EMPLOYMENT TRIBUNALS

Claimant: Mr Neva Narli

Respondent: Babcock Integrated Technology Ltd

Heard at: By Video **On:** 8 – 11 April 2024

Before: Employment Judge Danvers
Mrs Monaghan
Mr Beese

Representation
Claimant: In person
Respondent: Mr Adjei, Counsel

RESERVED JUDGMENT

1. The Respondent shall pay the claimant the following sums:

    a. Compensation for past financial losses: **£11,419.56**;
    b. Interest on compensation for past financial losses calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: **£757.86**;
    c. Compensation for injury to feelings: **£10,000**;
    d. Interest on compensation for injury to feelings calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: **£1,333.88**.

REASONS

Introduction

2. By a claim form received at the Tribunal on 19 January 2023, the Claimant brought a claim against the Respondent for direct nationality discrimination under s.13 Equality Act 2010. Having heard evidence and submissions on 8 - 10 April 2024, we upheld the Claimant's complaint and found that the exceptions under s.192, Schedule 9 para 1 and Schedule 23 para 1(e) Equality Act 2010 did not apply. We further found there was a 40% likelihood that the Claimant would have been dismissed for non-discriminatory reasons two weeks after his employment in fact terminated.

3. An oral Judgment and Reasons in respect of those matters were delivered on the morning of 11 April 2024. With the agreement of the parties, we moved on to hear evidence and submissions and to deliberate in relation to remedy that afternoon. However, there was insufficient time to provide an oral Judgment on remedy and so Judgment was reserved.

Issues

4. The Claimant confirmed he was not seeking a recommendation and nor did we consider this was a case where one would be suitable. The Respondent did not suggest this was a case where a declaration alone would be appropriate, and we did not consider it was such a case given the Claimant had suffered loss. Therefore, the issues we had to consider were limited to the amount of a financial award. The issues for us to determine were as follows:

    a. What financial losses has the discrimination caused the claimant? It was agreed that the Claimant's net weekly remuneration in respect of the engagement with the Respondent was £924.97.

    b. Has the claimant taken reasonable steps to mitigate his loss? If not, for what period of loss should the claimant be compensated?

c. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

d. Should the Claimant be awarded a sum for aggravated damages?

e. Did the Acas Code of Practice on Disciplinary and Grievance Procedures apply? If so:

   i. Did the Respondent unreasonably fail to comply with it?

   ii. If so, is it just and equitable to increase any award payable to the claimant?

   iii. By what proportion, up to 25%?

f. Should interest be awarded? How much?

Procedure, documents and evidence heard

5. We were provided with a Remedy Bundle which ran to 87 pages (this was in addition to the bundle and witness statements which we had already been provided with at the start of the liability hearing). The Claimant relied on a Schedule of Loss claiming £84,789.18. This comprised compensation for loss of earnings and injury to feelings. He also indicated in his witness statement that he was seeking compensation for aggravated damages and an Acas Uplift. The Claimant gave oral evidence and both the Claimant and Respondent's counsel made oral submissions.

Findings of fact in relation to remedy

6. The Claimant's engagement with the Respondent started on 8 August 2022 and ended on 11 August 2022. He had been sourced and placed with the Respondent by Expleo Engineering Ltd ('Expleo'), specialist recruiters of engineers for the sector. He was engaged through an 'umbrella' employment agency, JSA Group Ltd t/a Workwell ('JSA').

7. Prior to his engagement with the Respondent, the Claimant worked for Siemens Energy from June 2020 until June 2021 as a DFM Engineer. From

August 2015 until May 2020, he worked for Rolls Royce as an NPI Engineer and prior to that for GE Aviation. Most of his experience was as an engineer in the aero / aero derived energy engines industry.

8. Between June 2021 and 8 August 2022, the Claimant was not working because he had been unable to find a job. During that period, he had been seeking a job as a mechanical engineer in different industries but had been unsuccessful in obtaining one.

9. The Claimant lived in Gloucester before and during his engagement with the Respondent and still lives there. He has lived in Bristol in the past.

10. We were provided with documentary evidence which showed that the Claimant had applied for various engineering roles after his engagement with the Respondent ended. The number of jobs applications per month which are evidenced by the documents are as follows:

    a. August 2022 – 3

    b. September 2022 - 0

    c. October 2022 - 0

    d. November 2022 - 0

    e. December 2022 - 1

    f. January 2023 – 5

    g. February 2023 – 3

    h. March 2023 – 3

    i. April 2023 – 0

    j. May 2023 – 4

    k. June 2023 – 0

    l. July 2023 – 3

    m. August 2023 - 0

    n. September 2023 - 0

o. October 2023 – 5

p. November 2023 – 4

q. December 2023 – 5

r. January 2024 – 4

s. February 2024 – 4

11. The Claimant's evidence was that in addition to those for which he could provide documentary evidence, he applied for 'many' more jobs. He explained that when he applied directly on a company's web page, many did not send a confirmation or just called him straight away to either invite him to an interview or speak to him about the application. He noted that each week he had to go to Universal Credit appointments and explain what he had been doing to look for a job.

12. We accept that there may have been a few applications that the Claimant made for which there is no documentary evidence because, as he suggests, he applied directly via a company website and heard nothing about the role in writing. However, we accept the Respondent's case that it would have been relatively uncommon that there would be nothing in writing to either indicate that an application had been made or the outcome of that application.

13. We also accept, as the Respondent suggested, that it is unlikely that the distribution between those applications for which there was documentary evidence and those for which there was not, would vary much from month to month. For example, we consider it is unlikely that in August 2022 and January 2023 there would be 3 / 5 applications that could be evidenced with documents but that there would be nil which could be evidenced with documents between September – December 2022 if the Claimant had applied for the same or a similar number of jobs.

14. Accordingly, while we accept that there might have been some applications with no paper trail that were additional to those listed above, we have concluded this would have been no more than 1-2 per month.

15. The Claimant restricted his job search for roles that were either entirely /

mainly remote, or would involve no more than 1 hr of travel from his home (each way). This included North Bristol, but not the rest of Bristol. The focus of his search has been on mechanical engineering jobs. He said, and we accept, that he did also investigate a role for a logistic company delivering packages, but he would have needed to lease or buy a van which was not feasible.

16. The Claimant said that he was hampered by the lack of a reference from the Respondent. His evidence, which we accept, is that he reached the 'reference stage' of an application once in 2022 and three times in 2023. Further, that he did not request a reference from the Respondent because it was only three days of employment and he did not think he would be believed when he told potential employers that there had just been a mistake in the security vetting and was concerned it would not create a good impression.

17. The Respondent relied on a report dated March 2024 produced by a recruitment partner that the Respondent works with (Manpower). This purports to give an overview of Mechanical Design Engineer roles from September 2022 to March 2024. We were not provided with any information about the instructions given to this company, the methodology they used, or the data relied on in the report. We therefore concluded there was limited weight we could put on the report. The most we were able to ascertain from the report is that there did appear to be a fairly steady number of Mechanical Design Engineer roles over the period the report covered (i.e., there was not a sharp decrease or increase in numbers in the relevant period). Further, it appeared that Bristol was one of the top areas for those types of jobs, which the Claimant did not challenge. We did not draw any conclusions from the report on the total number of jobs advertised during the relevant period as it was unclear if, for example, Manpower had ensured they had not double counted for the same job being advertised by more than one company. The Claimant also made the point, which we accept, that not all the jobs listed in the Manpower report would have been suitable for him in terms of his specific expertise and it is also unclear how many were in the different geographical regions that were covered.

18. The Claimant has a wife and family and we accept therefore, that if he had to

move house it would involve some disruption. He also gave evidence, which we accept, that he has a mortgage and that he would not have been able to afford the costs of relocating, or obtain a mortgage on a new house immediately if he had obtained a job in a different city.

19. After his engagement with the Respondent was terminated, the Claimant initially spoke to Expleo about an alternative role and said he would be willing to rescind his dual-nationality, but that did not progress. Thereafter he said he did not ask Expleo for an alternative role because he had raised a grievance about his engagement with the Respondent ending. While we accept this was the reason he did not ask Expleo for an alternative role after the initial discussion, we have not seen any evidence to suggest (and do not find) that Expleo was effectively poisoned against the Claimant or would not have been willing to try to place him elsewhere because he had raised the grievance.

20. The Claimant signed up to one other recruitment agency, but did not apply to any others because he said he did not have direct contacts in any other agencies.

21. The Claimant tried to raise a grievance with the Respondent and asked Expleo for the relevant person to whom to raise a grievance. However, Expleo directed the Claimant to JSA. Accordingly, the Claimant did not in fact raise a grievance with the Respondent and the finding of EJ Livesey at a preliminary hearing on time limits (which has not been appealed or subject to a reconsideration application) was that the Respondent had nothing to do with the grievance investigation, outcome and / or appeal and did not appear to have known of the process at all.

22. We accept the Claimant's evidence (which was not challenged) that after the engagement ended, he started to feel depressed and stressed and suffered from some anxiety and insomnia in the first months. Further, that this increased when he had to deal with the grievance and appeal. He also suffered a panic attack on 21 August 2023, which led him to call an ambulance. At around the same time he had a young baby and his partner was pregnant again. His partner became ill during her pregnancy and the Claimant had to take her to hospital: he said this did have a psychological

impact but he was still able to look for a job during that time. The Claimant's evidence was that his wife's midwife kept checking whether he had obtained a job which gave rise to feelings of inadequacy and stress that he could not provide for his family.

23. In his witness statement the Claimant said that what made the situation 'even more bitter' was his belief that the situation had involved Ms Bartholomew slandering him and that she had an intention to destroy his reputation and career. In both the liability part of the hearing and in the remedy hearing, the Claimant was very focussed on his perception of Ms Bartholomew's involvement and was clearly very upset by that. It was put to him that the vast majority of his hurt feelings were caused by his perception of Ms Bartholomew's involvement, which the Claimant denied, he said that finding out about her involvement was a shock, but he was also very upset by what happened as part of the grievance and appeal process.

24. We find that the Claimant was very upset by his perception of Ms Bartholomew's involvement and by how the grievance was dealt with, but he also became upset in evidence when he talked about the impact of having gone through the process of becoming a UK citizen, which was onerous, and then effectively being treated as a 'non-UK national' by the Respondent. We also accept that he suffered stress and upset as a result of losing the engagement when he had already been out of work for some time and at a time when his young family was growing, and he wanted to be able to provide for them.

The Law

25. Pursuant to s.124 Equality Act 2010:

> (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).
>
> (2) The tribunal may—
>
> (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
>
> (b) order the respondent to pay compensation to the complainant;

> (c) make an appropriate recommendation.
>
> (3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.
>
> …
>
> (6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court or the sheriff under section 119.

26. S.119 provides:

> …
>
> (2) The county court has power to grant any remedy which could be granted by the High Court—
>
> (a) in proceedings in tort;
>
> (b) on a claim for judicial review.
>
> …
>
> (4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).
>
> …

27. It is for an employer to show that a claimant has acted unreasonably in failing to mitigate their financial loss and the Tribunal should not apply too demanding a standard to the victim of a wrong (**Cooper Contracting Ltd v Lindsey** UKEAT/0184/15).

28. An award for injury to feelings should compensate for the employee's injury rather than seek to punish the tortfeasor (**Prison Service v Johnson** [1997] IRLR 162).

29. When assessing injury to feelings it is necessary to consider what injury to feelings has been caused by the discriminatory act, as opposed to a non-

tortious reason (**Coleman v Skyrail Oceanic Ltd** [1981] IRLR 398). Where there are multiple causes of injury some of which are tortious and some which are not, Tribunals should try to identify a rational basis on which the harm suffered can be apportioned between a part caused by the employer's wrongdoing and a part which is not so caused (**BAE Systems (Operations) Ltd v Konczak [2018] ICR 1** at para 71 - 72).

30. In the case of **Vento v Chief Constable for West Yorkshire Police** (No2) [2003] ICR 31 the Court of Appeal identified three broad bands of compensation for injury to feelings award: the lower band for less serious cases, the middle band for serious cases that did not merit an award in the upper band and the upper band for the most serious cases. In accordance with the Fifth Addendum to the Presidential Guidance in respect of 'Employment Tribunal awards for injury to feelings and psychiatric injury following De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879' in respect of claims presented on or after 6 April 2022, the **Vento** bands should be as follows:

a lower band of £990 to £9,900 (less serious cases); a middle band of £9,900 to £29,600 (cases that do not merit an award in the upper band); and an upper band of £29,600 to £49,300 (the most serious cases), with the most exceptional cases capable of exceeding £49,300.

31. A summary of the law in respect of aggravated damages is given by Underhill J in **Commissioner of Police of the Metropolis v Shaw** [2012] ICR 464 at paras 13 - 28. At para 22, he notes the circumstances attracting an award of aggravated damages fall into three categories relating to:

    a. the manner in which the wrong was committed – where the act of discrimination was done in a 'high-handed, malicious, insulting or oppressive manner' (**Broome v Cassell & Co Ltd** [1972] AC 1027);

    b. motive – where the conduct is based on prejudice or animosity or is intended to wound;

    c. subsequent conduct – where the case at trial or after the act of discrimination is 'unnecessarily offensive'.

32. Aggravated damages should only be awarded to the extent that the relevant conduct increased the injury to a claimant's feelings (**HM Prison Service v Salmon** [2001] IRLR 425, EAT).

33. Pursuant to s207A Trade Union and Labour Relations (Consolidation) Act 1992 in proceedings which are listed under Schedule A2 of that Act (which includes claims under the Equality Act 2010):

> (2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
>
> (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
>
> (b) the employer has failed to comply with that Code in relation to that matter, and
>
> (c) that failure was unreasonable,
>
> the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

34. In **Rentplus UK Ltd v Coulson** [2022] EAT 81, HHJ Tayler, said as follows (para 19):

> Section 207A TULR(C)A can be broken down into a number of components, although there is, no doubt, some degree of overlap between them, and it is always important to consider a statutory provision as a whole: a. Is the claim one which raises a matter to which the Acas Code applies b. Has there been a failure to comply with the Acas Code in relation to that matter c. Was the failure to comply with the Acas Code unreasonable d. Is it just and equitable to award an uplift because of the failure to comply with the Acas Code and, if so, by what percentage, up to 25%

35. The 'Acas Code of Practice on disciplinary and grievance procedures' provides that the Code is designed to 'help employers, employees and their representatives deal with disciplinary and grievance situations in the

workplace.' Further, that: 'Grievances are concerns, problems or complaints that employees raise with their employers.'

36. Pursuant to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 a Tribunal may make an award of interest on sums awarded in discrimination cases. The rate of interest provided for under Reg 3(2) is currently 8%. For injury to feelings awards, it should be calculated from the date of the act of discrimination complained of ending on the day on which interest is calculated by the Tribunal (Reg 6(1)(a)). For awards for past financial loss, interest is awarded from the date half way between those two dates. Different dates can be used if there would otherwise be 'serious injustice (Reg 6(3)).

Conclusions

What financial losses has the discrimination caused the claimant?

37. It was agreed that the Claimant's net weekly remuneration when he worked with the Respondent was £924.97. The Respondent's counsel made the point that the Claimant's original engagement was for six months with a possibility of further work. However, in submissions he said he was not in a position to aver it would have ended after six months and the Respondent led no evidence to suggest that the Claimant's engagement would have in fact ended after six months. For example, they did not provide evidence suggesting that the Claimant's replacement had only worked for them for six months. In those circumstances we consider any reduction for the possibility that the role would have ended after six months in any event would be too speculative and this was not, in any event, actively pursued by the Respondent. Accordingly, we consider that the Claimant's net income from the Respondent up to the date of trial would have been £924.97 per week but for the termination of his engagement.

38. In that period his unchallenged evidence was that the only sums he received were a notice payment of £2,776.61 and Universal Credit payments. The Claimant's Schedule of Loss provided that as of 12 February 2024 he had received £8,656.90 in Universal Credit payments. The Claimant's evidence was that he did not immediately start receiving payments for Universal Credit

because in September he was paid his notice pay. However, after that time he had received Universal Credit throughout. We were not provided with a breakdown of the monthly sum received in respect of Universal Credit. Therefore, we have calculated the monthly average payment based on the information provided about the period for which it was paid and the total sum received. Starting from 1 October 2022 until 12 February 2024 there are 16 complete months when the Claimant received a Universal Credit payment. This is an average of £541 per month. We therefore find that from October 2022 onwards the Claimant received an average of £541 per month in Universal Credit (£124.85 per week).

Has the claimant taken reasonable steps to mitigate his loss?

39. We conclude that the Respondent has shown that the Claimant has acted unreasonably in failing to mitigate his loss. In particular, we have concluded that the following was unreasonable.

40. First, failing to apply for more jobs: Even taking account of our finding that the Claimant may have applied for 1-2 jobs a month that were not reflected in the documentary evidence, this still means that the number of jobs he applied for overall was very low. We have found that the evidence suggests there were a fairly steady number of mechanical engineering jobs over the relevant period and in some months the Claimant applied for 6-7 jobs (taking account of those for which there is no documentary evidence). Yet in other months, for example September – December 2022, without good explanation the Claimant at most applied for 1-2 jobs.

41. Second, restricting the geographical scope of his search to within one hour travel of his home: We accept that for a period of two months it was reasonable for him to see if he could find a job that was either predominantly remote or within one hour drive of his home. However, we are of the view that when he did not secure such a role within that period, in was unreasonable not to have expanded his search, in particular to include the whole of Bristol. This is particularly in the context of the Claimant having been unemployed for over a year prior to his very brief engagement with the Respondent. In those circumstances the Claimant was aware that it would be very difficult for him to obtain a suitable role within the parameters he had been looking, and we

consider this should have led him to broaden his search more quickly than might have been the case if he had not previously had difficulties getting a role. We accept that the Claimant would not have been in a position to immediately relocate for a job that was further away. However, in the circumstances we are of the view that it was unreasonable for the Claimant not to be willing to initially undertake a longer commute and then move in due course. We also accept that this would have been disruptive for his family, but note that the Claimant had previously lived in Bristol and also consider that given the length of his period of unemployment (save for the short period of engagement with the Respondent), it would have been a reasonable step to relocate in order to secure a new role.

42. Third, failing to ask Expleo for a new role (after the initial request) and / or only signing up with one other recruitment agency: For the reasons given above, we do not find that Expleo was poisoned against the Claimant and do not consider it was reasonable for him to have reached that conclusion or failed to ask Expleo to obtain a different role for him given that the reason the engagement with the Respondent was terminated was outside of his control. We also consider it was unreasonable for him only to sign up with one alternative recruitment agency: we do not accept that the fact that he did not have personal contacts with others was a reasonable basis to restrict himself in that manner.

43. Finally, restricting the type of work he searched for: Again, we accept that it was reasonable for the first two months after his engagement ended for him to try to find a similar role with a similar salary. However, in light of the difficulties that he had already experienced seeking employment, we consider that after that period it was unreasonable for him not to seek other types of work, even if it was lower paid. The only reference that the Claimant made to doing so, was looking into delivery work. While we accept he was not in a position to do this kind of work without a van, we consider failing to look for other options was unreasonable.

If not, for what period of loss should the claimant be compensated?

44. We have concluded that if the Claimant had taken reasonable steps (as outlined above) to obtain alternative employment, he would have either:

    a. been able to secure a job with earnings equivalent to that which the Respondent had paid him within 6 months; or

    b. would have been able to obtain a lower paid job within a few months of dismissal and either been promoted or moved on to a higher paid job some months later, such that his losses would only have equated to 6 months loss of the earnings he received with the Respondent.

45. In reaching that conclusion we have considered all the relevant circumstances.

46. These include that the Claimant did not have a recent reference for a long-term role and his role with the Respondent was terminated. We accept that a gap in the Claimant's CV prior to the engagement with the Respondent may have affected some potential employer's view of his application. However, we do not consider that this is a case where the way in which the Claimant's engagement with the Respondent ended or its short duration would have given rise to particular 'stigma'. The Claimant was not dismissed for misconduct: on any account the employment was terminated for a reason outside of his control and he did not put forward any evidence to suggest that the Respondent would not have confirmed as such if he had asked for a reference. In those circumstances we do not accept it was reasonable not to request a reference from the Respondent if one was needed. The Claimant could have also asked for a reference from a previous employer if needed. We note that despite the lack of a recent reference, the Claimant *had* been able to secure the role with the Respondent in August 2022 and so we do not consider the lack of a recent reference from a long-term job would have prevented him from getting a role in the industry.

47. We also take into account that it took the Claimant over a year to find the job with the Respondent. However, the year to find the engagement with the Respondent was in circumstances where he had been looking for jobs within

narrow search parameters (in terms of geographical location and type of role). We therefore do not conclude that it would have taken him the same period had he taken reasonable steps to mitigate his loss.

48. In support of our conclusion that with reasonable steps he would have been able to fully mitigate his loss within six months we further note the evidence of there being a steady level of jobs in mechanical engineering, that Bristol was one of the top areas for those types of jobs and that the Claimant did get through to reference stage in 4 roles, despite the low number of jobs he applied for in some months and his narrow search parameters. Further that in some months he did apply for 6-7 roles (including 1-2 for which he provided no documentary evidence) and so it appears that if he had made similar efforts consistently there were likely to be plenty of jobs he could have applied for.

<u>What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?</u>

49. We have set out above our findings in respect of the injured feelings that the Claimant suffered after his engagement ended. We are of the view that there are three components to this which can be rationally divided: the stress, upset and anxiety he suffered from due to his engagement being ended by the Respondent (i.e., the discrimination); the upset and panic he suffered due to the way in which his grievance and appeal were dealt with; and, the additional upset that he suffered later when he discovered the involvement of Ms Bartholomew. While the effects of these different causes did overlap in time, we consider they are properly separable as the Claimant described particular increases in / different symptoms as a result of the latter two matters at the point they happened or he became aware of them.

50. In respect of the injury to feelings caused by the discrimination, we do take the view that they were more than minor. As set out above, we find the Claimant was upset by being classed as a ‘non-UK national’ having gone through the steps he had to obtain citizenship and by losing the engagement he had obtained after being out of work for a long period and when he had a young family who he wanted to provide for. We accept that due to the termination of his engagement he suffered some depressive feelings, felt

anxious and experienced interference with his sleeping in the first few months after the engagement was terminated and that thereafter he continued to sometimes feel stressed and have feelings of inadequacy. We also accept that this period coinciding with his partner being pregnant and ill meant those feelings may have been heightened.

51. The Claimant claimed his award for injury to feelings should be in the middle **Vento** band (specifically £25,000). The Respondent argued it should fall in the upper part of the lower band or very bottom of middle band.

52. We have concluded that an appropriate award is £10,000. While the termination of the Claimant's employment was a one-off act, it amounted to a dismissal, and we consider that the level of the injury to feelings he experienced meant that it merits an award in the middle band. However, we have concluded an award at the bottom end of the band is appropriate because the main injury caused by the discrimination (as opposed to the other matters) lasted for a relatively short period of time and was of limited severity. In our view this is unsurprising given that the engagement itself had only lasted a few days, and therefore the injury to feelings in it ending was likely to be less than it might have been had a longer employment been terminated as an act of discrimination.

Should the Claimant be awarded a sum for aggravated damages?

53. The Claimant confirmed that the basis on which he was seeking an award for aggravated damages was as set out in his witness statement, namely:

    a. Ms Bartholomew's actions in telling the Respondent the Claimant had been dismissed from his previous employment and escorted off site;

    b. the Respondent's failure to apologise for their actions;

    c. the Respondent ignoring the grievance and appeal process.

54. We do not consider any of these amount to the circumstances in which an award for aggravated damages would be engaged (see **Shaw** above).

55. While, as per our findings on liability, Ms Bartholomew's information was the context in which the Claimant's dual nationality was discovered by Mr Driscoll, she did not make the decision to terminate the engagement. The act of discrimination which the Claimant made his claim about (the decision to terminate his engagement) was not, we find, done in a high-handed or malicious or oppressive etc., manner or with the motive of injuring the Claimant. On our findings Mr Driscoll made the decision he did because he genuinely believed that was what was required by way of the Security Aspects Letter governing the project the Claimant had been engaged to work on.

56. Further we do not find that the Respondent's subsequent conduct was 'unnecessarily offensive'. As set out above, in reaching his Judgment in respect of time limits (dated 23 January 2024) Employment Judge Livesey made a finding that the Respondent had nothing to do with the grievance investigation and did not appear to have known of the process at all. Accordingly, the Respondent did not ignore the grievance and appeal process: it was unaware of it. Further, the Respondent was entitled to defend the claim the Claimant brought and in circumstances where it was averring that it had set out a legal basis for considering the termination did not amount to discrimination notwithstanding that we did not find for the Respondent, we do not find that a failure to apologise was unnecessarily offensive.

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

57. The Claimant's case was that the failure to engage with his grievance and appeal was a breach of the ACAS Code of Practice. However, as per our findings above, although he enquired with Expleo about raising a grievance with the Respondent he did not in fact do so because Expleo directed him to JSA. Further, per Employment Judge Livesey's findings the Respondent did not know about that grievance.

58. Accordingly, our conclusion is that the ACAS Code of Practice did not apply and / or the Respondent did not unreasonably fail to comply with it.

Should interest be awarded? How much?

59. The Respondent's counsel indicated that there was not a basis on which he was inviting us to decline to award interest. We have concluded an award of interest is appropriate in this case and have awarded interest at the level of 8% in accordance with Reg 3 cited above.

60. The day of calculation is 11 April 2024, the date of the act of discrimination complained of is 11 August 2022 (when the engagement was terminated). The mid-point date is 13 June 2023.

Calculation

61. We have calculated the award as follows:

Financial Losses

Period 1	11/08/2022	to	25/08/2022
Weeks:			2.00
Weekly net pay:			£924.97
Loss during period 1:			£1,849.94
Less notice pay received:			*-£1,849.94*
Total Period 1:			£0.00
Period 2	26/08/2022	to	11/02/2023
Weeks:			24.14
Weekly net pay:			£924.97
Loss during period 2:			£22,331.42
Less:			
Remainder of notice pay:			£926.67
Universal credit:			
Period	01/10/2022	to	11/02/2023
Weeks:			19.00
Weekly Universal Credit:			£124.85
Sub-total Universal Credit:			£2,372.15
Less total sums received:			*-£3,298.82*
Sub-total:			£19,032.60
Prospect engagement would have ended in any event:			40%
Total Period 2:			£11,419.56
Total compensation for financial loss:			**£11,419.56**

Interest on financial loss

Period	13/06/2023	to	11/04/2024
Years:	0.83		
Annual interest rate:	8%		
Total interest rate:	6.64%		
Total interest on financial loss:			**£757.86**

Injury to feelings **£10,000.00**

Interest on injury to feelings award:

Period	11/08/2022	to	11/04/2024
Years:	1.67		
Annual interest rate:	8%		
Total interest rate:	13.34%		
Total interest on injury to feelings:			**£1,333.88**

TOTAL AWARD (inclusive of interest)* **£23,511.30**

*Because this award is under £30,000 and is a payment made in connection with the termination of his employment under s.401 Income Tax (Earnings and Pensions) Act 2003, it will not be subject to deductions for tax or national insurance.

Employment Judge Danvers
Date. 27 April 2024

Judgment sent to the Parties on 16 May 2024

For the Tribunal Office

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/