



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Kirsty Cush

**Respondent:** The Warden and Council of Saint Andrew's  
College, Bradfield of Bradfield College

**Heard at:** Reading                      **On:** 8 May 2024

**Before:** Employment Judge Gumbiti-Zimuto  
Tribunal member: Ms J Smith

## Appearances

For the claimant: In person

For the respondent: Ms M Sharp Counsel

## RESERVED JUDGMENT

1. The respondent is ordered to pay to the claimant the sum of £20,117.62 in compensation for unfair dismissal and disability discrimination.
2. The recoupment provisions apply to this award: The total monetary award is £20,117.62. The prescribed element is £2850. The period of the prescribed element is from 12 April 2022 until 3 January 2024. The excess of the monetary award over the prescribed element is £17,267.62.

## REASONS

1. The Tribunal found that the claimant was unfairly dismissed and discriminated against on the grounds of her disability.
2. The claimant was not in employment from the date of her dismissal until the date of the Tribunal hearing. The respondent contends that the claimant has failed to mitigate her loss; that the claimant has in any event not sustained any loss of earnings attributable to action taken by the employer. In respect of the claimant's claim of disability discrimination the respondent states that the award should be in the lower Vento band (£5000).
3. The claimant states that her dismissal resulted her suffering loss of earnings; that she suffered injury to feelings, that she was set back in her recovery from her mental health problems that had caused the claimant to be absent from work and had resulted in the claimant's dismissal. The claimant seeks an award for compensation for injury to feelings in the middle Vento band (£14,825).

4. **Injury to feelings**: The Tribunal considers that the claimant should be awarded a sum for injury to feelings in the sum of £14,825 as the claimant seeks. We have come to this conclusion for the following reasons.
- 4.1 The Tribunal note that the claimant has lost a job that she stated she enjoyed and which suited her needs in that it fitted in with her life style and commitments. The role was one where she worked term time only. The claimant stated that she had not been able to find a similar type role and while we say more about his later when considering mitigation we reflect this in considering how the claimant valued this particular employment because of the work pattern.
- 4.2 The claimant complains that the dismissal resulted in her suffering an exacerbation of her mental health problems. The claimant asserts this but has not produced specific medical evidence that directly addresses this issue. We note however that the medical evidence that has been produced shows that that claimant was suffering from mental health issues. These mental health issues are the primary cause for the claimant's sickness absence that ultimately led to her dismissal.
- 4.3 The claimant's mental health issues were not directly caused by the respondent's actions in dismissing the claimant. They appear to have been as a result of a combination of adverse life events that included the claimant and her family being threatened with homelessness.
- 4.4 The Tribunal notes that the medical evidence that the claimant has produced shows that prior to her dismissal she was suffering from mental health issues and at about the time of her dismissal the claimant continued to complain to her GP about the impact of her issues at work on her. In her communication with her GP on 9 April 2022 she referred to her employer not *"treating me very well and I feared they were trying to get rid of me - unfortunately this turned out to be the case ad I have been dismissed which certainly does not help things."* Then later on the 27 May 2022 the claimant referring to her hair loss issue, states to her GP *"I'm really hoping that the hair loss is only temporary due to the stress I have been under but it is not helping that I have recently lost my job so the financial implications of that only add to it."* The Tribunal note that throughout this period the claimant was being treated for stress and also for anxiety disorder for which she was prescribed medication.
- 4.5 The claimant's condition was sufficiently serious for her to be prescribed not only medication but also to be referred for psychological therapies, the claimant had two separate periods of such treatment.

- 4.6 The Tribunal also note that the claimant was looking to return to work after treatment which she hoped would improve her condition. The respondent's occupational health advisors indicated that the claimant though not fit to work in February 2022 could be "*considered for a phased return to work once psychological therapies have commenced.*" They did not commence before the claimant's dismissal.
- 4.7 The Tribunal have considered the claimant's evidence which we recognise is not medical evidence but a reflection of the claimant's state of mind, and she considers that the dismissal had an adverse effect on her and that the dismissal caused her to be set back in her recovery. We consider that the evidence available to us allows us to conclude that the claimant was set back in respect of her recovery because of the dismissal and thus to this extent contributed to her illness and thus exacerbated her condition. This in our view is a significant factor in considering the extent to which the claimant was suffering injury to feelings. The fact that the claimant considered that dismissal caused her to be set back in her recovery we consider to be a matter that can and should be reflected in an award for injury to feelings because it has a direct impact on the claimant's wellbeing.
- 4.8 We recognise that the respondent did not cause the underlying mental health issues but we do consider that the effect of the respondent's actions contributed to the an exacerbation of her condition and thus some element of her mental illness was attributable to her dismissal.
- 4.9 Taking all these matters into account we are of the view that an award of compensation in this case should sit in the middle Vento band which at the time of the claimant's dismissal was between £9,900 and £29,600. We are of the view that discrimination that results in the loss of employment is a serious case. We do not consider that tis case appropriately sits in the upper band or the lower band.
5. The claimant is entitled to an award of interest on the sum of £14,825 compensation made in respect of injury to feelings. The award of interest is made pursuant to the provisions of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (as amended by the Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013). The award of interest is made in respect of the period from the from 12 April 2022 until 8 May 2024 (757 days). The rate of interest during the relevant period is 8%<sup>1</sup>. The interest awarded is therefore £1, 230.12.<sup>2</sup>

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<sup>1</sup> Regulation 3 (2) provides that "Subject to paragraph (3) , the rate of interest to be applied shall be, in England and Wales, the rate fixed, for the time being, by section 17 of the Judgments Act 1838 ...".

<sup>2</sup>  $(8 \% \times £14825) \div 365 \times 757 \text{days} \times \frac{1}{2} = £1230.12$  interest awarded.

6. **Loss of earnings**: The Tribunal consider that the claimant has failed to mitigate her losses. The claimant has not demonstrated that she has sought alternative employment. The Tribunal recognise that the respondent bears the burden of proving that the claimant has failed to mitigate her losses. The respondent has shown that there were many different jobs available, in the types of employment that the claimant was potentially looking for, in the general geographical area where the claimant is based. The claimant has not really sought to challenge this: what the claimant has said is that the roles produced by the respondent were not suitable for her. While we generally accept that the claimant may well have justifiable reasons for disregarding some specific roles because she had a number of criteria that the needed to be met before a role was suitable for her, nonetheless we have been unable to conclude that the claimant has really made any effort to find alternative employment before the liability hearing. The claimant explained that she has been looking for employment after the liability hearing and has now enrolled for a course of study and has limited her claim for any loss of earnings accordingly.
7. There is no evidence that shows when the claimant was first fit to return to work. The claimant has it appears to the Tribunal drawn a line at the liability hearing and sought work thereafter. While this may be logical decision from the claimant's perspective but allied with the dearth of evidence about the claimant seeking employment we consider that it was in reality an arbitrary date and in fact the claimant would have been fit for work in the period some time before the liability hearing. The Tribunal also note that the claimant was able to spend a considerable amount of time preparing for the Tribunal hearing which we also consider suggests that some time before the liability hearing the claimant was potentially fit to work.
8. The way that we have approached the award of compensation for loss of earnings is therefore to consider what would have happened had the claimant looked for work. We consider that the claimant would have been likely to find some work in about a month or so. We have however also taken into account that the claimant was set back in her recovery because of the dismissal and we would therefore give her an allowance of another month or so. We have come to the conclusion that the claimant should therefore be award a sum of 8 weeks loss of earnings in the sum of £1,900. We consider that this a just and equitable award because it recognises that the claimant has not mitigated her loss but also acknowledges that had she mitigated her loss she would still have taken some time to find alterative employment.
9. The Tribunal have also considered whether the claimant should be awarded any sum in respect of holiday pay. We make the award claimed on £950. In arriving at this conclusion we take into account the fact that the claimant was for a significant amount of time not fit to work. During such period had the

claimant been employed but unfit to work she would have been entitled to holiday pay. Taking into account the claimant's evidence and reflecting on the fact that the Tribunal consider that the claimant would have been fit to work at some time before the liability hearing we consider that an award representing 28 days holiday pay of which the claimant claims in the sum of £950 is a reasonable sum and that it is just and equitable to make such an award.

10. Our conclusion in respect of loss of earning is that a total sum of £2, 850 is a just and equitable award that fairly represents the claimant's loss of earnings attributable to the dismissal.
11. The respondent does not challenge the claimant's claim for compensation for loss of statutory rights and the Tribunal makes an award in the sum of £500 in that regard.
12. The amounts awarded by the Tribunal therefore break down as follows:

Compensation for injury to feelings:	£14, 825.00
Interest on the award of injury to feelings:	£ 1, 230.12
Basic award for unfair dismissal:	£ 712.50
Compensatory award for unfair dismissal:	
Loss of earnings:	£ 2, 850.00
Loss of statutory rights:	£ 500 .00
Total award:	<b><u>£20,117.62</u></b>

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**Employment Judge Gumbiti-Zimuto**

Dated: 9 May 2024

Sent to the parties on: 23 May 2024

For the Tribunal: