



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Zalejska

**Respondent:** Cameo Consultancy (Recruitment) Limited

**Heard at:** Reading Employment Tribunal

**On:** 15 December 2023

**Before:** Employment Judge Annand  
Ms Tufts  
Mr Juden

## Representation

**Claimant:** Ms Zalejska  
**Respondent:** Mr Hurd, Counsel

**REMEDY JUDGMENT** having been sent to the parties on 26 January 2024 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

1. A remedy hearing was listed in this case for one day in person on 15 December 2023. The Claimant attended and was unrepresented. The Respondent was represented by counsel, Mr Hurd. The Tribunal was provided with a remedy hearing bundle (242 pages) and a witness statement from Hannah Spiero, one of the Respondent's Directors.
2. At the start of the hearing, I informed the Claimant how the remedy hearing would proceed. As the Claimant had not provided a witness statement for the remedy hearing, it was agreed at the outset that her Schedule of Loss would stand as her witness statement and that she would need to give evidence to the Tribunal so that she could provide some further clarification in respect of her financial losses.

3. As noted in the judgment on liability, which was sent to the parties on 19 October 2023, the Claimant started in a temporary role on 13 June 2022 as a Temp Administrator with Principal Medical Limited based at Banbury Cross Health Centre. The assignment was due to last 12 weeks, ending on Friday 2 September 2022. The assignment was terminated on 15 June 2022. The Tribunal concluded the termination of that assignment on 15 June 2022 was an act of direct disability discrimination.
4. In her witness statement, Ms Spiero stated the Respondent accepted the Tribunal's findings. She formally apologised to the Claimant. She explained that the three Directors/employees in the Respondent's company had undertaken the Recruitment and Employment Confederation Compliance Test, which required undertaking training in a range of relevant areas including equality and diversity. She also set out that they were all enrolled to attend an ACAS training course called Mental Health at Work on 8 February 2024.
5. In her witness statement, Ms Spiero explained the rate of pay for the Claimant in her role at Principal Medical Limited was £11 per hour gross for 37.5 hours per week. If she had worked for all 12 weeks, she would have been paid £4,950 gross. She also explained after the Claimant's assignment was terminated, someone else filled the role on a part-time basis, and that the assignment was extended to 30 September 2022. There was no suggestion that the person who had completed the role after the Claimant had been offered a permanent role.
6. At the remedy hearing, the Claimant confirmed that she had started in a new administrative role in mid-September 2022. She believed the start date was 12 September 2022. She is employed directly by her new employer on a permanent contract and was not placed in the role by an agency. She confirmed she receives a gross annual income in the new role of £26,000 per annum. Initially the salary was £24,000 or £25,000 but after three months she received a pay rise and so her salary increased to £26,000. She confirmed that her monthly net income is £1,649.09. By the time of the remedy hearing, on 15 December 2023, the Claimant was still working in the role she had started in September 2022.
7. The Claimant accepted in cross examination that as the role for Principal Medical Limited had paid £11 per hour gross, which amounted to an annual salary of £21,450, she was being paid more in her new role which started on 12 September 2022. When asked how she had coped in her new role in terms of her health, she said she had taken some annual leave when she had a period of feeling very low. She had taken one week and two days off work.
8. In terms of the Claimant's medication, after she had attended her GP and then A&E after her assignment had been terminated on 15 June 2022, her dose of Sertraline was increased to 100mg. She had remained on this dose until July 2023, when it had been increased to 200mg per day. She described that she had a period of bad anxiety in July 2023. This was not caused by her employment, but she had not felt able to say anything about this at work.

9. In cross examination, the Claimant was asked about her assignment with Karcher. This had occurred in January/February 2022, before her assignment with Principal Medical Limited. She had been placed in the role at Karcher by the Respondent. The assignment had been for six months, but the Claimant had only remained in the role for approximately three weeks as the Claimant had informed the Respondent that she was not happy and wanted to leave. Prior to that the Claimant had worked for a dealership in Banbury. She had worked there for approximately a year. She believed the role started in October 2020 and finished in November 2021. She had been working on a fixed term contract as maternity cover.
10. There was evidence in the remedy hearing bundle of the benefits the Claimant received between June and September 2022 when she was not working. However, the Claimant said that even when she was working, she had received a small amount in benefits as her income was low. The Tribunal were not presented with the precise figures of what she had received, or how much she would have received in benefits if the assignment with Principal Medical Limited had lasted from 15 June 2022 to 12 September 2022.
11. When asked by Mr Hurd about how likely it was that she would have stayed working for Principal Medical Limited until September 2022, if the assignment had not been terminated on 15 June 2022, the Claimant said there was “a huge chance”. She said she was excited about the position. She has a degree in social work. She had hoped it would lead to a permanent role and she was very keen to work for the NHS. She did not find the role to be complicated.

### **Submissions**

12. On behalf of the Respondent, Mr Hurd submitted that the Tribunal were concerned with financial losses from 15 June 2022 (the Claimant had been paid for 1.5 hours of work that day) to 12 September 2022. He said the Tribunal needed to consider what would have happened if her assignment had not been terminated by Principal Medical Limited and the Respondent and consider whether the Claimant might have left either because of her health, because she was unhappy, or because she found another role.
13. Mr Hurd pointed to the Tribunal’s liability judgment, and the findings in respect of the Claimant’s health before the discriminatory act occurred. He noted the references to the Claimant’s medication not controlling her symptoms even before she had been dismissed. He also referred to the findings of the Tribunal that she had become very upset at work on 15 June 2022 when talking about her mental health, and the Tribunal’s finding that the Claimant’s mental health had not stabilised despite being on medication for 6 months. He noted that the Claimant had previously left an earlier assignment with Karcher because she was unhappy with the role. He suggested on this basis that there was a 50% chance the Claimant would have remained working for Principal Medical Limited until 12 September 2022, and her compensation for financial loss should therefore be reduced by 50%.

14. In terms of the award for Injury to Feelings, Mr Hurd accepted an award from the Middle Band was appropriate, but indicated the lower end of the Middle Band would be appropriate in this case. He noted it was a one-off decision, but recognised it had a significant impact on the Claimant.
15. In terms of an award for Injury to Health/personal injury, Mr Hurd accepted the case law does not require the Claimant to provide an expert report, or medical evidence, but noted that without it, the Tribunal would be in difficulties making findings regarding causation. This was a case where the Claimant had a pre-existing condition before she applied for the assignment, and where she had been able to obtain full time employment from September 2022 and had remained in the role since then. He suggested in these circumstances, it was more appropriate to increase the Injury to Feeling award to reflect the impact on the Claimant's mental health, rather than to make a separate award for Injury to Health/personal injury.
16. Mr Hurd made measured, sympathetic, and realistic submissions on behalf of the Respondent, which the Tribunal were grateful for.
17. In the Claimant's submissions, she emphasised that she continued to have a sense of insecurity regarding her employment. Because of her experience, she felt she could be dismissed at any time. She explained she had been forced to find a new role in September 2022 as she had no money and was starting to accrue debt. She explained she has no support in the United Kingdom so the experience of having her assignment terminated was horrible for her. She explained that she has fears she will not be able to reach her full potential and put her degree to good use. In her Schedule of Loss, she indicated that she felt an appropriate award would be £90,000.

### **The Tribunal's decision**

#### **Financial losses**

18. The Tribunal decided that if the Claimant had not had her assignment terminated on 15 June 2022, there was an 85% chance she would have remained in the role until 12 September 2022.
19. The Tribunal considered 12 September 2022 was the appropriate end date when calculating the Claimant's financial losses. Although her assignment was initially for 12 weeks and so would have ended on 2 September 2022, Ms Spiero confirmed that the person who filled the role after the Claimant had remained in the role until the end of September 2022. As the Claimant started a new role on 12 September 2022, in which she was paid a higher salary than she received from the Respondent, her financial losses ceased at that date. The Tribunal found there was no evidence to support the Claimant's contention that the role may have become permanent. This may have been the Claimant's hope, but there was no evidence which indicated that was likely to have occurred.
20. When reaching the conclusion that there was an 85% chance the Claimant would have remained in the role until 12 September 2022, the Tribunal took into account a) the fact that the assignment was only for a short period of time overall, and b) the fact that the Claimant has since found a new role

which she has remained in for over a year. These factors indicated that the Claimant would have been likely to remain in the role with Principal Medical Limited until 12 September 2022.

21. The Tribunal did however accept that there was a risk that the Claimant would not have been able to remain in the role until 12 September 2022. In reaching that conclusion, we took into account a) the Claimant's health before the discriminatory event (as set out in the liability judgment), b) the indication the Claimant gave on 15 June 2022 to Ms Nichols that she felt her symptoms were not well controlled on the medication she was taking and the fact she felt her medication needed to be increased, c) how upset she became at work on 15 June 2022, and d) the fact it was agreed she would see her GP. The Tribunal also took into account that the Claimant had left the assignment with Karcher after a few weeks because she was unhappy in the role. The events of 15 June 2022 had started when the Claimant had a difficult conversation with a colleague after she felt the colleague had made an inappropriate comment about the Claimant being overstressed to a patient. These factors indicated that the Claimant may not have been able to remain in the role until 12 September 2022.
22. Overall, the Tribunal concluded that there was a risk that the Claimant would have left the assignment early but concluded that risk was low. This was mainly because she had gone on to remain in employment for over a year in her current role. The Tribunal concluded there was a 15% chance of her assignment ending earlier either due to her health or because of being unhappy in the role. For these reasons, the Tribunal concluded that there was an 85% chance the Claimant would have remained in the role until 12 September 2022, and that she was therefore entitled to be awarded 85% of her financial losses over this period.

### **The calculation of the Claimant's financial losses**

23. The Tribunal started by calculating the Claimant's financial losses between 15 June and 12 September 2022. This was a period of 12 weeks, 2 days, and 6 hours (she had been paid for 1.5 hours for 15 June 2022). The Claimant earned £11 gross per hour for 37.5 hours per week. This is £412.50 per week. Multiplied by 12 is £4,950. She worked 7.5 hours per day, which multiplied by £11 is £82.50 per day. Therefore, adding together 12 weeks (£4,950), two days (£165), and 6 hours (£66) comes to a total of £5,181 gross. 85% of that is £4,403.85.
24. The Respondent explained that the Claimant's holiday pay entitlement was £49.79 per week. This was owed for 13 weeks (13 June 2022 to 12 September 2022) which came to a total of £647.27 and 85% of that is £550.17.
25. The Respondent also explained the Claimant's employer pension contributions were £8.78 per week. The Claimant cannot claim for the employee pension contributions, just the employer's contributions. £8.78 multiplied by 13 weeks comes to £114.14. 85% of that is £97.02.
26. Therefore, the Tribunal calculated the total gross losses over this period as being £5,051.04 (£4,403.85, plus £550.17, plus £97.02).

27. The Tribunal needed to off-set any income the Claimant had received over this period. The evidence in the remedy hearing bundle indicated that over the relevant 13 week period the Claimant received £2,336.08 in universal credit benefits. However, the Tribunal accepted that the Claimant may have been entitled to a small amount of benefits in any event, and therefore did not deduct all £2,336.08, but instead rounded the amount down to £2,200. Therefore, the Tribunal deducted £2,200 from £5,051.04, which came to £2,851.04.
28. The Tribunal therefore concluded that the Claimant's gross financial losses over the relevant period was £2,851.04. The interest owed on the financial losses (£2,851.04) was calculated from the mid-point to the date of the remedy hearing at a rate of 8% which came to £171.22. This came to a total of £3,193.44. The Respondent is ordered to pay the tax and national insurance owed on this to HMRC and pay the Claimant the net amount she is owed.
29. As this is a discrimination case, the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 do not apply.

### **Injury to Feeling**

30. The Tribunal concluded that the appropriate award of damages for Injury to Feelings was £14,000. This figure was inclusive of compensation for the temporary exacerbation to the Claimant's pre-existing mental health condition, and the Tribunal decided not to make a separate award for Injury to Health/personal injury.
31. The Tribunal accepted that the experience of having her assignment terminated after just two days was very distressing for the Claimant. The Tribunal took into account that the Claimant took an overdose of her medication that day, and having spoken to her GP went to A&E and was assessed. The Claimant's GP notes recorded: "She has been doing temp work and has been struggling with depression for a couple of years taking sertraline 50mg daily. Today she took 3 extra not to kill herself but to try to calm herself but it has not worked and now she feels she wants to end it all." Therefore, the Tribunal accepted that the overdose of tablets were taken to calm herself down, but that the Claimant did express to her GP that she had feelings of wishing to end her life.
32. The Tribunal also took into account the fact that after the Claimant's assignment was terminated, her medication was increased, and the fact that these events have resulted in an on-going sense of insecurity regarding her employment. She remains concerned that she could lose her job. The Tribunal also considered that the Claimant did not start work again until September 2022.
33. We weighed these points alongside the fact that the Claimant had, to her credit, managed to obtain full time work from 12 September 2022, and had managed to remain in that role for over a year. Again, to her credit, she has managed to remain in her new role despite having had a further period of

poor mental health since then. We therefore concluded that while the Claimant had been very distressed by the termination of her assignment, she had managed to find new employment fairly quickly after the events of 15 June 2022, and had managed to remain working in that role. For these reasons, the Tribunal accepted that an award in the lower end of the Middle Band was appropriate and awarded the Claimant £14,000 for injury to feelings.

34. The Tribunal declined to make a separate award for Injury to Health/personal injury. The Tribunal accepted the Claimant had a very distressing experience on 15 June 2022, and it resulted in her attending A&E. However, the Tribunal felt this was more appropriately compensated with damages for Injury to Feeling, rather than a separate Injury to Health award. The Tribunal were not persuaded that there was a clear exacerbation in the Claimant's mental health condition, that could be attributed to the ending of the assignment, which was anything other than temporary. The Claimant's mental health clearly fluctuated over the years, as set out in her medical records. The pattern of fluctuation has continued since the events of June 2022. The Claimant's medication was increased on 15 June 2022 but even before the assignment was terminated the Claimant indicated to Ms Nicholls she thought it needed to be increased and therefore there is a good chance it would have been increased in any event. The Claimant explained she had managed to maintain full time work since September 2022, despite having had a further period of poor mental health. In short, the Tribunal were persuaded that the Respondent's actions caused a temporary exacerbation of the Claimant's pre-existing mental health condition but that by September 2022 she had managed to obtain a new role and had managed to continue in that role for over a year.
35. The interest owed on the damages for Injury to Feeling (£14,000) was calculated from the date of the discriminatory act to the date of the remedy hearing at a rate of 8% which came to £1,681.53.

**Total award**

36. The total award of compensation therefore is £18,703.79. However, the Respondent is ordered to deduct the tax and national insurance payments owed on £3,022.26 of that amount, and therefore the payment to the Claimant will be slightly less than £18,703.79.

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Employment Judge Annand

Date: 11 March 2024

REASONS SENT TO THE PARTIES ON

20 March 2024.....

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FOR THE TRIBUNAL OFFICE