



EMPLOYMENT TRIBUNALS

Claimant: Mr A Hussain

Respondent: Home Office

Heard at: Leeds by CVP

On: 30 April 2024

Before: Employment Judge Maidment

Members: Ms Y Fisher
Mr J Howarth

Representation

Claimant: In person

Respondent: Ms S Cummings, Counsel

JUDGMENT

As compensation for injury to feelings, the respondent is ordered to pay to the claimant the sum of £1,000 together with an additional sum of £116.92 in respect of interest thereon.

REASONS

Issues

1. This hearing was listed to determine the claimant's remedy arising out of the tribunal's findings that the respondent subjected the claimant to an act of victimisation in respect of his messaging conversation with Mr Shah on 9 November 2022. The claimant seeks an award of compensation for injury to feelings. These reasons must be read with reference to the tribunal's Reserved Judgment and Reasons as to liability dated 4 December 2023.

Applicable law

2. As regards injury to feelings arising out of the act of discrimination upheld, according to **Prison Service and others v Johnson [1997] ICR 275** the purpose of an award for injury to feelings is to compensate the claimant for

injuries suffered as a result of the discriminatory treatment, not to punish the wrongdoer. In accordance with **Ministry of Defence v Cannock [1994] ICR 918** the aim is to award a sum that, in so far as money can do so, puts the claimant in the position he or she would have been had the discrimination not taken place. Pursuant to **Corus Hotels Plc v Woodward [2006] UK EAT/0536/05**, an Employment Tribunal should not allow its feelings of indignation at the employer's conduct to inflate the award made in favour of the claimant.

3. The Tribunal was referred to the **Vento** guidelines (derived from **Vento v Chief Constable of West Yorkshire 2003 ICR 318**) and to the guidance given in that case where reference was made to three bands of awards. Sums within the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory treatment. The middle band was to be used for serious cases which did not merit an award in the highest band. Awards in the lower band were appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. Nevertheless, the tribunal considers that the decisive factor is the effect of the unlawful discrimination on the claimant.
4. The bands originally set out in **Vento** have increased in their value and are now the subject of Presidential Guidance which re-drew the lower band for claims brought on or after 1 April 2022 as ranging from £990 - £9,900 with the middle band going up to £29,600. The claimant's complaints were brought on 12 December 2022.

Evidence and factual findings

5. The claimant did not seek to rely on any documentary or witness statement evidence beyond that already before the tribunal at the previous liability hearing with the exception of a letter from his GP of 11 January 2024. The tribunal identified with the claimant that he dealt with pure remedy issues in his original witness statement from paragraph 152 onwards. Nevertheless, on adjourning to read through such relevant evidence, the tribunal did consider the witness statements submitted by the claimant's wife and Ibrar Hussain, the latter of which referred to a deterioration in the claimant's mental health from June 2022. The tribunal also considered counselling records included within the original tribunal bundle.
6. On reconvening the hearing, the tribunal referred to the further statements and documents it had considered. The claimant confirmed again that there was nothing further he wanted to tell the tribunal. Ms Cummings had no question she wished to put to the claimant.

7. The tribunal then heard oral submissions on behalf of the respondent. Those are to the effect that the tribunal ought to make no award in the absence of evidence as to any injury to feelings caused or alternatively one at the lowest point of the lower Vento band. The claimant submitted that any award should fall within the middle band giving a figure of £33,200 to which should be added interest and a 25% ACAS uplift arising out of a failure to follow the code of practice relating to the handling of grievances.
8. The claimant's witness evidence did not contain any particular assertion that the act of victimisation with which the tribunal is concerned caused specific injury to feelings. His evidence was as to the overall consequences for his mental health of a range of matters in respect of which he had brought his tribunal proceedings.
9. The approach taken by Mr Shah on 9 November 2022 post-dated the claimant's interview on 27 June 2022 in which he was unsuccessful for his application for promotion and which then gave rise to a complaint of 3 August and his first grievance of 26 October. After the message exchange with Mr Shah on 9 November 2022, the claimant raised a second grievance in January 2023 which was said to be solely based on his second interview for the position, in which was again unsuccessful. He complained of a failure to make reasonable adjustments. He did not refer to the change of approach by Mr Shah on 9 November 2022.
10. The claimant's tribunal application itself did not refer to the incident and indeed it did not become part of his claimant until raised for the first time at a preliminary hearing of a case management nature on 28 March 2023.
11. The claimant's GP has written on 11 January 2024 confirming that the claimant is suffering with severe mental health issues, both depression and anxiety and stating that his symptoms started following problems at work when he was going for a promotion. There was a reference to him reporting work related discrimination to his employers on 9 November 2022 which is not an accurate reference to his conversation with Mr Shah. His GP describes in more detail his symptoms and impairments together with medication taken and therapy received. It is noted that the claimant had been off work from 1 February 2023 until 3 December 2023 before returning on a phased basis. That report cannot assist the tribunal in understanding any specific effect on the claimant of the relevant events on 9 November 2022.
12. The tribunal, as stated above, has been through records of counselling sessions attended by the claimant. These appear to have commenced from November 2021 in relation to concerns about the health of the claimant's infant daughter as result of which he had been prescribed antidepressant medication. On 5 April 2022, the claimant's concerns appeared to relate to domestic matters. A record on 12 May refers to feeling stressed at work

and at home, to medication prescribed from the previous year and medication having been doubled 3 weeks previously. The claimant describes panic attacks when seeing emails from particular management on 6 June 2022. All of these feelings and impairments predate the matters complained of in these proceedings. He attended a final counselling session in a series 18 July 2022 after his first unsuccessful interview.

13. Counselling appears to have resumed in October 2022 when the claimant refers to upset about the way the interview process had been conducted and discrimination at work. At a session on 19 November 2022, he made no reference to the then recent events of 9 November.

Conclusions on remedy

14. The tribunal can award compensation for the injured feelings arising only out of the act of discrimination found.
15. The tribunal is here compensating for an injury to feelings for a single complaint of victimisation in respect of Mr Shah's reaction to the claimant's request for information and assistance during a 9 November 2022 messaging discussion. This was a single momentary occurrence of unfavourable treatment and one which would point towards a categorisation in the lower Vento band without evidence of particular upset. It is in the context of the claimant already having been through an unsuccessful interview on 27 June, complained about that on 3 August and raising a formal grievance on 26 October 2022. The act of victimisation is then followed by the claimant being reinterviewed unsuccessfully and then raising a second grievance in January 2023.
16. The tribunal has to conclude that Mr Shah's change in approach during the messaging conversation was an issue for the claimant – he believed that Mr Shah could and would give him some insight into the role he was applying for. However, it was not much of issue for him at the time. In terms of its effect on him, not much can be hung on this incident including in terms of how the claimant felt given the overall context. The claimant's primary and overriding concerns derived from an interview where he felt he had been treated unreasonably. He didn't include this incident in a second grievance and it was not raised until a preliminary hearing in these tribunal proceedings.
17. The tribunal recorded in its earlier reasons that the claimant adopted a scattergun approach contacting a large number of people in attempting to get the answer he wanted. Mr Shah was one of those people and had had no material involvement in the claimant's case. Mr Shah in fact did the right thing in referring the claimant to HORC as was established practice.
18. There is then no medical evidence or evidence from counselling records which can be linked to this event. The claimant had significant mental health

issues and was receiving counselling even before his first interview including relating to his daughter, concerns about passing his probation period and a stress risk assessment which was being arranged at work. He was already under significant medication. Claimant's major issue by October 2022 was how his first interview had been handled. In a counselling session on 19 November, he makes no reference to Mr Shah's treatment of him.

19. He has clearly suffered thereafter in terms of his mental health, but without any evidence of any linkage to Mr Shah's treatment of him on 9 November or that being any form of trigger. Again, the medical evidence is supportive of this not having a material impact on his health. It is difficult when faced with a range of complaints and a period of obvious upset and mental ill health to separate out the effects of one act from another. On no commonsense view, however, given the scope and focus of the claimant's concerns was this unfavourable treatment on 9 November 2022 significant.

20. In all the circumstances, an award in the lower Vento band would be appropriate for the single act of victimisation as found and indeed in the lower part of that band. The tribunal has determined that a figure of £1000 would be an appropriate sum in money terms to compensate the claimant for injury to feelings. The tribunal believes that the evidence justifies what it recognises to be a low award. Interest accrues on this sum at the rate of 8% with there being a 76 week period from the act complained of until today's hearing. That gives an additional sum of interest to be added of £116.92. The tribunal cannot consider an uplift for any breach of the ACAS code on grievance procedures in circumstances where no grievance was raised about the act complained of.

Employment Judge Maidment

Date 30 April 2024

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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Recording and Transcription

Case No: 600086/2022

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