



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs T Morgan

**Respondent:** Stagecoach Group Plc

**Heard at Ashford**

**On: 29-30 April 2024**

**Before:** Employment Judge Corrigan  
Mr S Corkerton  
Mr S Huggins

## Representation

**Claimant:** In person

**Respondent:** Mr O Kessack, Solicitor (day 1)  
Miss C Cheng, Barrister (day 2)

## REMEDY JUDGMENT

1. The claimant is awarded compensation for unfair dismissal of £2,069.75 to be paid by the respondent to the claimant.
2. This award consists of a basic award of £1,569.75 (3.5 x £448.50) and £500 loss of statutory rights. The claimant's loss of earnings were included in the award for discrimination below.
3. Recoupment therefore does not apply to this award.
4. The respondent is ordered to pay compensation of £36,724.81 to the Claimant for the Respondent's contravention of the Equality Act 2010.
5. This sum consists of:

loss of earnings from 22/10/20 to 14/02/21	£6,346.68
loss of contractual sick pay from 14/02/21- 10/03/21	£1,376.39

loss of SSP from 11/03/21- 2/06/21	£1,150.20
loss of pension	£266.20
Subtotal	£9,139.47
<u>Minus earnings in new position</u>	- £2,867.48
<u>Minus overpayment of 5.5 weeks' SSP post-resignation</u>	- £527.18
Total financial loss:	£5,744.81
8% interest	£1,622
Injury to feelings award	£22,000
8% interest	£7,358

6. The total to be paid by the respondent to the claimant is £38,794.56.

## **REASONS**

*Provided following the claimant's oral request at the hearing.*

1. The lists of issues in respect of remedy had been set down in Case Management Orders dated 3 February 2022 and were agreed between the parties to be as follows.

### **Unfair dismissal**

2. If there is a compensatory award, how much should it be?

The tribunal will decide:

- 2.1 What financial losses has the dismissal caused the claimant?
- 2.2 Has the claimant taken reasonable steps to replace their lost earnings?
- 2.3 If not, for what period of loss should the claimant be compensated?
- 2.4 Did the claimant's decision to leave her new employment at a COVID testing centre and then to not pursue the offer of employment from Border Force effectively ended the period of loss for which the respondent was responsible?
- 2.5 Is there a chance the claimant's employment would have ended at some stage any way due to her inability to work after February 2021?

- 2.6 If so, should the claimant's compensation be reduced? By how much?
- 2.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 2.8 Did the claimant unreasonably fail to comply with paragraph 34 by failing to pursue her grievance?
- 2.9 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25 %?
- 2.10 What basic award is payable to the claimant, if any?

**Failure to make reasonable adjustments and disability-related harassment**

- 2.11 What financial losses has the discrimination caused the claimant?
- 2.12 Has the claimant taken reasonable steps to replace loss of earnings, for example by looking for another job?
- 2.13 If not, for what period of loss should the claimant be compensated?
- 2.14 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 2.15 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 2.16 Is there a chance the claimant's employment would have ended at some stage any way? Should their compensation be reduced as a result?
- 2.17 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 2.18 Did the claimant unreasonably fail to comply with paragraph 34 by failing to pursue her grievance?
- 2.19 If so, is it just and equitable to increase or decrease any award payable to the claimant?
- 2.20 By what proportion, up to 25%?

2.21 Should interest be awarded? How much?

### **Hearing**

1. Unfortunately on the morning of 29 April 2024 the respondent's counsel had contacted the respondent's solicitor to say they were at hospital and too unwell to attend. The tribunal accepted that this was the case. The respondent's solicitor was not supposed to have been at work as he had booked the day off for unavoidable personal reasons (the details were provided to the tribunal and again these were accepted). He did nevertheless attend to assist the tribunal in the morning and was able to arrange alternative counsel to attend on 30 April 2024. The tribunal therefore used the 29 April 2024 to read and deal with narrowing the issues and other housekeeping. We heard evidence and submissions on 30 April 2024.
2. The parties had produced an updated schedule of loss and counter schedule of loss and written submissions. We had a remedy bundle and also considered specific documents from the liability bundle, to which we had access. We heard evidence from the claimant.

### **Facts**

3. The following matters were agreed or had already been decided. The claimant's gross weekly pay was £448.50 and the net pay was £382.33. The employer's pension contribution was 3%. The correct multiplier for the basic award was 3.5 weeks based on 3 years' service and the claimant's age of 42 at the time of her constructive dismissal. The effective date of termination was 21 October 2020. The respondent had continued to pay statutory sick pay to the claimant after this date.
4. The basic award was £1,569.75. The respondent accepted the claimant was entitled to net loss of earnings for the period from 21 October 2020 to 14 February 2021 (13.3 weeks) amounting to £5,084.99 from which we deducted the amount the claimant received (£2867.48) for work in a COVID testing centre (from December 2020- February 2021). The figure the respondent had deducted (£3,382.20) had been gross earnings not net.
5. The respondent also accepted the loss of pension benefit of £13.44 per week from 22 October 2020 to 14 February 2021.
6. The claimant began claiming Universal Credit on 3 June 2021 and Employment Support Allowance from 30 June 2021. The sums claimed are in the counter schedule of loss.
7. It was more favorable to the claimant to award loss of earnings as part of the discrimination award (because of the award of interest) and the respondent's representative did not object to our doing so.

8. The respondent's representative agreed that daily accrued simple interest at a rate of 8% was appropriate and proposed how this should be calculated in respect of both financial loss and injury to feelings. We used the respondent's method of calculation.
9. From the evidence heard and the documents before us we found the following.
10. The Claimant did obtain alternative temporary work (as referred to above) which was at least paid at a similar rate from December 2020 until 14 February 2021 when she decided it was too much due to the travel to it, the long days and also that she was not emotionally ready. This work was inevitably temporary as it was a COVID testing centre and we find that this did not end the period of loss for which the respondent is responsible. On 26 February 2021 the claimant was admitted to hospital with headaches and it was suspected that she had had a stroke. There was a GP note in the original bundle which confirmed she was not fit for work from 31 May 2021 until 31 August 2021.
11. We accept that she had a stroke in February 2021 but there is no evidence on which we can base a finding that it would not have happened if she had not worked for the respondent or experienced the treatment that we have found to be unlawful. Though we acknowledge it is the claimant's strong belief that the respondent's treatment and the stroke are connected, there is no evidence to support a finding by us that the stroke was caused by stress which was caused by the respondent.
12. The Claimant then participated in a recruitment exercise with Border Force which led to a provisional offer of employment, but then on 5 July 2021 she chose to withdraw saying she was not fit to do the role. She made this decision after a conversation with her GP who challenged her decision that she could work. She has not worked since then and has cancelled her driving instructor registration in September 2022 on health grounds.
13. We took account of the letter from her GP of 15 March 2022 (p141) and the neuropsychology report of 5 December 2023 (p397).
14. As said above, we find on the evidence before us that there is no basis for a finding other than that the stroke would have happened anyway. However we do not agree with the respondent that if the claimant was still employed with the respondent she would have resigned on the same day that she resigned from the COVID test centre. We find it more likely she would have taken sickness absence.
15. According to page 521 of the liability bundle the claimant's company sick pay ran out on 20 September 2020 and at that point she had 17 weeks of SSP left. According to the sick note (and our liability decision) the period of sickness she had taken from 31 July 2020 and 28 August 2020 was lung related as well as mental health related and therefore probably would have

happened any way (even without the discriminatory treatment). However from 28 August 2020 the sick notes were for stress and depression and were related to the discrimination.

16. We therefore find that if there had not been discrimination then by February 2021 the claimant would still have had 24 days of contractual sick pay remaining and then would have been entitled to and remained on SSP until after 2 June 2021. From 2 June 2021 she claimed Universal Credit which is more than she would have received on SSP. As she would not have returned to work on full pay, we find that at this point she mitigated her loss.
17. We accept that at some stage her employment would have ended because of her inability to return to work and that therefore the claimant would have remained on SSP until her entitlement ran out or the employment terminated. However we find that it is unlikely that there would have been a termination of employment prior to 2 June 2021, especially as she did not withdraw her application from Border Force until 5 July 2021 and prior to that she was hopeful she could resume working. We consider it just and equitable to compensate her for loss of earnings for the full period from 22 October 2020 until 2 June 2021, but taking account her mitigation of loss and also that her earnings would have reduced to SSP once her company sick pay ran out.
18. The relevant Vento bands at 7 December 2020 (date the claim was presented) were £900-£9000 (less serious cases); £9,000- £27,000 (middle band) and £27,000 - £45,000 (most serious cases). The respondent argued the appropriate award was top of the lower band or lower middle band. We did not consider the lower band appropriate as this was not one off. There was more than a year of failure to make reasonable adjustments and we have identified a number of times when they should have been made. We accept she experienced the distress of unnecessary aggravation of her pain for that period and that it made her feel worthless and invisible. She felt humiliated by the attitude of the controllers and the failure by management to discuss the report with the claimant even when she made approaches to do so. She felt particularly offended when she felt she had given so much hard work to the respondent.
19. We recognise the claimant lost a job that she loved and that her aspiration to be an examiner with the respondent was also brought to an end by the dismissal. We accept she found that devastating, and that this was not lessened by the fact she was unable to work from February 2021 for a different reason. At the time she lost the job and therefore the opportunity to be an examiner she did not know what would later happen in February.

20. We accept that the treatment by the respondent caused the claimant to have stress and depression starting in July 2020 and continuing from August 2020 through to December 2020. In that period she was so unwell for about a month that her own solicitor could not take her instructions.
21. There was quite separate harassment in how the respondent handled the claimant's absence and ill health and the letters from her solicitor. It was particularly high handed to ignore what the claimant's solicitor was saying about the claimant's ill health and ability to deal with the matter and instead to insist upon contact in person by the claimant and to threaten disciplinary action if she did not meet with the respondent. A number of people in senior positions to the claimant contributed to that harassment when the claimant was at such a low point. She described herself as feeling broken by the company.
22. By December 2020 though she did feel well enough to get work at the COVID testing centre and her GP recorded that she was feeling well enough to come off medication. We find she was by then recovering well when she suffered the set back of the stroke in February 2021.
23. Since February 2021 the claimant's mental health symptoms have continued and she has had a diagnosis of PTSD. We have no medical evidence about the cause of the PTSD and supporting the assertion that the PTSD was a result of the respondent's discrimination.
24. There were from this point complex factors contributing to the claimant's physical and mental health. There was the impact of suffering the cognitive impairment and the impact of having to give up work following the stroke. From the medical evidence it is apparent that there were complex factors including side effects of her drugs contributing to the cognitive impairment. The claimant is strongly of the view that the respondent has caused the stroke in February 2021 but this is unsupported by medical evidence. To conclude, we accept the respondent's discriminatory treatment has had an impact on the claimant's mental health but is not the only contributing factor affecting her mental health since February 2021.
25. Taking all of the above into account we considered in the top half of the middle Vento band, to be the appropriate level. Although serious, it is not the most serious of cases. We thought about a separate award of aggravated damages for the impact of the particularly high-handed conduct by management after the claimant's solicitor became involved and the Claimant set out her case to the respondent. However we decided that a small increase to what we otherwise would have awarded for the injury to feelings award was the more appropriate way to recognise the impact of this conduct on the Claimant and this is therefore already factored into the injury to feelings award. We considered the appropriate award to therefore be £22,000.
26. Turning to the ACAS Code of practice on grievances. The respondent did not pursue a reduction for the claimant's failure to complete the grievance

process and we find it would not be appropriate given our liability findings. We considered whether the respondent's conduct in insisting the claimant attended meetings and threatening disciplinary action warranted an uplift. However we did not consider there was a basis for uplifting the award for this. The respondent was trying to follow the grievance process and those actions, though part of the harassment, are not strictly a breach of the code. Again we considered it more appropriate to compensate for the impact of this on the claimant's feelings within the injury to feelings award and this is also reflected in the £22,000.

27. The method of calculating interest was proposed by the respondent and set out in the counter schedule of loss. We adopted that method. Interest on financial losses was therefore based on the 1288 day period since the effective date of termination of 21 October 2020. Interest on the injury to feelings was based on 1526 days since the 25 February 2020.

Employment Judge Corrigan  
15<sup>th</sup> May 2024

Sent to the parties on  
30<sup>th</sup> May 2024

For the Tribunal Office

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