



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs P Armstrong

**Respondent:** Commissioners for His Majesty's Revenue and Customs

**HELD AT:** Newcastle Employment Tribunal **ON:** 23 April 2024  
(by CVP)

**BEFORE:** EJ McCluskey, Ms E Wiles & Ms D  
Winship

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Represented by Mr J Duffy, Counsel

# RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the respondent shall pay the claimant the sum of **nine thousand and twenty pounds and fifty pence (£9,020.50)**, the breakdown of which is as follows:

1. Compensation for injury to feelings in the sum of £8,000; and
2. Interest on compensation for injury to feelings calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 in the sum of £1,020.50.

# REASONS

## Introduction

1. The claimant brought a complaint of disability discrimination which was considered at the liability hearing of this claim on 15 – 18 January 2024. Judgment and oral reasons were given to parties on 18 January 2024. The judgment was sent to the parties on 24 January 2024 and written reasons were sent to the parties, following a request from the respondent, on 8 March 2024 (together the liability judgment). The judgment sent to parties on 24 January 2024 stated: the complaint of failure to make reasonable adjustments for disability is well-founded and succeeds; and a separate hearing will be listed to determine remedy.
2. Our findings at this remedy stage must be read and viewed alongside the liability judgment. The remedies hearing took place on 23 April 2024 by CVP. We considered a remedy witness statement, an updated schedule of loss and oral evidence from the claimant. A bundle of documents had been prepared for the remedy hearing extending to 321 pages. Page references are references to this bundle. We considered the documents in that bundle to which we were taken in the claimant's remedy witness statement, updated schedule of loss or in her oral evidence.
3. We also heard oral submissions from the claimant and considered oral and written submissions from the respondent's representative during the hearing. There was insufficient time at the remedies hearing for us to deliberate and deliver an oral judgment and reasons. We met on 16 May 2024 to deliberate and reached a decision. This is the date the award was made.
4. The claimant sought the following award as set out in her updated schedule of loss (page 58 – 60): £45,000 award for injury to feelings; ACAS uplift of 10% – 15% which the claimant stated related to a failure to follow the ACAS Code on Disciplinary and Grievance Procedures in October 2022 as she was told to resubmit her formal concern when the appeal process was complete; loss of pension – no sum proposed. The claimant also sought a declaration that dismissal forms from her record be deleted as soon as possible.

### **Findings in fact**

5. These findings of fact are in addition to and should be read alongside our findings of fact as set out in the liability judgment at paragraphs 8- 42.
6. We concluded at paragraph 81 of the liability judgment that the proposal of permanent home working was a reasonable adjustment which would have alleviated the substantial disadvantage pled and that the respondent ought to have made this adjustment by 13 October 2022. It failed to do so. The respondent was therefore in breach of the duty to make reasonable adjustments under section 21 Equality Act 2010 (EqA).
7. We have made the following additional findings in fact following the remedies hearing:
8. On 22 May 2022 the claimant obtained a repeat prescription from her GP for Sertraline medication (100mg tablets) for anxiety. She had taken this medication since around 2018. On 18 April 2023 her GP increased the dosage of her Sertraline medication to 150 mg tablets.

9. At around the end of February 2024 the claimant was referred to Cygnus Support Counselling for counselling services about anxiety.
10. The claimant lodged a grievance following her receipt of the letter of 13 October 2022 refusing her permanent home working application. The respondent told her that the procedure to follow was to appeal against the refusal decision rather than raise a grievance. She did so and her appeal was progressed by the respondent.

## Law

11. Awards of compensation in claims of discrimination are governed by section 124 EqA which gives to the tribunal the same power to grant any remedy which could be granted in proceedings in tort before the civil courts.
12. 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. Compensation based on tortious principles aims to put the claimant, so far as possible, into the position that she would have been in had the discrimination not occurred – essentially a “but for” test in causation when assessing damages flowing from discriminatory acts.
13. The EAT reiterated in **Komeng v Creative Support Ltd** that the tribunal needs to consider the impact of the discriminatory behaviour on the individual affected, rather than the seriousness of the conduct of the respondent.
14. We were 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.
15. The Presidential Guidance stated that the bands for claims brought between 6 April 2022 and 5 April 2023 were as follows: lower band: £990 - £9,900; middle band: £9,900 - £29,600; and higher band: £29,600-£49,300.
16. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 sets out the Tribunal’s power to award interest for injury to feelings awards. Regulation 3(1) states that interest is calculated as simple interest which accrues daily. The current rate of interest is 8% and is to be calculated from the date of the act of discrimination complained of until the date on which the award is made (Regulation 6).

## Discussion & decision

17. It was clear from the claimant’s remedy witness statement, updated schedule of loss and her oral evidence that her evidence of upset and distress goes well beyond matters relating to the permanent homeworking refusal in the period 13 October 2022 until 7 March 2023.

18. The claimant identifies the matters which have caused her upset and distress as everything which had happened during her employment since she first made an application for home working in September 2021 until she was granted ill health retirement in about September 2023. This is clear from her witness statement for the remedies hearing, her updated schedule of loss and her oral evidence.
19. The difficulty for us is that the claimant's evidence of upset and distress does not deal specifically with the effect on her of the refusal to grant permanent homeworking from 13 October 2022 until 7 March 2023. In other words, a focus on the effect of the discriminatory act.
20. We have concluded from her evidence that the claimant was upset and distressed because of things that happened during her employment. However, the reasons for her upset and distress were not solely related to the refusal to grant permanent homeworking in the period 13 October 2022 until 7 March 2023 but also included:
  - a. Matters related to her employment with the respondent before 13 October 2022 during which the respondent was considering her application for permanent home working. She described this period as a lengthy campaign of discrimination; however, we did not find this to be the case either in the liability judgment or in considering the claimant's evidence at the remedies hearing. Her claim was for failure to make a reasonable adjustment, namely, to allow permanent home working. In the liability judgment, we found that adjustment was reasonable, and one which the respondent should have made by 13 October 2022, not by any earlier date. The claimant did not bring any complaint for harassment or any other complaints relating to her disability apart from the one reasonable adjustment complaint.
  - b. Matters relating to her employment with the respondent after 7 March 2023 and her application for ill health retirement which was granted on or around 5 September 2023. The claimant did not lead evidence at the liability hearing or at this hearing about the medical circumstances of her ill health retirement. The claimant asserts that she had to request ill health retirement because of what she says was the effect of the lengthy discrimination campaign against her. She did not give evidence and did not lead any medical evidence which allowed us to conclude to what extent, if any, the discriminatory act of refusing to grant permanent homeworking on 13 October 2023 had on her subsequent ill health retirement application. She had been granted permanent homeworking on 7 March 2023 when her appeal was successful.
21. The claimant relied on repeat prescription documentation from her GP showing that her prescription for Sertraline had increased on 18 April 2023. The claimant had taken this medication for anxiety since around 2018 following two cancer diagnoses. She also relied upon a referral for counselling for anxiety in February 2024. Her oral evidence was that the increase in her anxiety in April 2023 was because of "everything" that is in her witness statement for the remedies hearing. This included the process of her application for permanent home working prior to 13 October 2022, the appeal process until the outcome on 7 March 2023 and matters relating to her employment thereafter.

22. We need to ask ourselves what the effect of the failure was to make the reasonable adjustment on 18 October 2022. There is no evidence which allows us to make the causal link between the act of discriminatory conduct on 18 October 2022 and an increase in her anxiety in April 2023 when her medication increased and her referral to anxiety counselling in February 2024.
23. We do however recognise that the claimant suffered upset and distress during the period from 18 October 2022 to 7 March 2023 when she did not know whether her appeal would be successful. We concluded that a total injury to feelings award of £8,000 (plus interest) was a fair assessment of an amount which is aimed at compensating the claimant rather than punishing the respondent. This award reflects the significant degree of upset suffered by the claimant and our finding of the actual act of discrimination which caused or contributed to it.
24. We have concluded that there should be no uplift of compensation under the ACAS Code of Practice on disciplinary and grievance procedures. The claimant lodged a grievance following her receipt of the letter of 13 October 2022 refusing her permanent home working application. The respondent told her that the procedure to follow was to appeal against the refusal decision rather than raise a grievance. She did so and her appeal was progressed by the respondent. We did not conclude that this or the way the respondent dealt with her appeal was a breach of the ACAS Code.
25. We concluded that we had heard no evidence to enable us to consider whether the claimant had sustained any pension loss because of the refusal to allow permanent home working in the period 13 October 2022 – 7 March 2023 or any submissions from the claimant about any need to amend to include this. In any event the claimant said during oral submissions that this was not being pursued.
26. The claimant also sought a declaration that dismissal forms be deleted from her records as soon as possible. We concluded that we were unable to make such a declaration. The claimant did not bring a complaint of unfair dismissal. The finding we have made is about a failure to make a reasonable adjustment on 13 October 2022. The decision to refuse permanent home working was reversed by the respondent on 7 March 2023. She was allowed to work permanently from home thereafter. The declaration sought does not relate to what we found to be the discriminatory act.
27. We have awarded £9,020.50 to the claimant in respect of injury to feelings. The breakdown of the award is as follows;
- a. Injury to feelings award: £8,000 (relating to the failure to make a reasonable adjustment of allowing permanent home working);
  - b. Calculation dates: 13 October 2022 (when the failure to comply with the duty to make the reasonable adjustment occurred) to 16 May 2024 (the date of the Tribunal deliberations when the award was made)
  - c. Number of days: 582 days
  - d. Interest rate: 8%
  - e. Interest calculation:  $£8,000 \times 0.08 \times 582 / 365 = £1,020.50$
28. The compensation payable to the claimant by the respondent is £9,020.50

Employment Judge McClusky

Date: 16 May 2024

**Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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

10.2 Judgment - rule 61  
February 2018