EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondents**
Ms Elaina Cohen		Mr Khalid Mahmood MP

Heard at: London Central Employment Tribunal

On: 3 May 2024 (8 May 2024 in chambers)

Before: Employment Judge Adkin
Ms K O'Shaughnessy

Representations

For the Claimant: in person
For the Respondent: Mr T Perry, Counsel

RECONSIDERATION

(1) Paragraph 311 of the written reasons dated 2 August 2022 is deleted.

(2) The original judgment dated 2 August 2022 remains unchanged and is confirmed.

REMEDY JUDGMENT

(3) There will be no order of reinstatement or re-employment.

(4) The awards for compensation for successful complaint of unfair dismissal pursuant to section 94 & 98 of the Employment Rights Act 1996 ("ERA") shall be subject to the following deductions:

a. Reduction in compensatory award pursuant to section 123(1) ERA ("*Polkey*") of **75%**;

b. Reduction in both basic and compensatory awards of **75%** pursuant to sections 122(2) and 123(6) ERA.

(5) The total compensation for successful claims is **£11,729.99**, which is comprised of the following sums:

a. Basic award of £3,429.75;

b. Compensatory award of £2,310.24;

c. Award for injury to feelings of £6,000.

Note that these are the actual sums payable to the Claimant after deductions or uplifts have been applied. Calculations appear in the appendix below.

(6) The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:

1. The total monetary award (i.e. the compensatory award plus basic award plus injury to feelings) payable to the Claimant for unfair dismissal is £11,729.99.

2. The prescribed element is £1,292.38.

3. The period of the prescribed element is from 27 January 2021 to 27 July 2021.

4. The difference between **1.** and **2.** is **£10,423.24**.

REASONS

Procedural matters

1. This hearing was in person. The parties attended and we heard evidence and submissions on the first day.

2. The Claimant represented herself at the hearing, having previously had the benefit of representation by solicitors (and counsel at hearings) until November 2023.

3. A document which the parties had agreed would be in the bundle was removed on the first day of the hearing at the request of the Claimant for reasons given orally. The Respondent agreed to the Claimant's request to redact certain items on her payslips e.g. national insurance number.

4. Witness statements and the remedy/reconsideration bundle were made available for observers at the back of the hearing in accordance with the principle of open justice.

History of proceedings

5. The Claimant presented her claim on 22 March 2021, which was accepted on 16 July 2021.

6. Following a hearing in August 2022, a decision finding the complaints of unfair dismissal and protected disclosure detriment well founded was sent to the parties.

7. Both parties appealed. The Respondent's appeal was not upheld. The Claimant's appeal was upheld such that HHJ Shanks ordered that the tribunal reconsider paragraph 311 of the written reasons and the effects on the conclusions at paragraphs 313 and 327-328 i.e. the decision of the tribunal in respect of detriment (c) and automatic unfair dismissal pursuant to section to 103A ERA.

8. The parties agreed in writing to the Tribunal sitting as a panel of two following the retirement of non-legal member Mrs K Church.

Evidence

9. The Tribunal received an agreed bundle of 365 pages and witness statements from the Claimant, Mr Majid Khan and the Respondent who each gave brief oral evidence.

10. The Tribunal retained evidence from the liability hearing in 2022.

Findings of fact

Background

11. The decision on liability contains full findings of fact which cover the Claimant's relevant employment history working with the Respondent from 24 November 2003 onward until her dismissal and the subsequent internal appeal.

12. Some findings of fact are repeated here for convenience where these are relevant to remedy.

Suspension & earlier claim

13. In 2016 the Claimant's employment was suspended for a period by the Respondent.

14. In 2017 the Claimant brought a claim in the Employment Tribunal. That claim was ultimately settled. Neither party referred to the detail of the events leading to that claim which we believe are covered by a non-disclosure agreement. The Claimant says that the fact the parties subsequently carried on working shows that they are capable of working together after resolution of a dispute.

Dismissal

15. On 27 January 2021 the Respondent sent to the Claimant a letter dismissing her with immediate effect.

Appeal

16. On 29 January 2021 the Claimant appealed the decision to dismiss her.

Appeal outcome

17. On 26 February 2021 appeal outcome letter and report were sent to the Claimant. The Respondent did not consider that there were grounds to allow the appeal and confirmed the decision to dismiss further reasons substantially in line with those already given.

Claim in Employment Tribunal

18. After delays caused by the Claimant providing the wrong ACAS number, following a reconsideration of the rejection of the claim, by Employment Judge Clark, the whole claim was accepted.

Replacement for the Claimant

19. We accept the Respondent's unchallenged evidence that the responsibilities previously carried out by the Claimant are now carried by others.

Attempts by the Claimant to find work

20. Mr Perry helpfully summarised the Claimant's evidence of applications to find alternative work after termination of her employment as follows:

    a. May 2021 - Project Manager Blackpool Airport and Enterprise zone (R146)

    b. 4 July 2021 - registers on Careers hub (R154)

    c. 15 July 2021 - "another refusal today" (R155)

    d. 8 September 2021 – Non-Exec on Community Radio Fund Panel (R158)

    e. 6 October 2021 – Shell PLC "Corporate Relations Adviser" (R160)

    f. 11 October 2021 – Sky TV "public policy exec position" (R161)

    g. October 2021 – Grosvenor hotels "head of community engagement" (R163)

    h. January 2022 - public affairs and policy exec (R164)

    i. October 2022 - senior policy and public affairs officer at IPSO (R166)

j. February 2023 - West Midlands Mayoral Selection (R169)

k. July 2023 - further contact about jobs with West Midlands Mayor (R171)

l. Undated - Community Engagement Specialist R176)

m. Undated - Apple Head of Government Affairs (R177)

n. Undated - PR specialist (R178)

21. The first dated document which evidences the Claimant's attempts to find work is a rejection for her application for the post of Project Manager dated 12 May 2021. We infer that the application would have been made some time between the end of February 2021 and the date of the rejection.

22. The Claimant has evidenced attempts to find work in relation to 17 different roles. She had a solicitor acting for her until November 2023 and the involvement of experienced, specialist employment law counsel at the liability hearing. On balance we find she would have been aware of the need to evidence attempts to find alternative work to mitigate her loss.

Roles within Labour Party

23. The Respondent has put in evidence a very large number of roles advertised within the Labour Party which he says that the Claimant could or should have applied for to mitigate her loss. According to an email from Bill Thompson sent on 4 April 2024 there were 778 advertisements placed in 2022, 611 in 2023 and 149 in the period January to end of March 2024. The remedy bundle contains a large number of advertisements: pages 187 to 343 contain up to 7 roles advertised per page.

24. As is detailed above, the Claimant put herself forward to be the Labour party candidate for the West Midlands mayoral election. There was an interview scheduled on 24 February 2023 over Zoom. She says that around this time she spoke to a senior Labour party official. She named this individual in her oral evidence, but this was not referred to in her witness statement. She says that she subsequently put in a complaint about this individual discouraging her on the basis that her reputation within the party was tarnished as a whistleblower. We have not heard evidence from the official, nor have we seen the content of the complaint. We are not in a position to make detailed findings about what occurred at this time, but we accept that in general terms that in early 2023 the Claimant became discouraged about her prospects of achieving a role within the Labour Party.

LAW

25. The Tribunal received comprehensive, helpful and balanced written submissions from Respondent's counsel, bearing in mind that the Claimant is now a litigant-in-person. It is not intended to replicate all of those submissions in these reasons which the Tribunal considers to be an accurate statement of the relevant law.

Remedies under the ERA

26. The Employment Rights Act 1996 ("ERA") contains the following provisions relevant to reinstatement and re-engagement:

> 116 Choice of order and its terms.
>
> (1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for **reinstatement** and in so doing shall take into account—
>
> > (a) whether the complainant wishes to be reinstated,
> >
> > (b) whether it is practicable for the employer to comply with an order for reinstatement, and
> >
> > (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
>
> (2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for **re-engagement** and, if so, on what terms.
>
> (3) In so doing the tribunal shall take into account—
>
> > (a) any wish expressed by the complainant as to the nature of the order to be made,
> >
> > (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
> >
> > (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.
>
> Section 122 Basic award
>
> (2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
>
> Section 123 Compensatory award
>
> (1) Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the

> complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
>
> …
>
> (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

CONCLUSIONS

Reconsideration

Protected disclosure detriment claim

27. Following the order of HHJ Shanks made in the Employment Appeal Tribunal on 21 November 2023, we have reconsidered our judgment made on 2 August 2022 and the written reasons, in particular the following paragraphs in relation to the protected detriment claim:

> c. The Claimant sustained aggressive and bullying treatment at the hands of the Respondent, including threats of dismissal.
>
> 311. The Claimant does not in her witness statement set out the wording of any threat of dismissal or say in clear terms that on a particular date the Respondent threatened to dismiss her. We do not find therefore balance of probabilities that he threatened her with dismissal.
>
> 312. We have made findings about marginalisation above. Beyond that we do not find that there is evidence of aggressive and bullying treatment at the hands of the Respondent.
>
> 313. We do not find that there was detrimental treatment under this heading.

28. Paragraph 311 is plainly wrong in view of our finding at paragraph 42 of the written reasons on liability in relation to a telephone conversation on 26 January 2020. The Claimant referred in her evidence to the Respondent threatening to "sack" her. The Tribunal accepted this evidence. Paragraph 311 of our conclusions therefore cannot stand.

29. Does that change our conclusion in respect of detriment (c) i.e. aggressive and bullying treatment at the hands of the Respondent, including threats of dismissal? There was a threat of dismissal. This was a comment made in the heat of the moment a year before the dismissal actually happened. It also has to be seen the context of the peculiar relationship between the Claimant and the Respondent and the direct nature of the communication between them. The Claimant robustly stood up for herself. We do not find that the relationship

between them during this period should be properly characterised as him bullying her.

30. We have carefully reconsidered (c) allegation overall and do not find that the Claimant sustained aggressive and bullying treatment at the hands of the Respondent. We have accepted that the Respondent ignored the Claimant for a substantial period during 2020, but that is relevant to allegation (a) marginalisation which succeeded as a claim of detriment. We do not find that this should be characterised as "aggressive" or bullying treatment.

31. Our conclusion in relation to detriment (c) remains the same. This allegation is not well-founded.

Automatic unfair dismissal because of a protected characteristic (s.103A)

32. In relation to the claim of automatic unfair dismissal because of a protected detriment (section 103A ERA), there are the following paragraphs:

> 327. Whereas the protected disclosure may have been part of the reason for the Claimant's dismissal, the Tribunal did not find that that this was the sole or principal reason.
>
> 328. We find that the principal reason that the Claimant was dismissed was her conduct. In her evidence to the Tribunal the Claimant seemed to give little credence to the suggestion that her messages to the Respondent were inappropriate and offensive. Whether that was a lack of insight into her effect on others or reluctance to make a concession in the hearing is less clear. Nevertheless the Tribunal forms the view that the Claimant's abusive style of communication and her propensity to involve senior people in her private conflict with the Respondent was the principal reason for her dismissal.

33. Notwithstanding the removal of paragraph 311 of the written reasons for liability, the conclusion of the Tribunal remains the same. Paragraph 311 was an error. The Tribunal was aware of the content of the conversation on 26 January 2020 given our finding on this point.

34. After careful consideration we have decided that the principal reason for the dismissal was the Claimant's conduct. The protected disclosure was an element in the reasons for dismissal but not the principal reason, which we find was the Claimant's conduct.

Reinstatement / re-employment

35. We have considered reinstatement and re-employment.

36. The Claimant expressed the wish for the Tribunal to make one of these orders. The Respondent is opposed to the making of such an order.

37. In her oral evidence the Claimant said that she was an "eternal optimist" in relation to her ability to work with the Respondent again. She pointed to their ability to work together after a previous employment tribunal claim in 2016/7.

38. The Tribunal has decided not to order reemployment in either form for the following reasons.

39. First, the Claimant did to a significant extent cause the circumstances of her dismissal by her conduct and unprofessional behaviour. In our judgment this is a strong argument against making of such an order.

40. Second, the Tribunal considered practicability of an order of reinstatement or re-employment. We considered whether there was a reasonable chance of such an order successfully working. The Tribunal finds that the relationship between the Claimant and Respondent has broken down. It was plainly dysfunctional for a number of years by the point of dismissal. The nature of the Respondent's work is that there is a small staff supporting him. In order to work effectively the Claimant must be in regular contact with the Respondent and the two of them need to be able to communicate in a professional manner. Given the Claimant's conduct we doubt that this would be likely to happen.

41. There also needs to be a significant element of trust. We have been careful not to "punish" the Claimant for the consequences of the protected disclosure or the litigation itself. In our judgment there was conduct on the part of the Claimant quite apart from the protected disclosure and the bringing of the claim which means that viewed from the Respondent's point of view, quite reasonably, the trust in the relationship is broken.

42. Other employees are now performing the role carried out by the Claimant, which is understandable given the passage of time since her dismissal. This is another circumstance weighing against an order of either reinstatement or re-employment.

43. In summary therefore we do not consider it just and equitable to order either reinstatement or re-employment.

Mitigation of loss

Attempts to find work generally

44. We have considered whether the Claimant has taken reasonable steps to mitigate the financial loss caused by the termination of her employment with the Respondent.

45. The Tribunal finds it probable the Claimant had made an application to Blackpool airport before the correspondence dated 12 May 2021, given that this was a rejection. We do not conclude that the Claimant had failed to mitigate her loss in the period February – May 2021.

46. There are 17 roles which the Claimant has evidenced that she applied for or was considering which relates to the period 26 month period 12 May 2021 to July 2023.

47. Eight of the documents evidence roles do not have any date on them.

48. Based on the documents which have a date on them the Claimant has only provided evidence of having applied for 8 roles in the 12 months after the conclusion of the internal appeal process. There is no evidence of such applications in the period January to October 2022 at all, i.e. a nine month period. We accept that in early March 2022 the Claimant may have been focussed on the preparation of witness statements and shortly before the final hearing which commenced on 17 May 2022 she may have been preoccupied. Looking at most of this nine month period, the Tribunal has formed the impression that the Claimant was not taking reasonable steps to mitigate her loss.

49. Considering the whole period since dismissal, the remedy hearing has taken place a little over three years after the conclusion of the appeal hearing. Based on the documented evidence, this suggests that the Claimant was only making between 5-6 applications a year. The Claimant's oral evidence was that there were some other roles in respect which she has not provided documentary evidence. This was somewhat vague and she did not quantify this assertion. Even if the Tribunal accepts that there may have been a limited number of roles which the Claimant applied for but did not document, we have formed the impression that the Claimant was not taking all reasonable steps to find another role during this period.

Labour party roles

50. As to attempts to find roles within the Labour Party, the Tribunal accepts that the Claimant would have struggle to obtain employment with those politically aligned to the Respondent or within the West Midlands area. We are conscious however that the Labour Party is a large organisation which is politically and geographically diverse. There are plainly a very large number of roles advertised every year as the Respondent has demonstrated. The fact that the Claimant has only evidenced one application within the Labour Party suggests in our view that she has not explored all options with the Labour Party and the associated political world such as the trade union movement.

51. We accept the Claimant's evidence that she is disadvantaged by her age. She was 62 years old at the date of termination. The Tribunal acknowledges that it is an unfortunate fact of life that many (though not all) employers are reluctant to offer roles to older workers. That said, the Tribunal formed the impression that the Claimant is an intelligent, skilled and resourceful woman. We consider that with reasonable efforts she would have found another role, either permanent or temporary by 1 March 2022, which represents a point shortly after one year after the conclusion of the internal appeal process and 15 months after the Respondent invited her to a disciplinary.

Polkey

52. Would the Claimant have been likely to have been dismissed had a fair procedure being followed (usually described by Tribunals as the 'Polkey' deduction following the decision of the House of Lords in **Polkey v AE Dayton Services Ltd** [1987] UKHL 8).

53. Given that there were reasonable grounds for finding misconduct, set out in our findings on liability and discussed below under the heading contribution, we find that there was a significant likelihood that a fair procedure would have led to dismissal. An appeal manager would have been entitled to take the view that these matters were serious enough to merit dismissal.

54. That the Claimant had been ostracised and felt excluded was a mitigating circumstance, but on balance we consider that most independent appeal managers would not have regarded this as sufficient mitigating circumstances to overturn the decision to dismiss.

55. In the circumstances we find that a reduction of **75%** to the compensatory award would be appropriate.

Contribution

Blameworthy conduct leading to dismissal

56. As to the Claimant's contribution to her dismissal, all of the following matters were blameworthy conduct on the part of the Claimant. We have retained the numbering of the various disciplinary charges, and reiterate here some of our earlier comments on them:

56.1. *2. The Claimant sent various emails and texts to the Respondent between the 10 November 2020 and 14 November 2020 harassing him following the death of his father in law*. It is not in dispute that these offensive and inappropriate messages were sent. Indeed the Claimant apologised for them.

56.2. *3. The Claimant sent various emails and texts between the 13 October 2020 and 25 October 2020 regarding a confidential SARS request for a Labour Councillor discussing details with constituents*. The Claimant ultimately admitted that she had wrongly understood that she was the data controller. There were messages sent to the Khan brothers which were disrespectful to the Respondent and unprofessional.

56.3. *4. The Claimant sent various emails on the 11 October 2020 to the Respondent, David Evans and Sir Keir Starmer calling the Respondent a "first class idiot"*. The Claimant admitted that she had "reached out" to the wrong person, such that it might be appropriate for her to make a public apology, or to contact Sir Keir Starmer. We noted that the Respondent himself on 11 October 2020 appears to have introduced the "first class idiot" comment, albeit he was quoting the Claimant from an earlier occasion and that he appeared to have in part perpetuated the email argument,

choosing to copy in David Evans and Sir Keir Starmer the General Secretary of the Labour party and the Leader of the Opposition.

56.4. *5. The Claimant publicly tweeted potentially Islamophobic words [about z-list jihadis]. The tweet was then sent to the organisers of a protest outside the Respondents office in Birmingham*. The fact of the tweet, its content and the Claimant hurriedly removing the tweet were not seriously in dispute. They were admitted. The Claimant admitted that they could be deemed offensive.

57. The Respondent had clearly warned the Claimant about the content of her messages by email on 22 August 2020, set out in our liability reasons at paragraph 121. She nevertheless persisted in sending inappropriate emails. Each one of the communications above represented serious misconduct.

58. Our conclusion is that the conduct of the Claimant set the scene for her dismissal and that there were reasonable grounds for dismissal. Against this we need to balance the fact that the Respondent had marginalised the Claimant, which was an unlawful act of protected disclosure detriment, which was one factor in the further deterioration of their relationship. Had it not been for this factor, a reduction of 100% for contributory fault might have been appropriate.

59. In the circumstances we find that a reduction of **75%** to both the basic and compensatory awards would be appropriate.

Double-counting contribution and '*Polkey*'

60. We have stepped back and assessed both of the deductions for contribution and under Polkey to ensure that we are not penalising the Claimant by double-counting. Making a reduction for 85% and 75% respectively as in the counter-schedule might have risked double counting.

61. We are satisfied that we have not done this by reducing by 75% under each heading. There was a high degree of culpability on the part of the Claimant which is reflected by the high percentage reduction under this head. The Claimant had behaved in a significantly unprofessional and personally unpleasant manner on a number of occasions. By contrast, the Respondent had attempted to communicate with her in a professional and appropriate manner, albeit that 2020 was characterised by him ignoring her to a significant extent, which we found was detrimental treatment because of the protected disclosure in January 2020.

62. The reduction under the principle in "Polkey" reflects our conclusion that, had there been an independent appeal, the majority of fair minded and appeal managers would have refused the internal appeal against the decision to dismiss. In other words, on a balance of probabilities the Claimant would have received nothing at all. The principal reasons why the Tribunal has not made a 100% deduction under this head is to reflect the possibility that a fair minded and appeal manager *might* have regarded the history of the unusual communication between the Claimant and the Respondent and the detrimental

ostracization of her by him in 2020 as amounting to mitigation circumstances such that a lesser disciplinary sanction might have been appropriate.

Compensation for protected disclosure detriment

63. The Claimant is entitled to an award for injury to feeling for her successful claim of protected disclosure detriment.

64. We reminded ourselves of the principles applying to this sort of award:

64.1. Any award for injury to feeling should be compensatory rather than punitive. The focus should be on the injury rather than the conduct of the employer.

64.2. We have to consider the extent of the injury to feelings *caused* by the unlawful detriment.

65. A figure of £20,000 (middle Vento band) was claimed in the original schedule of loss dated August 2022. That schedule was produced at time that decision of the tribunal was not yet known. No attempt was made to attempt to quantify this head of claim in the updated schedule dated April 2024, produced when the Claimant was acting for herself. In the Respondent's counter-schedule should it is suggested that the injury to feeling award should be in the middle of the lower band of Vento and the figure of £5,000 is suggested.

66. Presidential Guidance (third addendum):

> "In respect of claims presented on or after 6 April 2020, the Vento bands shall be as follows: a lower band of £900 to £9,000 (less serious cases); a middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band); and an upper band of £27,000 to £45,000 (the most serious cases)"

67. The finding of the tribunal was that the Claimant felt marginalised following her protected disclosure made on 26 January 2020 until her dismissal on 27 January 2021, i.e. a period of a year.

68. The Claimant's written evidence as to the effect on her was:

> "13. I have been extremely depressed at the unfairness of my situation carrying out my professional duty in reporting criminality and safeguarding issues to my employer…
>
> 14. I was in dark place following the threat of dismissal. I was subjected to continuous isolation…"

69. The Respondent makes the point that there is no medical evidence of the Claimant suffering depression or anxiety or other ill effects of marginalisation. We have reminded ourselves that this is not a claim for personal injury where medical evidence might be expected. It was a practical reality that obtaining

medical treatment from a GP during much of 2020 was difficult due to the circumstances of the Covid-19 pandemic.

70. The Respondent submits that the Claimant previously alleged that she had been ignored by the Respondent. This does appear to have been one of the dynamics in their relationship. That is not an excuse or a justification, but it is fair to say that minimal responses from the Respondent to the Claimant characterised their relationship before the relevant protected disclosures.

71. The Tribunal has had regard to the context in three respects: first the nature of the relationship between the Claimant and the Respondent. In short their relationship was up and down. Second, the Claimant reported feeling ignored not just by the Respondent but by others in the Labour Party more generally. Third, were the unusual circumstances of the Covid-19 pandemic. That the Claimant was stuck at home and feeling isolated was an experience shared by very many at that time. We find that this feeling of isolation applied to the Claimant. During the later part of 2020 and into early 2021 the Claimant was contending with the significant ill health of her ex-husband with whom she was living. Not all of these circumstances were caused by the Respondent's reaction to the Claimant's protected disclosure.

72. Although caution should be exercised in relying on reported cases of awards in other cases given how fact specific each case is, the Tribunal has derived some assistance from the following cases:

72.1. **Ms Hilary Melville v Santander UK PLC** (Liverpool) (Case No 2403284/2018) (20 December 2019, unreported) — **ITF £4,500**. The tribunal found that the claimant in that case experienced feelings of hurt, distress and humiliation when her grievance alleging serious acts of disability discrimination was ignored at a time when she was alone at home and too ill to work in a job which she found too difficult to carry out.

72.2. (Summary from IDS) **Hunt v Cotswold Architectural Products Ltd** ET Case No.1401467/10: H was given a disciplinary warning after raising health and safety concerns about the practices of a machine setter with whom she worked. In fixing compensation for her successful claim under S.47B, an employment tribunal stated: 'We understand and take notice of the fact that it would be hurtful and upsetting to bring matters to your employer's attention relating to health and safety only to be told that you are wasting company time, that you are being frivolous and vexatious and in effect a liar, without first being given the opportunity of a fair hearing.' It deemed an award for injury to feelings to be appropriate, but given that H had displayed strength of character in bringing the claim, and the fact that she was still employed by CAP Ltd, it determined that an award in the lower of the Vento bands would be appropriate, and thus settled on the figure of **£3,000**. Some updating for inflation would be required to that award and the employment relationship continued, by contrast with Ms Cohen's case.

Conclusion on Injury to feeling

73. In summary, the Tribunal accepts that the Claimant felt depressed and isolated during 2020 and in part this represented an injury to feeling caused by the Respondent's detrimental treatment of her. This was only one of the reasons why she felt as she did, as we have explored above. We consider that the appropriate level of the award in this case is a little above the middle of lower band which is £4,950. We find that **£6,000** is the appropriate figure.

74. We have considered whether any reduction should be made to reflect the Claimant's conduct pursuant to section 49(5) of the ERA 1996. We do not consider that the Claimant contributed in a blameworthy way to the detriment that she suffered and accordingly have made no such reduction.

_____

Employment Judge Adkin

Date 6 June 2024

WRITTEN REASONS SENT TO THE PARTIES ON

12 June 2024

.....

.....

FOR THE TRIBUNAL OFFICE

Notes

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.

APPENDIX 1
TABLE CALCULATING AWARD

Unfair Dismissal

Basic Award		13,719.00
deduction for contribution	75%	-10,289.25
Basic Award less deduction for contribution		3,429.75
Compensatory award		
Loss of statutory rights		500.00
Net weekly income	*718*	
No of weeks	*45*	
Loss of net weekly income		32,310.00
Pension contribution (per week)	*92.31*	
No of weeks	*45*	
Loss of net weekly income		4,153.85
Sub-total compensatory award		36,963.85
Less Polkey award	75%	-27,722.88
Sub-total less Polkey		9,240.96
Less deduction for contribution	75%	-6,930.72
Total compensatory award less deductions		2,310.24
Protected disclosure detriment		
Injury to feeling		6,000.00
GRAND TOTAL		**11,739.99**

APPENDIX 2
TABLE CALCULATING PRESCRIBED ELEMENT FOR RECOUPMENT PROVISIONS

Recoupment

		Prescribed element
JSA in payment for 26 weeks from 27.1.21 - 27.7.21		
Compensatory award in prescribed period		
Net weekly income	*718*	
No of weeks	*26*	
Loss of net weekly income		18,668.00
Pension contribution (per week)	*92.31*	
No of weeks	*26*	
Loss of net weekly income		2,400.00
Sub-total compensatory award		21,068.00
Less Polkey award	75%	-15,801.00
Sub-total less Polkey		5,267.00
Less deduction for contribution	75%	-3,950.25
Prescribed element		1,316.75
Total award		11,739.99
Difference between total award & prescribed element		**10,423.24**