



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondents

Ms Elaine Williams

v

Hertfordshire County Council

**Heard at:** Watford (via CVP)

**On:** 16 February 2024

**Before:** Employment Judge Daley

**Members:** Mr P Hough  
Mr C Grant

## Appearances:

**For the claimant:**

Ms L Hudson, of counsel-Public Access

**For the respondents:**

Mr Ryan Anderson- counsel

## RESERVED REMEDY JUDGMENT

The unanimous decision of the tribunal is that:

1. The respondent must pay the claimant the sum of-: **£22,500.00** (a) **£17,500.00** by way of compensatory award for subjecting her to a detriment pursuant to Section 47B of the Employment Rights Act 1996. And;  
(b) The sum of **£5000.00** for injury to feelings
2. Regulation 4(3) of The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 does not apply.
4. No tax is payable on the award as it is a payment for compensation below the £30,000 threshold.

# REASONS

## Introduction

1. Having found in favour of the claimant in the Tribunal's Judgment announced on 15 February 2024 that the claimant had suffered a detriment due to a Protected Disclosure. After the evidence and submissions at the Remedy Hearing we reserved judgment because there was insufficient time.
  2. The judge apologises for the delay in promulgation of this reserved judgment.
- The Issue**
3. The claimant's claim was that the respondent treated her detrimentally for making a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996 ("the Act"), contrary to section 47B of the Act. Her claim was for compensation only.
  4. The only issue for the tribunal to decide at this hearing is the compensation the claimant should be awarded for her complaint.

## **Evidence before the Tribunal**

5. On 16 February 2024 the Tribunal was provided with a further witness statement dated 13 February 2024, comprising 42 paragraphs. It also heard oral evidence from the claimant, who provided an updated schedule of losses and provided details of her efforts to mitigate her losses. She was cross-examined by Mr Anderson. The Tribunal also heard submissions from both counsels.
6. The Tribunal record here the relevant findings of fact from our liability decision, and additional findings of fact we have made based on the evidence we heard and read at the remedy hearing.
7. The Claimant began early conciliation on 31 August 2022 and the Employment Tribunal claim was issued on 16 October 2022. The claimant was employed as a locum social worker for six weeks.
8. In her ET 1 The claimant pleaded that on 9 June 2022, the claimant made a protected disclosure via email setting out concerns that she had about two foster children. In her email the claimant set out that "I have escalated my concerns to the child's social worker, my manager, Fostering Services Manager and Independent Reviewing Officer". The claimant claims that because of this she was provided with a poor reference which was not factually accurate which resulted in her offer of employment being withdrawn.
9. The Tribunal by a majority found that the claimant had made a protected disclosure and that this was the principal reason why she was given a poor reference. The Tribunal also found that the poor reference was why Aim High (confirmed by email) withdrew the employment offer.
10. In her witness statement, the claimant stated that she had been unemployed since June 2022, when she resigned from the Respondent social services department before her expected commencement day at Aim High.

11. The claimant had also provided a Schedule of Loss in which she set out and explained her heads of claim. The claimant's schedule of loss as understood by the Tribunal set out that her annual salary had she been appointed by Aim High was £37,000. As she had been unable to find work since, her claim was for 21 months (about 2 years) of salary in the sum of £64,750.00 (sixty-four thousand and seven hundred and fifty pounds). She was claiming a sum for the fact that she had missed making pension contributions for the period of her unemployment. At a monthly rate of £145.83 with her employer's contributions calculated at £87.50 per month.
12. The claimant also claimed for sums for her missing pension contributions in the sum of £3062.43 plus a claim for additional pension contributions in the sum of £7579.00. Although the Tribunal was unclear as to the reason for this element of the claim, it appeared to be on the basis that she had and would continue to be unable to find work and would have to pay additional contributions to be able to provide a suitable pension on retirement.
13. In addition, the claimant claimed sums for unpaid National Insurance contributions in the sum of £198.96 per month in the total sum of £2387.52 for the 21-month period. She also included sums for holiday pay and Compulsory Professional Development training which her employer would have paid for.
14. As a separate heading the claimant claimed £33.00 per month for her internet and phone expenses, which she claimed as necessary in seeking work.
15. The claimant said she tried to find alternative work and referred the Tribunal to her CV and to the emails to her by agencies looking for social workers. There were also some letters which concerned two interviews having been arranged.
16. The claimant also claimed loss of future earnings up until her retirement at the age of 67 years old in the sum of £185,000. She also wanted the tribunal to uplift the award by 10% to consider the ACAS uplift for the respondent's failure to follow the ACAS code of guidance.
17. In respect of injury to feelings, the claimant claimed the total sum of £133,578.22. The claimant also claimed sums for unemployment benefit and loans from family members, counsel's fees and accountants' fees. The Tribunal has not set this out in any detail, as it is clear that if the claimant was compensated on the basis of her claim, she would not be entitled to recover sums for loss of income and income support and or loans from family members that she had used to support herself whilst she was unemployed as this would have represented a double recovery. There was no award for cost which would have enabled recovery of legal fees, and there was no information on why accountant's fees would have been payable, or why this should form the basis of part of a compensatory award.
18. During his cross-examination Mr Anderson asked the claimant about her work history as included in her CV. He referred her to her CV in which she set out that she was -: "A successful senior practitioner with a wealth of transferable social work skills, gained through hard work over 15 years child protection/fostering in the Social Work profession." The claimant agreed that she had transferrable skills. Mr Anderson asked her about the last 10-year period of her employment prior to her working for the respondents. she

accepted that she had 11 jobs and 8 Gaps. She told the Tribunal that during the career breaks she had taken time off to engage in family care, she told the Tribunal that she had supported her mother during her illness and end of life care and her children. (The youngest of whom was now 24 years old). She also told the Tribunal that she had taken time out of work to take her father to medical appointments.

19. In answer to Mr Anderson's claim that she had numerous short spells of employment, she stated that the job at Aim High was only 3 miles away from her home address and given its conveniency it was likely that she would have stayed there for a significant period or until her retirement.
20. Mr Anderson referred to her job applications he referred to the emails and noted that there was no evidence that she had applied for any jobs between August and November 2022. Or between January and November 2023. Although the claimant did not accept that this was the case, she had not included details of any of the applications that she had made.
21. The Claimant was also asked about several enquiries that she had from agencies telling her about job opportunities which were available. For example, where she had been told about a particular role, she was asked about whether there was evidence that she had applied for the position. The claimant informed the Tribunal that her solicitor had come off the record, at some point, and that she was unaware that she had to provide details of each of the roles that she had applied for. She had also had to manage much of the process for the employment Tribunal herself after her solicitor came off the record.
22. The claimant also told the Tribunal that there were roles that she had applied for such as one at Thurrock where she had been interviewed in August 2022. However, there was no information on the outcome or feedback about why she had been unsuccessful. One example was a series of roles that had been set out in an email from Rhys Rafferty on 25 August 2022 which detailed a wide variety of roles across London and the UK, (approximately 60- 70 vacancies).
23. The claimant told the Tribunal that "my specialism is Fostering and assessment, these roles are looked after team or referral assessment. This is outside my specialism. Referral and assessment, and looked after children these are the type of roles I would have gone for when I was first qualified..." She also stated that for some of the roles she would have needed to undertake further, updating training as she needed to update her knowledge. And would have needed funding to be able to undertake such training.
24. Mr Anderson submitted that the claimant had been employed for an average of 5.5 months with the 11 employees whom she had worked for in the last 10 years. There were also career gaps in her CV. He submitted that it was, more t probably than not that the Tribunal could conclude that the claimant would not have been in that job for a long period. Although she had set out that Aim High would have been a permanent role, which she would have kept for longer as it was three miles from her home.
25. Mr Anderson submitted that the Tribunal should exercise, caution in accepting the explanations given by the claimant as to why she had been unable to secure work. He stated that she had been assisted by an experienced individual in preparing her case, and that for a considerable period in this litigation assisted

- by Solicitor or experienced Counsel. Mr Anderson submitted that the claimant acted unreasonably and had failed to mitigate her losses. He stated that there were many jobs that she was sent information about from specialist agencies where she provided no evidence of her exploring the potential roles. He said that her failure to consider a job even at a lower level amounted to an unreasonable failure to mitigate her losses.
26. Mr Anderson referred the Tribunal to the calculation of her salary breakdown from Aim High. The salary was £37,000, the take home pay was 29,182.40, a monthly amount of £2431.86 after deducting of tax which the claimant would have had to pay. In respect of her claim for pension contribution, he submitted that the claimant would have been required to contribute from her salary any provision for additional pension would have been payable by her, and she had not provided any information about her pension. He submitted that National insurance contribution would have been deducted, and holiday pay would have been part of the claimants pay.
  27. The claimant was also claiming her expenses for finding work, Mr Anderson submitted that although the claimant was entitled to her reasonable expenses in seeking employment, there was no evidence, to say that she had to pay for internet access over and above her normal usage, or that she had incurred additional cost for the use of her phone.
  28. He submitted that the claimant was not entitled to Future loss, as there was a wealth of Jobs available, Mr Anderson stated that if the claimant was applying for any of these jobs, she would have found a job by now.
  29. He referred to the claimant's heads of claim which included a 10% uplift for failure to follow the ACAS code of practice, he did not accept that this was payable in the circumstances of this case. He accepted that the Tribunal could make an award for Injury to feelings and that the applicable Guidelines, were the Vento Bands. However, Mr Anderson submitted that there was no evidence of the psychological impact that the claimant claimed to have suffered, neither in support of the significant impact on her well-being that the claimant claimed she had suffered. He urged the Tribunal to exercise caution given the lack of evidence.
  30. He further submitted that there were three factual complaints about the claimant's practice, and there had been concern about her failure to access the IT System and complete the case management. Given these failings the reference was not wholly inaccurate. Given this he submitted that there was contributory fault on the claimant's part which had led to the loss of her employment with Aim High.
  31. Mr Anderson referred the Tribunal to **Hollier –v- Plysu [1983] IRLR 260**, He submitted that the Tribunal may reduce any compensatory award by such proportion as it considers just and equitable. The Tribunal decision was “so obviously a matter of impression, opinion, and discretion...”
  32. He asked the Tribunal to consider whether the claimant was wholly to blame, or in the alternative whether she had some contributory fault and to assess this as a percentage and reduce the award accordingly.

33. Ms Hudson in her closing submissions on behalf of the claimant, told the Tribunal that they should consider the starting point, as the fact that Ms Gitos admitted that the reference was sent by mistake. She submitted that the claimant was a Litigant in Person since August and although the claimant was represented at the hearing, Ms Hudson's role was limited to advocacy. She had not assisted her with the Schedule of Loss.
34. Ms Hudson submitted that the fact that the claimant had not applied for benefit meant that she was expecting and seeking to find work. She submitted that the ACAS guidelines did apply, although it had not been on the list of issues. However, she submitted that it was still open for the Tribunal to apply the uplift. Ms Hudson submitted that for contributory fault to apply the claimant must be shown culpable or blameworthy in some way, and that she could not see how contributory fault arises.
35. She submitted that the claimant's claim was for loss of her salary with Aim High, this flowed direct from the respondent's wrong. Ms Hudson submitted that the starting point was the salary that the claimant would have earned which was £2472.58 a month after tax, Ms Hudson also submitted that the Tribunal should make an award for injury to feeling which she submitted was at the top of the middle band at £50,000
36. She submitted that the Tribunal could and should make an award for aggravated damages. Ms Hudson submitted that what was done, was done in a high handed and oppressive way. The Tribunal should make an award for aggravated damages and exemplary damages as this would send a strong message to the LA who had acted insensitively, oppressively and arbitrarily in their conduct.
37. Ms Hudson also submitted that the Tribunal should take account of the claimant's evidence and ought to consider an award for future losses.
38. We applied the legal principles to the facts as we found them and reached the following conclusions.

## **The Law**

39. **Section 49 of the 1996 Act- provides that** -:Where an [employment tribunal] finds a complaint well-founded the tribunal- (a) shall make a declaration to the effect, and (b) may make an award of compensation to be paid by the employer to the complainant in respect of any acts or failure to act to which the complaint relates.
40. The Tribunal was also assisted by the guidance given in The Remedies Handbook 2023-2024 : "If a claim is well founded the tribunal must make a declaration and may make an award of such an amount as it considers is just and equitable having regard to: 1) the infringement to which the complaint relates; 2) any loss which is attributable to the act, or failure to act, which infringed the claimant's right (s49(2) ERA 1996, ... The loss shall be taken to include: any expenses reasonably incurred by the claimant in consequence of

the act, or failure to act, to which the complaint relates; and loss of any benefit which the claimant might reasonably be expected to have had but for the act or failure to act (s49(3) ERA 1996 ... The award may also include compensation for injury to feelings. Where a worker has brought the claim under s45A, 47B or 47D and the detriment is termination of the contract, which is akin to a claim for unfair dismissal of an employee, it is arguable that injury to feelings may be awarded.

**The financial losses in principle caused to the claimant and other relevant determinations of principle**

**The claimant's losses in principle**

41. In respect of the infringement the Tribunal found that the claimant was out of work from the 15 June 2022 until the date of the hearing, 16 February 2024. She did not claim any state benefits during the period between the date. The Tribunal has not attributed her period of unemployment to the detriment suffered.
42. Neither has the Tribunal made a finding that she contributed to what occurred, as having found that the protected disclosure was the substantial reason for the poor reference (by a majority) the Tribunal cannot speculate on what would have occurred, had the reference only included the three complaints which had been made about the claimant.
43. During that period (15 June 2022- 16 February 2024) the claimant set out multiple reasons as to why she was unable to find alternative work, at best she did not consider that her skills were up-to date for some areas of practice. Accordingly, she told us that she needed additional training. At worst there appeared to have been a refusal on her part to consider any other area of practice other than one which involved the supervision of foster carers. The claimant referred to some areas of practice as being areas that she would have undertaken when she was first qualified, rather than as an experienced social worker.
44. The claimant further claimed that the reference had ruined her reputation. However, the claimant did not provide any evidence that this had happened or that the reference had been disseminated, or seen by other potential employers. The Tribunal noted that the reference had been withdrawn. The Tribunal finds that given this, the poor reference should not have prevented or hampered her in her ability to find work.
45. The Tribunal finds that Ms Gittos acted promptly to the claimant's request that the reference be rescinded, the Tribunal considered her letter in which she stated:- "I am writing regarding a reference supplied to you by Grete Lund, Service Manager dated 29.06.22 in respect of Elaine Williams. I am requesting that your service please delete all copies of this reference stored on all computers and any other devices and that you please kindly confirm that you have deleted the reference? I make this request because Hertfordshire policy

is to give an HR reference only and the first reference dated 29.06.22 was sent in error and contained factually incorrect statements.”

46. The Tribunal noted that the reference was provided on 29 June 2022, and that in response to the Claimant’s issuing a complaint Ms Gittos had by the 19 July 2022 indicated that she was prepared to withdraw the reference. In her email of the same date, she wrote: “Regarding your reference, I would be very happy to rescind the reference written by Grete Lund to Guidant Global and to arrange for you to receive a standard Hertfordshire Human Resources (HR) reference. The standard HR reference confirms dates of employment, last position held and reason for leaving, which I understand in your case was to take on a new position.”
47. Given this, the Tribunal finds that there was no barrier to the claimant seeking work as a result of the poor reference, after 19 July 2022. It noted that the claimant, has set out that although there were jobs, she was not qualified to undertake those roles. However, the claimant did not provide any evidence that her knowledge and skills would have been considered out of date or that she would have had to undertake training to undertake these roles, or indeed that an employer would not have been willing to provide such training.
48. The Tribunal has noted the considerable list of vacancies (which numbered into the hundreds) that the claimant was sent, and the minimum hourly rate of pay that was being offered, which at £30.00 per hour gross was comparable to the position which she had been offered prior to the poor reference at Aim High.
49. The Tribunal finds that the claimant has failed to demonstrate that she took reasonable steps to mitigate her loss.
50. The Tribunal finds that within a five to six-month period the claimant ought to have been able to find suitable work commensurate with her experience and aptitude.
51. The Tribunal has determined that it is just and equitable to award the claimant the sum of £17,500. (Gross pay at the rate of £2500.00 per month for 7 months.) This took into account the fact that the claimant would not have been able to start looking for work until the issue of the reference was resolved.

### **The claim for aggravated damages**

52. As for the question whether or not the claimant should receive aggravated damages, the Tribunal took into account in deciding this, that since, the award of aggravated damages is compensatory and not penal, we should not award a separate sum for aggravated damages since we had already (see below), in deciding the award for injury to feelings, taken into account the matters on which the claim for aggravated damages was based.
53. **The claim for an uplift in the compensation by reason of the claimed failure to comply with the ACAS code of practice**
54. Turning to the question of the alleged failure to comply with the ACAS code of practice, the Tribunal was not satisfied that the ACAS code of guidance was engaged or that the respondent has acted in bad faith or otherwise unreasonable in failing to apply the code. Further it noted that this was not



included within the list of issues, and as such the respondent was not able to respond to this element of the award. Accordingly, the Tribunal has determined that no uplift to the award should be made under this heading.

**55. What the award for injury to feelings should cover**

56. The Tribunal was satisfied that the claimant should receive compensation for injury to her feelings arising only from the detrimental treatment.

57. It heard that the claimant had suffered as a result of the distress that the reference caused her and the subsequent withdrawal of the offer of employment.

58. The Tribunal accepted that the actions of the respondent, did cause injury to feeling, however it had no evidence that the claimant was unable to work or was in receipt of medical treatment as a result of the respondent's action towards her. The Tribunal has considered the applicable *Vento bands*, and having considered the range of cases for injury to feelings, the Tribunal finds that the claimant's injury to feelings, should be awarded at the bottom of the middle band in the sum of £5000.00.

59. The Tribunal has in reaching its decision considered the sum of compensation, which is just and equitable to award, it noted that the respondent acknowledged that the reference ought not to have been given and acted to put things right. It has taken this into account when considering the compensation to be paid to the claimant.

60. The Tribunal finds that there should be no compensation for future loss, as it considered that the claimant failed to mitigate her losses. It is also not satisfied on the evidence before it that she incurred additional expenditure for finding work. The award has also taken into account the loss of any employer's pension contribution for the period of six months.

**61. The total net award has not been grossed up as there is no need to gross it up to take account of the impact of income tax**

62. The total sum payable to the claimant is £22,500.

**Employment Judge Daley**

**Date: 12 April 2024**

JUDGMENT SENT TO THE PARTIES ON  
1 MAY 2024

FOR THE TRIBUNAL OFFICE