019, a period of approximately ten months and one week. C was disgruntled when

overlooked by R for a promotion that he felt he was qualified to undertake and had deserved.

3.5. The problems and issues encountered during his employment by C at the hands of management, and by R's management and C's colleagues at his hands, are set out in the Liability Judgment. Significantly, C was not only unhappy at being overlooked for promotion but had expressed his intention to resign well before he did so. Over and above the disappointment about his application for promotion, he had ongoing issues with his line manager SG. He sought termination of her employment; although he expressed an intention to resign, he wanted to see to that beforehand.

3.6. C Was discriminated against as described in the Liability Judgment. This discrimination caused him further stress and gave him reason to leave his employment.

3.7. C made many unsuccessful claims to the Tribunal in relation to his employment by R. He felt that he had been treated badly in ways and for reasons in relation to which certain claims at the Tribunal failed. The Tribunal therefore notes that in addition to the failed promotion, and justifiable discontent caused by discriminatory conduct, C was dissatisfied at work with R for other reasons in respect of which his claims lacked legal merit.

3.8. In the light of the above, the Tribunal infers that it is more likely than not C would not have remained in employment with R beyond the last full week of June 2020 in any event. Having terminated his happiest period of employment after 18 months because he became dissatisfied, the Tribunal concludes but it is improbable he would have remained in the employment of R for more than 18-months even if there had been no unlawful discrimination.

3.9. Facts relevant to consideration of the claim by the claimant for an uplift, and by the Respondent for a discount, for unreasonable failure to follow an applicable code:

3.9.1. on 4 November 2019 C sent an e-mail to R (p376 of the Liability Bundle) in which he complained about the environment at work, violation of his trust in R, and that his safety had been neglected. This is a grievance e-mail.

3.9.2. On 5 November 2019 R wrote to C with its disciplinary outcome (commencing at page 373 of the Liability Bundle).

3.9.3. On 6 November 2019 R responded to C's grievance of 4 November 2019 (p378 of the Liability Bundle) saying that C may raise a formal grievance but, whether or not he did so, he must return to work and carry out his duties, failing which he would be subjected to disciplinary proceedings. R had recognised C's 4 November email as raising grievances, but, under threat of disciplinary action, nevertheless required him to return to work prior to addressing them; it would then only address them if C explicitly raised the matters under a formal grievance procedure.

3.9.4. C did not make his grievance formal within the procedure laid down by R. C could not, however, return to work in the circumstances, and he said as much when he resigned on 8 December 2019 (page 384 of the Liability Bundle). There was an impasse. In his letter of resignation, he set out complaints of breaches of contract, breach of trust and confidence and "last straw doctrine"; he offered to attend an exit interview. C was clearly raising grievances again, albeit not labelled as such or through the formal grievance procedure. It seems to the Tribunal that this was out of character for C who appreciates and seeks, generally, to abide by clear and established policies and procedures; failure to submit the grievances pursuant to policy was a significant omission, but not one that negated the nature of the two grievances identified above.

3.9.5. By letter dated 10 December 2019 (p387 of the Liability Bundle) R accepted C's resignation with immediate effect, denied any breach of contract or trust and confidence, but it did not pursue the extant grievances or take up the suggestion of an exit interview.

3.10. The Tribunal finds that C sustained financial loss as a result of R's discriminatory conduct, being his loss of earnings from 8 December 2019, but only until the last full week of June 2020, 28th June 2020. This is a period of loss of 29 weeks.

3.11. C resigned with immediate effect on 8 December 2019 at which time his net weekly pay was £235.48. Had he remained in employment his net weekly pay would have increased on 5 April 2020 to £247.89.

3.12. Wales went into lockdown owing to the COVID pandemic at the end of March 2020. Under the government's Job Retention Scheme R's employees, with their consent, were furloughed, such that they received only 80% of wages but without the need to attend work. In all probability, C would have accepted furlough pay. The effect of this would have been to reduce net weekly pay to 5th April 2020 to £193.32, and from 6th April until the last full week of June 2020 to £206.09. Whilst employed by R, C was contracted to work a 30-hour week.

3.13. The employer's contribution to employees' pensions was contractually set at 3%. Had C remained in employment until 28 June 2020 he would have received 3% pension contributions from the date of termination of employment to 5th April 2020, a period of 117 days, on his gross pay which was then £246.30 pw, and for the further period of 84 days on gross pay of £247.89 pw to 28 June 2020.

3.14. C has not secured paid employment since 8 December 2019. C has lived with ill-health and conditions affecting his ability to secure and maintain employment, some of which pre-date his employment by R, for many years. Taking account of C's medical history, employment history, and both successful and unsuccessful claims in this Tribunal, the Tribunal finds that on balance, C's continued unemployment, past 28 June 2020, is not wholly or materially attributable to the unlawful discriminatory conduct of R. He was medically incapable of working in the period 8 December 2019 – 28 June 2020; he could not mitigate the loss of income by seeking paid employment.

R has not proved a failure to mitigate in respect of non-receipt of benefits, in that it has not adduced evidence of what C would have been entitled to receive had he secured state benefits before he did.

3.15. C made R aware that he is autistic at the commencement of his employment. He wanted and needed someone to listen to what he needed to ensure acceptable employability (acceptable to both parties); he did not receive that audience until late in the day, and even then it was followed by a final written warning and no obvious end in sight to his expressed concerns. C was affronted.

3.16. The discriminatory conduct, as found by this Tribunal, caused C considerable upset and stress over a prolonged period of time, several months. Despite his need for financial security, it was sufficient to finally cause him to resign when he did. All this caused stresses and strains on his marriage and on family life generally. Being convinced he had done nothing wrong, he had still to explain to his then wife that he was subject to disciplinary action and warnings. Presumably conscious of his work record to date, both C and his wife were faced with financial jeopardy as C's employment with R was becoming tenuous and not viable. This situation was avoidable or capable of mitigation, as explained in the Liability Judgment.

3.17. As is clear from the Liability Judgment, the unlawful discrimination found did not amount to a lengthy campaign of harassment in relation to a protected characteristic, nor were there isolated or one-off incidents. The unlawful discrimination amounted to a course of conduct which was having foreseeable, but avoidable, consequences, leading to resignation as and when it did. The resignation when it occurred was due to circumstances of R's making. The Tribunal does not consider that this is an exceptional, or even one of the most serious, cases of discrimination, but it is serious.

3.18. C applied for Universal Credit on 29 July 2020; he did not make any benefit applications prior to that date. He did not therefore receive any recoverable benefits. The Tribunal is unable to find facts in relation to benefit eligibility or amounts potentially payable.

4. The Law:

4.1. The claimant ought to be put into the financial position that he would have been in had he not been subjected to unlawful discrimination. That is, he ought to receive a sum equivalent to his loss of earnings and employer's pension contributions for the period that we assess he would have been employed had it not been for that discrimination.

4.2. As indicated in CHAGGER, there may be situations where it is appropriate to compensate a claimant to the end of their projected working life if a Tribunal considers that a claimant is unlikely, or it is improbable, that he or she will work again in consequence of the discrimination; such a claimant will have been landed back in the labour market at a time and in circumstances not of their own choosing, or as in this case at a time when C felt compelled to resign; a claimant's career path will therefore have been altered. The proper assessment of loss is to ask when C might expect to obtain another job on an

equivalent salary to that enjoyed with R, if at all. Such cases are untypical, and caution is required in assessing whether or not a successful claimant ought to be compensated for the whole of their working life. In essence, the Tribunal must consider all the circumstances of the case and do its conscientious best to assess how long a successful Claimant's career has been affected, in consequence of which there have been financial losses; the Tribunal is speculating doing the best that it can on the evidence available.

4.3. In SHITTU it was held that the tribunal was entitled to find that there was a 100% chance of the claimant resigning on the same date as they did, even if there had been no fundamental breach of contract by the respondent, and in so far as any later date is speculated, (a counter-factual), any decision as to what a claimant might have done is to be decided on the balance of probabilities.

4.4. Injury to feelings is a head of damage. Guidelines are published, known as the "Vento guidelines". This sets out, in broad terms, bands to reflect the seriousness of the effect of discrimination and therefore the seriousness of the discrimination as experienced by a claimant. Damages for injury to feelings are not punitive but compensatory. They ought to reflect the spending power of the award being made while being mindful of and proportionate in relation to the civil law guidance on personal injury damages, such as psychiatric injury. Awards should not be so high, or so low, as to cause disrepute to the system and Tribunal. The applicable bands are those that were applied at the time of the discrimination/claim and not as at the date of assessment.

4.5. If there is unreasonable failure to follow an applicable code, such as the ACAS code applicable to grievances, awards may be uplifted or discounted by up to 25%. Where an unsuccessful Respondent has unreasonably failed to follow the procedure then a claimant's award may be uplifted; where a successful claimant has unreasonably failed to follow the procedure any award may be reduced. The Tribunal must consider all the circumstances of the case and assess whether or not there ought to be either an uplift or a reduction, and in the same way then consider the size of that uplift/reduction, limited to 25% of the award in question.

4.6. Interest may be awarded and must be considered. In respect of financial losses interest is due on compensation from the halfway mark between the discrimination and date of assessment; in respect of damages the period commences with the act of discrimination and ends with the date of assessment. The applicable rate is 8% per annum.

4.7. Awards in respect of losses and damage are not a matter of science but require the conscientious judgement of the Tribunal taking into account all relevant circumstances and the interests of justice. The formulation and calculation of the total sum is a matter of science. Insofar as this judgment contains any arithmetical error the expectation is that if either party seeks reconsideration on the basis of mathematics, that party will first approach the other with its proposed re-calculation and an effort will be made by both parties to agree how the calculation ought to be set out, arriving at the correct sum to reflect the Tribunal's judgment. Should a party request

reconsideration on the basis of arithmetical error without doing this, they will be directed to do so.

5. Submissions:

5.1. C:

5.1.1. Mr Wild presented a 7-page written submission which was duly considered. In addition, he made oral submissions. In summary, C says that general damages for injury to feelings should be in the upper Vento band, aggravated by the fact that C is autistic, and that the Tribunal must look at matters through his eyes taking into account the detrimental effect on his marriage and the impact of losing employment in a situation where he has not worked for four years since. This cannot be categorised as a one-off incident as there was a continued failure by R to deal with matters, compounded by a final written warning and failure to heed occupational health reports and recommendations; this is a serious and not trivial discrimination case. It would not be fair for R to take advantage of its own poor conduct by emphasising that C was looking for alternative employment at the time or before his resignation and had said he would resign long before he did; he was only looking to leave because of the treatment he had received. C was unable to mitigate losses because of his unfitness to work which has been evidenced throughout. He has been signed off as unfit to work and likely to ever work. This is therefore a career loss case. C had worked consistently prior to his employment with R; the duration of each job is irrelevant and what is relevant is the fact that he had always secured employment previously, whereas now he Is permanently incapable of work. He did not fail to follow an applicable ACAS code in not appealing because he was not expressly dismissed (see R's submissions below at 5.2.4 on this; it seems Mr Wild misunderstood what was being suggested); on the other hand R tried to force him to return to work prior to resolution of the issues he had raised and this therefore justifies a 25% uplift in any award.

5.2. R: Ms Williams made oral submissions.

5.2.1. She placed injury to feelings in the lower Vento band noting that in context the substantive finding of the Tribunal is in respect of two claims of harassment which overlap with the "arising" claim and to an extent the reasonable adjustments claim. The incident on 19 August 2019 was a one-off incident and it is one where a manager became irate because of the manner and content of C's approach at the meeting. The policy being challenged by C was clarified and was put in writing in response to him. With regard to the imposition of a final written warning the Liability Judgment found that there was a valid reason for there to be a disciplinary hearing, and therefore it can be concluded that some sanction may have been reasonable. It may have been appropriate for adjustments to be made sooner, but the Tribunal ought to concentrate on the effect of any such conduct upon C. Principally he was disgruntled over a failed promotion, and his claim in that respect did not succeed at the liability hearing. This set the scene as to how he approached his continued employment, and how he felt about his line manager; C has

been found to have been insubordinate. There were no signs of significant stress until the second disciplinary hearing which the Tribunal has said was a reasonable step on the part of R. It therefore followed that it was the imposition of the final written warning that was “the main thing”. In effect the worst element of the discrimination was requiring C to return to work without adjustments, and there is no evidence of C suffering mental ill-health as a result of that. The medical evidence shows a deterioration in his mental health in June 2020, where the reason was marital breakdown; the Tribunal cannot speculate that the marital breakdown was due to discrimination, and it is clear that there were marital problems in any event. C described the relationship as an abusive one. C’s “problems” stem from ASC and ADHD. The effect of the discrimination found, was short term and not a campaign over years and therefore falls at the top end of the lower Vento band for assessment.

5.2.2. The loss of earnings claim is in a complicated situation where this was not a discriminatory dismissal but there was a resignation in response to a failure to make reasonable adjustments. The Tribunal has found it was unreasonable to require C to return to work without reasonable adjustments, rather than because of the imposition of a final written warning. The question therefore arises whether C would have returned to work if adjustments had been in place. Given that C had indicated his intention to leave from August 2019, and that he had an axe to grind with his line manager whom he was attempting to get sacked, and where he was disgruntled about the failed promotion, it is highly unlikely (or there was at least a low chance that) he would return to work even if reasonable adjustments were in place; an assessment of that chance would be 10-20%. The Tribunal should then look to see what might have happened if that chance materialised. C had a chequered employment history; he had “severe difficulties staying in any one workplace for any length”. If the chance of return to work materialised, it is very likely he would have left his employment of his own volition, and a 100% chance this would occur by June 2020 when his marriage had broken down and his mental health had deteriorated. C’s limited capacity for work is because of his disabling conditions with associated anxiety.

5.2.3. C only raised the matter of aggravated damages in submissions, which is surprising, and this is not such a case.

5.2.4. An uplift of the award would it be inappropriate. Mr Wild has missed the point about a failure to follow procedure when he refers to C not having been dismissed; the point is that C did not present a formal grievance. C says that he raised a grievance on 4th November, but he was then absent from work and resigned within a relatively short time thereafter such that it would be unreasonable to penalise R for failing to deal with that e-mail.

5.2.5. WARDLE makes clear that career loss cases are the exception and not the rule. SHITTU means that the case should be based on a percentage chance of C returning to work, where the Tribunal must assess the chances. The Tribunal must do the best it can to make such an assessment.

6. Application of law to facts:

6.1. C Resigned when faced with an ultimatum to return to work or face disciplinary action, absent any attempt by R to address his concerns and implement recommended adjustments. The Tribunal had to assess the chance that C would have returned to work following his ill health absence had it not been for the discrimination found, and on the balance of probabilities speculate as to how long he was likely to remain in employment had it not been for the discriminatory conduct. The Tribunal would then be able to assess the claim for financial losses attributable to the discriminatory conduct.

6.2. C did not walk away from his job merely because he was subjected to disciplinary action which he sought to avoid. He had continued in employment notwithstanding difficulties with his line manager and other managers, and the incident that had occurred on 19 August 2019. He is tenacious. He knows his rights. C is vocal in expressing his rights and arguing for justice, as he sees it. As this litigation has shown, it could be said in common parlance that C is “up for the fight” where he feels that he is the victim of an injustice, and that another party is not acting fairly and conscientiously in accordance with policies, procedures and employment rights. The Tribunal concludes that C would have returned to work had his concerns been addressed, or a procedure whereby they would be addressed had been adopted, and the recommended adjustments had been put in place. Even as he resigned, he offered to return for an exit interview to discuss such matters.

6.3. There is evidence to suggest that C wanted to bring about the termination of his line manager’s employment; there is evidence of his saying that whereas he would resign he would not do so until he had seen to her exit from the business. Although this may be reprehensible conduct, nevertheless the Tribunal is appraised that it may have been a further motivation for him to return to work after his ill-health absence, had it not been for the discriminatory conduct that led to his resignation.

6.4. That said, the Tribunal does not consider it likely that C would have been prepared to commit to employment by R indefinitely. There was no evidence before us to suggest that he considered his role there as a lifetime career. There is ample evidence by way of his employment history, and the events that occur during his employment with R, for the Tribunal to consider that in all probability he would have left his employment by the end of June 2020. Had he done so he would have been employed for some 18 months, a period matching his previous happiest length of employment at Tesco. His employment by R was not his happiest period of employment. Just as with the Tesco job, it is more likely than not that C would have resigned having failed to gain a promotion he felt he deserved. In December 2019 C had unfinished business with R, in that following on from the failed promotion and all that transpired after it he still had an “axe to grind” and points to make. Had he remained in employment he would have been furloughed, and one can speculate that it is likely he would have been content remaining in

employment on 80% pay but absent from work and management confrontation.

6.5. For all the reasons set out above and our findings of fact relevant to the speculation required, we conclude that had C not resigned in December 2019 because of the discriminatory conduct he would in any event have resigned by no later than the last week of June 2020. Financial losses should therefore be limited to that period.

6.6. In calculating C's financial losses, the Tribunal has taken into account the variable rates of pay in the period in question and the effect of furlough pay arrangements. C lost employer's pension contributions for that period of speculated continued employment, for which he should receive compensation.

6.7. C Received a late diagnosis of his disabling conditions. Partly aided by his psychology studies and degree, let alone his lived experience, C has developed various coping and personal management strategies. Taking into account his employment history, and again his lived experience, C knew that any employer would have to take into account his disability and ought therefore to enter into dialogue with him. He disclosed his disability from the outset and expected some dialogue, consideration, and accommodation. The sequence of events set out in the Liability Judgment show that there was no proper dialogue until very late in the day with Mr Newton, and that was the only real consideration and accommodation that he received. Notwithstanding that, he was faced with the threat of disciplinary action if he did not return to work before his grievances were addressed. This caused stresses and strains on his marriage which was in any event in jeopardy. It caused him to resign. An avoidable situation had arisen, and it caused C to be frustrated, anxious and distressed over a significant period of time. The Tribunal considers, having given careful consideration to the applicable Vento bands for injury to feelings damages at the material time, that £12,000 is the appropriate level of damages. Technically there was a failure to implement adjustments from the outset of employment but matters came to a head on 19 August 2019, and the Respondent's knowledge of substantial disadvantage was apparent from the subsequent OH reports; for these reasons 19 August 2019 is the key date for the start of the calculation period for interest purposes; the Tribunal considers that this is the fairest way of proceeding in all the circumstances.

6.8. It is clear that C raised serious grievances, albeit informally. R recognised that C was grieving but insisted on his following a formal procedure. In the circumstances, including demanding a return to work subject to a disciplinary threat, this was unreasonable. It is surprising perhaps that C did not vigorously pursue matters through a formal channel, as one might have expected given the history of his employment with R and his general way of going about things which he attributes to is disabling conditions. He chose not to do so. There was however an impasse that was avoidable. Ideally R should have commenced a grievance investigation or set up a mechanism by which C's concerns could be addressed. Matters had clearly come to a head, and it was unreasonable to demand that C formalise matters when his continued employment was on a knife edge and he was being put under the

threat of disciplinary action, whether he did or whether he did not pursue the grievance formally. C had however been invited to follow a procedure and he was familiar with procedures in general; it would have been in character for him to have done so, and his failure to do so is significant. The Tribunal considers that the bigger failing, or the most unreasonable action/omission, was that of R, and that there should be an uplift to reflect its unreasonable failure to follow an applicable code, the ACAS Code on grievances. We assess the uplift at 12.5% because there was an element of unreasonableness on the part of C by his failing to take the opportunity open to him, and to which he was invited, of having the matter dealt with in line with procedure. C's failure does not take away from the fact that he raised two grievances, 4 November 2019 and in his resignation letter, and neither was addressed.

6.9. Both awards, financial losses and damages for injury to feelings, attract interest as explained above.

6.10. The Tribunal's calculation is set out in the Judgment at paragraphs 1-8 above. As previously stated, if the parties do not agree the calculation, then they are expected to attempt agreement as to the proper calculation and, if possible, to present the same with any requests for reconsideration to the Tribunal. If agreement cannot be reached on the arithmetical calculation the parties will be directed to present their respective versions. This is not however an invitation to seek reconsideration of the findings in principle namely:

6.10.1. C will be compensated for financial losses from the date of termination of employment to 28 June 2020;

6.10.2. Injury to feelings damages have been assessed by the Tribunal at £12,000;

6.10.3. both awards ought to be uplifted by 12.5%;

6.10.4. each award attracts 8% interest calculated from the appropriate day to the date of assessment, 22 February 2024.

Employment Judge T.V. Ryan

Date: 15 March 2024

JUDGMENT SENT TO THE PARTIES ON 18 March 2024

FOR THE TRIBUNAL OFFICE Mr N Roche