



## EMPLOYMENT TRIBUNALS

**Claimant:** D

**Respondents:** R1  
R2  
R3  
R4  
R5

**Heard at:** Cardiff

**On:** 6, 7, 8, 9 November 2023 and in chambers on 29 November 2023

**Before:** Employment Judge S Moore  
Mrs J Beard  
Mrs M Walters

**Representation**

Claimant: Mr C Howells, Counsel  
Respondents: Mrs Younis, Solicitor

## RESERVED JUDGMENT ON REMEDY

The unanimous judgment of the Tribunal is as follows:

1. The complaints of being subjected to detriments for making protected disclosures and victimisation detriments were upheld. The first, second, third and fourth Respondent are jointly and severally ordered to pay the Claimant the sum of £3,000 injury to feelings and £589.80 interest in respect of the complaints listed at paragraphs 9 (a), (b) and (c) below.
2. The complaint of unfair dismissal contrary to section 103A Employment Rights Act 1996 was upheld. The first Respondent is ordered to pay the Claimant the following sums:
  - a) Basic award – £228.96.

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- b) Loss of Statutory Rights - £500.00
3. The complaint of harassment related to sexual orientation and race was upheld. The first and fifth respondents are jointly and severally ordered to pay the Claimant the sum of £1,500.00 and interest of £309.70.
4. The complaint of harassment related to gender reassignment was upheld. The first, fourth and fifth respondent are jointly and severally liable to pay the Claimant the sum of £1,500.00 and interest in the sum of £309.70.
5. The complaint of harassment related to disability was upheld. The first and fourth respondent are ordered to pay the Claimant the sum of £1,000.00 and interest in the sum of £206.47.
6. The complaint of sexual harassment was upheld. The first and fourth respondents are jointly and severally ordered to pay the Claimant the sum of £1,500.00 and £309.70 interest in respect of the complaints listed at 10 (a) and 10(b) below. The first and fifth respondents are jointly and severally ordered to pay the Claimant the sum of £9,500.00 and interest in the sum of £1961.42 in respect of the complaints listed at 10 (c), (d) and (e) below.
7. The complaint of being subjected to a detriment for making protected disclosures and victimisation detriments at paragraph 9 (d) below (dismissal) was upheld. The first, second, third and fourth Respondent are jointly and severally ordered to pay the Claimant the following:
- a) Compensation, which is awarded under section 124 (2) (b) Equality Act 2010 as follows:
- b) For pecuniary loss the sum of £5,794.68 plus interest on past loss in the sum of £598.20 and;
- c) The sums of £11,000 for injury to feelings and £5,000 for aggravated damages plus interest in the sum of £3,131.62.
8. In respect of tax payable on the award ('grossing up'), the first Respondent is ordered to pay the sum of £2,448.67.
9. When the proceedings were begun the First Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars. The first Respondent is ordered to pay the claimant the sum of two week's pay in the sum of £457.92.
10. The first Respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 and it is just and equitable to increase the compensatory award payable to the claimant by 25 % in accordance with s 207A Trade Union & Labour Relations (Consolidation) Act 1992.
11. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:
- a) The total monetary award (i.e. the compensatory award plus basic award)

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payable to the claimant for unfair dismissal is £5,528.14.

- b) The prescribed element is £1,190.64
- c) The period of the prescribed element is from 19 June 2021 to 29 November 2023.
- d) The difference between (1) and (2) is £3,715.68.

## **REASONS**

### Background and Introduction

1. There are anonymisation orders and restricted reporting orders in place in respect of all parties and two other individuals (Person A and Person B). A separate remedy judgment has been issued in respect of the first Claimant, who is referred to as C in this judgment.
2. On 11 October 2023 the responses for all Respondents were struck out by Judge Ryan. The hearing had due to be heard over 8 days but as a result of the responses being struck out, the hearing was reduced to 4 days. The Respondents were permitted to cross examine the Claimants on remedy and adduced one witness statement for R2 but he was not called to give oral evidence. None of the other Respondents submitted witness statements in respect of remedy.
3. At the outset of the hearing the Respondent's representative confirmed she remained instructed for all Respondents.
4. The claim was heard at Cardiff Tribunal on 6, 7, 8, 9 November 2023. Oral judgment on liability was given on 9 November 2023. A written record of the judgment was promulgated on 14 November 2023. Remedy was reserved. The Tribunal sat on 29 November 2023 to reach their decision on remedy.
5. There has been no request for written reasons for the liability judgment. Where it is necessary to recount liability findings to make sense of remedy findings these are set out below.

### Rule 50 orders

6. The Tribunal raised of their own volition that the Claimant's complaints included allegations concerning a potentially vulnerable person and the allegedly inappropriate and abusive relationship between that person and R4. There were also allegations regarding comments made in the work place about a sexual relationship and sex acts at work involving an individual who was not a party to these proceedings. On 6 November 2023 the Tribunal issued anonymisation and restricted reporting orders in respect of these persons who shall be referred to as Person A and Person B in these proceedings.
7. There had been no previous applications by either party for any other Rule

50 orders.

8. The Respondents have appealed Judge Ryan's decision to strike of the responses. The timing of the appeal was after the Tribunal met in chambers and reached their remedy decision. As there was no request for written reasons of the liability judgment, given the content of the remedy judgment, the appeal gave rise to the Tribunal further considering whether Rule 50 orders should be extended to all parties. The parties were provided with the opportunity to make representations on whether there should be further privacy orders. On 5 February 2023 the Tribunal made further anonymisation and restricted reporting orders in respect of all of the parties.

#### LIST OF COMPLAINTS UPHELD

##### 9. PID detriments (s.47B ERA 1996) and s27 EQA detriments R1

- a) On June 15th, 2021 the Claimant was removed from the management WhatsApp group.
- b) On June 19th, 2021 R4 asked the Claimant to return her keys to the store.
- c) On June 19th, 2021 R4 accused the Claimant of theft of a bottle of water.
- d) The Claimant was not given the right to reply before R4 summarily dismissed her 20 minutes later (this claim is advanced R4, but in respect of which R1 is vicariously liable).

#### Harassment (s26 EQA 2010)

##### 10. Sexual Harassment R1 and R4

- a) On or around 1 May 2021 R4 commented to the Claimant that he would watch CCTV of the store whilst in the bath. R4 also said that he wished there were cameras in the toilet facilities so that he could watch staff there.
- b) On or around May 2021 R4 would stand very close to the Claimant, and other female colleagues, during shifts.

##### Against R1 and R5

- c) R5 would comment on the Claimant's nipples when she emerged from the freezer.
- d) R5 commented that the Claimant should not bend down *in front of men*.
- e) R5's references to having played pornographic virtual reality games.

##### 11. Harassment related to sexual orientation R1 and R5

- a) After arguing with a homosexual staff member who suffered with epilepsy, R5 referred to him as a "gay retard".
- b) On another occasion R5 referred to a co-worker as a "butch lesbian".

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12. Harassment related to race / national origin R1 and R5

- a) R5 repeatedly referred to a co-worker of Indian ethnicity as “Barry” in the Claimant’s presence. He would mimic his accent when speaking to him and he would use phrases such as “*thank you, come again*”.

13. Harassment related to disability R1 and R4

- a) R5 referred to the Claimant as a “gay retard” during a training session after observing her table layout.

14. Harassment relating to gender reassignment R1, R4 and R5

- a) When referring to a former colleague, who was born female but had explicitly advised that he identified as male, R4 and R5 would use the female name assigned at birth and not the male name as requested. During the course of this person’s employment R4 and R5 customarily referred to this person as “the heshe” .
- b) This colleague left employment with R1 on May 1<sup>st</sup>, 2021. Referring to this, R4 told the Claimant “*It has left*”.

Findings of fact – relevant to remedy

15. The Claimant was employed 4 September 2020 to 19 June 2021. Her age at the date of dismissal was 25.
16. The Claimant was initially employed as a kitchen assistant. She worked predominantly with R5 who was a Shift Manager although routinely also worked with R4. On 1 May 2021 she was promoted to Shift Manager. Her gross and net weekly pay was £228.96. R1 failed to disclose the pension scheme documents to the Claimant. It is assumed R1 operated a nest type pension as is typical in the sector and employer contributions are found therefore to have been 3%. The Claimant was entitled to food up to the value of £18 per shift worked, namely 3 shifts per week.
17. Following the Claimant’s dismissal, she was unemployed until 14 July 2021. She commenced employment with JD Wetherspoons from 15 July 2021 until 29 August 2021 where she earned £145.60 per week. From 30 August 2021 until the current time the Claimant secured employment with a garage earning pay in excess of her pay with R1 and no loss is sought from 30 August 2021.
18. The Claimant was entitled to 12 weeks’ notice but was only paid two weeks’ notice upon her dismissal.

Findings in respect of injury to feelings – harassment claims

19. Complaints regarding R4. The Claimant was shocked and uncomfortable by R4’s statement regarding watching the staff from the bath and wishing

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there was CCTV in the toilets. The Claimant was also made to feel uncomfortable about how close R4 stood next to her during her training as a Shift Manager to the extent she had to ask him to move whilst getting things out of the oven.

20. In relation to R5's frequent and open references to watching pornography and to a pornographic video game that he was playing at the time, these statements made the Claimant feel very uncomfortable and were not the sort of thing she expected a manager to talk about at work.
21. The Claimant initially considered that if she kept her head down and just got on with things, she would be able to ignore him, but eventually R5's offensive comments began to be directed at the Claimant. On numerous occasions R5 made comments about the Claimant's nipples being erect when she exited the walk-in freezer. This happened on so many occasions that eventually the Claimant tried to make sure she was wearing a padded bra for work, or if she happened to forget, that she would either ask another member of staff to retrieve items for her or carry things in a way to cover her chest. The Claimant was clear with R5 that she did not find these comments amusing. She would never laugh at his 'jokes' about "cutting diamonds" or jokes with sexual connotations about her being "happy to see him" etc. The Claimant felt mortified by the whole thing and believed that R5 enjoyed the fact that it obviously embarrassed her.
22. In relation to the bending over comment, the Claimant was extremely embarrassed in that moment and stood straight back up without having achieved what she was trying to do.
23. In relation to the occasion when R5 called a member of staff a "gay retard" the Claimant was made to feel very uncomfortable by the behaviour and felt the need to tell him to "pack it in" and not to make comments like that as he was disturbing the entire shop and making a scene.
24. In relation to R4 and R5's comments about the transgender member of staff, the Claimant found these comments to be horribly offensive.

Findings in respect of injury to feelings – PID detriments and victimisation detriments

25. The Claimant worked with Person A who was employed by R1.
26. From the start of her employment the Claimant noticed that Person A was treated differently to the other staff by R4. Jokes were made about their<sup>1</sup> intimate personal appearance by R4 and R5.
27. Person A told the Claimant that R4 would watch them on CCTV when he was not at work to ensure they were always busy and had to keep moving or R4 would reprimand them. Person A told the Claimant and C that they

<sup>1</sup> We have used gender neutral pronouns to ensure Person A remains anonymised

**Commented [EQ1]:** Footnote may need to be moved to first use of gender neutral pronoun. Para 26, line 2.

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often had to cover R4's shifts but would not be permitted to clock in, be paid or claim the food allowance for that shift. The Claimant and C also observed Person A had very little money and had shoes with holes in. The Claimant asked them why they did not buy new shoes and Person A told the Claimant and C that they were not allowed to as R4 was in control of their bank and credit cards and would not permit them to buy shoes. R4 is alleged to have retained Person A's wages and provided them with a small allowance. If Person A ordered a supermarket delivery R4 would review and edit the order removing snack items stating the reason was he did not want them to get fat.

28. C purchased Person A new shoes from his own money.
29. Person A also informed the Claimant and C that R4 had acted as a guarantor when they had applied to rent a property. R4 retained a set of keys to Person A's flat and would undertake inspections whenever he chose. On one occasion C had unwittingly been taken to Person A's flat during work time under R4's instruction. C was unaware the flat belonged to Person A until R4 began to FaceTime staff and take and share photos of Person A's flat and intimate personal matters.
30. There were many occasions the Claimant observed Person A in tears after telephone calls from R4.
31. On 2 May 2021 C had become so concerned about the relationship between R4 and Person A that he decided to make a report to Adult Social Services. We saw corroborating emails in the bundle. He engaged with Social Services following up their request for information. Person A informed Social Services that they did not want any action to be taken and did not cooperate with their enquiry. We found this was a genuine concern on the part of the C done out of concern for Person A. We accepted his evidence about his concerns and why he held them. There was also a text message in the bundle from Person A to the Claimant who had messaged Person A on 5 May 2021 after learning that they did not want to engage with the social services investigation. The Claimant told Person A he was not "pissed off" but disappointed because he knew the only way they could escape it (the alleged situation with R4) was with help from the police and he had "*put a lot on the line*" to go to the police and agreed to accompany Person A in any interviews. He acknowledged Person A's decision but believed as a friend they were making a mistake. He reassured them they would not lose his friendship and went on to state that every time R4 "*treats you like crap or you aren't able to buy a pasty or box of coffee remember you do not have to live that life. You can get out whenever you're ready*".
32. Person A responded "*I know you've put a lot on the line for me. I will always be grateful for that. I just ain't got it in me to do it to someone. I know it's wrong, everything he does and I'm stupid for putting up with it but I can't let him get arrested over me*".

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33. In light of that text message and the other evidence we heard concerning the relationship between R4 and Person A, we found that the Claimants genuinely believed there was an abusive relationship between Person A and R4. We did not make findings about those concerns otherwise as this was not relevant to the issues in these proceedings.
34. The Claimant and C then reported their concerns to the police on 3 May 2021. The police visited Person A at C's home as they had not attended the police station with Person A as had been hoped, as they had refused. The Claimant and C were with Person A who declined to speak to the officers.
35. On 1 June 2021 the Claimant sent an email to the R2 raising concerns about the behaviour of R4. She was telephoned by R2 and advised R2 that C also wanted to raise a grievance / complaint. A meeting was arranged for 9 June 2021. The Claimant confirmed she wished to pursue a formal grievance on 7 June 2021 due to the nature of the issues and concerns raised. At this stage the issues had not been detailed other than to say they were serious.
36. The Claimant and C were invited to a grievance meeting on 9 June 2021 attended by R2 and R3. There were two areas of concerns relayed by the Claimant and C at this meeting. The first area was that Person A was being emotionally, financially and psychologically abused by R4. These concerns were based on conversations Person A had had with the Claimant and C and also their observations and C's visit to Person A's flat. The second area was in respect of incidents that had occurred directly involving the Claimant, C and R4 and R5. The Claimant informed R2 and R3 about R5's sexual harassment both in relation to herself and more broadly. The Tribunal found that the information provided to R2 and R3 at this meeting amounted to qualifying disclosures under S43B ERA 1996 and protected acts under S27 EQA 2010.
37. Following the grievance hearing the R2, R3 and R4 took steps to start removing the Claimant from the business. The findings regarding R3 were due to the wholly inadequate, prejudicial and fabricated investigation she had conducted following the Claimant's grievance which focussed on finding reasons to dismiss the Claimant and wholly failed to investigate the allegations that had been made against R4 and R5. On 19 June 2021 R4 requested the Claimant's door keys stating something was wrong with the lock. On 15 June 2021 the Claimant was removed from the store's management WhatsApp group. The same Respondents also set out about constructing a fabricated and malicious disciplinary case against both Claimants and another employee who had supported the Claimants' accounts.
38. On 19 June 2021, 15 minutes into the Claimant's shift, she was called into the office by R4. Upon entering she saw that R5 was also present. We pause here to say that only a few days before the Claimant had made allegations of sexual harassment against both of these individuals yet was called into a room with them both, without any representation. We found that R2 must have sanctioned this approach given what ensued.
39. Without asking for any explanation whatsoever, R4 accused the Claimant

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of stealing a bottle of water which he said he had 'caught' the Claimant doing on the live CCTV footage. The Claimant explained she had not stolen anything and that the bottle of water had been paid for the previous day and told R4 to look on the system where he would find the receipt which he did. This receipt was produced in the bundle.

40. 20 minutes later, the Claimant was asked to return to the office at which time R4 informed the Claimant that her contract of employment was terminated with immediate effect. The Claimant was completely and utterly shocked, having no idea what was happening or why she was being dismissed. At one stage it entered her mind that they might even just be joking. She was unable to make any sense of what was happening.
41. R4 gave the Claimant a letter advising the Claimant's employment was terminated for poor performance, for gross misconduct and for breach of the social media policy. The Tribunal found these allegations to be completely unfounded.
42. Despite the Claimant's objections and desperate requests for further information, R4 refused to provide her with any further information and advised that the decision was final, and nothing could be done to reverse it.
43. The Claimant told the Tribunal that working for R1 and being sacked was one of the hardest things she has ever had to go through. There were multiple occasions during her employment where she would come home to her partner and burst into tears. The Claimant had wanted secure employment after having her first child but time-after-time she would come home 'in a mess'. The conditions, the harassment and the abuse that happened daily on her shifts was very hard to take.
44. The Claimant often felt completely helpless and became overly critical of herself wishing that she could be stronger and stand up for herself and her colleagues against R4 and R5. The Claimant told the Tribunal she would have "given her right arm" to help Person A with the relentless bullying and abuse that she suffered day in day out describing it as gut wrenching and inhumane. It was only through fear of being unemployed that the Claimant stayed in her role. She experienced sleepless nights, and the events had a very detrimental impact on her family life during that time. The Claimant could not enjoy being a new mum and experienced feelings of dread on the way to work. It was all encompassing. The Claimant remains angry in some respects as she knows she will never get that time back.

As of the date of the hearing the Claimant still feels the lasting impact of working for R1. The Claimant had previously considered herself to be outgoing, cheerful, have a positive mindset and loved making friends with people in work, but she now finds herself much more withdrawn, quiet and her ability to trust people has changed.

45. The Claimant's dismissal resulted in her losing friendships, getting into debt and losing her feelings of job security and being able to provide for her family.
46. In contrast R4 was treated very differently. Whilst there appears to have

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been an investigation, R4 was not subject to any disciplinary sanction despite R2 being in possession of a recording regarding the comments R4 had made about employees with mental health issues. R4 was sent a letter recording that his explanations were “*unsatisfactory*” and he should “*make every effort to address shortcomings that have been identified*”. It was not recorded what these shortcomings were.

47. The Claimant’s allegations against R5 were not put to him at all according to R3’s notes on an investigation. There was no evidence of any action taken against R5.

The Law

48. Section 49 ERA 1996 provides:

**49 Remedies**

(1) Where an [employment tribunal] finds a complaint [under section 48(1), (1ZA), (1A) or (1B)] well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.

.....

(2) [Subject to [subsections (5A) and (6)]] The amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement to which the complaint relates, and
- (b) any loss which is attributable to the act, or failure to act, which infringed the complainant’s right.

(3) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates, and
- (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.

(4) In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

49. The dismissal was a discriminatory dismissal as it was found to be a detriment under S27 EQA 2010. The compensation for loss should therefore be awarded on the principles applying to discrimination cases.

50. **Al Jumard v Clwyd Leisure Ltd [2008] IRLR 345** is authority for the approach where a case involves multiple forms of discrimination. In such cases the EAT held that where more than one form of discrimination arises out of the same facts, it can be artificial and unreal to ask to what extent each discrete head of discrimination has contributed to the injured feelings, and there will be no error of law where the tribunal fails to do that. Where discriminatory heads overlap, it is not simply a case of treating both forms of discrimination wholly independently and then adding the sum for each. The degree of injury to feelings is not directly related to the number of grounds on which the discrimination has occurred. It may be, for example, that a tribunal takes the view that injury to feelings in a case of race and disability discrimination is not materially different from the injury that would have been experienced had it been race alone. Similarly, there should not

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be some artificial attempt to assess loss by reference to each and every alleged incident of discrimination. That is wholly unreal and would be an impossible exercise. In many cases an act of discrimination, such as failing to give a proper hearing, could be divided up into various sub-categories. The exercise would also give a wholly specious objectivity to what is inevitably a broad-brush calculation.

51. Discrimination is a statutory tort which means that where two (or more) respondents are jointly responsible for an act of discrimination, harassment or victimisation, the Tribunal can award compensation on a joint and several basis.
52. In **London Borough of Hackney v Sivanandan & Others [2013] EWCA Civ 22**, the Court of Appeal upheld the EAT's decision that an employment tribunal had no power to apportion a compensatory award where numerous respondents were found jointly and severally liable for an indivisible act of discrimination. In the EAT, it was held that where there are co respondents jointly responsible, the usual award will simply be that each such respondent is jointly and severally liable. In such cases, the EAT (Underhill P presiding) held that the Employment Tribunal's discretion to apportion liability to the claimant between each of the respondents exists only where the injury caused by different acts of discrimination is 'divisible' and the tribunal can—and, indeed, should—apportion to each discriminator responsibility for only that part of the damage done by them. Even then, the EAT warned that such 'split' awards should only be made where such an order is sought by one of the parties and if the proper legal basis for the discretion is clearly demonstrated in the particular case.
53. The Claimant is under a duty to mitigate his loss and the burden of proof is on the Respondent to show the Claimant has failed to mitigate his loss. **Ministry of Defence v Cannock [1994] ICR 918 and Wilding v British Telecommunications Plc [2002] ICR 1079.**
54. The Court of Appeal gave guidance to Tribunals when assessing future loss of earnings after a discriminatory dismissal in **Wardle v Credit Agricole Corporate and Investment Bank [2011] EWCA Civ 545**. Where it is at least possible to conclude that the employee will, in time, find an equivalently remunerated job (which will be so in the vast majority of cases), loss should be assessed only up to the point where the employee would be likely to obtain an equivalent job, rather than on a career-long basis, and awarding damages until the point when the tribunal is sure that the claimant would find an equivalent job is the wrong approach. This case was also relevant when considering whether an ACAS uplift should be awarded having regard to the overall size of the award.
55. In **Virgo Fidelis Senior School v Boyle [2004] IRLR 268** the EAT held that a protected disclosure detriment is a form of discrimination and it is appropriate to apply Vento guidelines.
56. Guidance on assessment of compensation in injury to feelings is contained in **Vento v Chief Constable of West Yorkshire Police (No2) [2003] ICR 318**. There are three bands.

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57. In respect of claims presented on or after 6 April 2021, the Vento bands were as follows: a lower band of £900 to £9,100 (less serious cases); a middle band of £9,100 to £27,400 (cases that do not merit an award in the upper band); and an upper band of £27,400 to £45,600 (the most serious cases), with the most exceptional cases capable of exceeding £45,600.
58. Injury to feelings awards are compensatory and should compensate without punishing the discriminator. Feelings of indignation should not inflate the award.
59. **Cannock** is also authority for the principle that the Tribunal should not simply make calculations under different heads, and then add them up. A sense of due proportion is required and to look at the individual components of any award and then looking at the total to make sure that the total award seems a sensible and just reflection of the chances which have been assessed ( per Morison J at para 132).
60. Aggravated damages can be awarded where aggravating features have increased the impact of the discriminatory act on the Claimant. Underhill P in **Commissioner of Police of the Metropolis v Shaw UKEAT/0125/11/ZT** cites the phrase 'high-handed, malicious, insulting or oppressive' behaviour'. Subsequent conduct such as conducting the trial in an unnecessarily oppressive manner, failing to apologise, or failing to treat the complaint with the requisite seriousness can also give rise to aggravated damages.

Conclusions

Basic award

61. The Respondents submitted there should be no basic award as the Claimant does not have two years' service. We could not find any authority to support this contention in s118 ERA 1996. This is a complaint of unfair dismissal that is well founded and as such we award the Claimant a basic award in the sum of £228.96.

Compensatory award

62. The compensation is to be awarded under s124 EQA 2010 rather than s123 ERA 1996.

Mitigation

63. We consider that in all the circumstances the Claimant took reasonable steps to mitigate her loss. She secured work three weeks later albeit at a lower rate of pay and by 29 August 2021 had secured new employment where her losses ended. We therefore award the Claimant the loss in earnings between the date of her dismissal to 29 August 2021.
64. We were invited to award the Claimant a loss of £18 per shift in respect of

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the loss of her food allowance she enjoyed in R1's employment. Whilst this was a contractual benefit, we do not consider that the full amount should be awarded as the value was based on the retail price rather than what the benefit actually cost to provide to the employees. Applying a broad-brush approach, we consider that a sum of £7.50 per shift justly compensates the Claimant for this loss of benefit.

Breach of contract

65. We found that the Claimant was entitled to 12 weeks' notice yet was only paid two. We would therefore award damages for wrongful dismissal for 10 weeks' pay but have calculated this loss under the pecuniary loss arising under s124 EQA 2010, being the most proportionate way of calculating these complex remedy conclusions.

ACAS Uplift

66. We consider this to be a claim where it is appropriate to award a 25% uplift to the compensation award on the basis there was a wholesale failure by R1 to comply with the ACAS Code of Practice in respect of both the disciplinary procedure and the Claimant's grievance.

67. The Claimant raised a grievance in writing with the Respondent. Whilst there was a grievance meeting this was a total sham. Thereafter there was no investigation into the grievance and the Claimant's allegations of sexual harassment were not even put to R5 according to R3's own investigation notes. The disciplinary procedure was a sham and we found it was malicious and motivated by and amounted to victimisation and a detriment for making protected disclosures. What was also aggravating was the way in which the dismissal was carried out in particular empowering the two managers who were alleged to have harassed the Claimant to conduct the dismissal itself with no right to be accompanied to a meeting in a room alone with these individuals.

68. Having regard to **Wardle** and **Cannock** we do not apply the uplift to the injury to feelings and aggravated damages as we consider that this would not be proportionate having regard to the overall size of the award.

Injury to Feelings R1, R4 and R5

69. As the detriment, harassment and victimisation complaints were against different Respondents we have set out our findings in respect of each complaint separately. This is a claim where there were multiple findings of discriminatory conduct as well as detriments. As such we have had to apportion liability. This can be seen when the sexual harassment complaints are considered. We cannot make a global award for injury to feelings as different respondents are liable for different acts.

70. The Claimant's schedule of loss sought injury to feelings of £29,000 which is at the lower end of the upper Vento band and aggravated damages of £5,000.

71. We agree that overall, having regard to the multiple acts of discrimination

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that the total award should fall within the top Vento.

72. We consider it appropriate to award the sum of £3,000 for the PID detriments at paragraphs 9 (a) (b) and (c). In particular we were mindful of the impact on the Claimant of being accused of stealing and being called into an office with R4 and R5 who she had alleged to be sexually harassing her only a few days before. We had to separate out these detriments from the dismissal as R4 was not liable for the decision to dismiss whereas R4 was jointly and severally liable for the acts leading to the dismissal we concluded amounted to detriments.
73. In relation to the harassment complaints again these had to be apportioned as different acts were upheld against different Respondents. We considered that in relation to the sexual orientation, race and gender orientation, these were offensive comments made on more than one occasion and assess the injury to feelings to fall within the bottom of the lower band and award £1,500.00 for these complaints. In respect of the disability related harassment complaint this was one comment and as such we award £1,000.00 for injury to feelings. In respect of the sexual harassment complaints advanced against R1 and R4 we consider that there were two occasions where the Claimant was made to feel shocked and uncomfortable (see paragraph 19) and assess the injury to feelings at £1,500.00
74. In relation to the sexual harassment claims against R1 and R5 (see paragraphs 20, 21 and 22) we considered that the Claimant's injury to feelings fell within the middle Vento band. The offensive and predatory comments of a highly personal nature were repeated so often the Claimant felt obliged to think about her clothing she would have to wear to work and ask other members of staff to retrieve items from the freezer. We assess injury to feelings at £9,500.00.
75. The total award for the multiple harassment complaints is £15,000 plus interest.

PID detriment (dismissal ) and Victimisation detriment (dismissal) R1, R2, R4

76. See our findings of fact at paragraphs 35 – 39 setting out the injury to feelings as a result of the discriminatory dismissal. The Claimant was dismissed on the grounds of / because she had raised extremely serious allegations of discriminatory and harassing behaviours by R4 and R5. The dismissal was conducted in a brutal manner which has left the Claimant with trust issues. The Claimant chose to report serious matters to her employer trusting they would be investigated and taken seriously. Instead, the Respondents dismissed the Claimant on the basis of fabricated and malicious reasons. We consider the appropriate Vento Band to be the middle band and award the Claimant £11,000 injury to feelings for these complaints.
77. The total injury to feelings award amounts to £29,000 in total. We have, as required, stood back and looked at the total amount and are satisfied this is a just and equitable award within the appropriate Vento Band, taking into account also the ACAS uplift.

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78. Turning now to the issue of aggravated damages. We agree that this is a claim where it is appropriate to make such an award. We have found that the Respondents constructed a false reason to dismiss the Claimant. The Claimant had told R2 only days earlier that R5 had sexually harassed her and that R4 was allegedly involved in extreme abuse of Person A yet R4 and R5 were permitted to call the Claimant into an office where they were both present, accused her of stealing and then summarily dismissed her. We found the manner of this dismissal to be a particularly brutal and spiteful act of victimisation. For these reasons, we award the sum of £5,000 for aggravated damages.

S38 EA 2002

79. This claim was upheld as the first Respondent failed to issue the Claimant with a compliant S1 ERA 1996 statement of terms and conditions of employment or provide updated terms when the Claimant was promoted to Shift Manager. We consider that two week's pay should be awarded in respect of this failure. We were not persuaded that the higher award was appropriate when standing back and looking at the totality of the award.

Interest

80. We have set out the interest calculations below. We acknowledge these are complex remedy calculations but consider that it was just and equitable to calculate the interest on the different awards as different Respondents are liable.
81. The first act of harassment where a definitive date is provided was 1 May 2021. We have therefore settled this date as the first act of harassment for the purpose of calculating the interest in respect of this complaint.
82. In respect of the awards for the PID / victimisation and aggravated damages, the relevant date for the purpose of calculation is 19 June 2021.

Grossing up

83. The portion above £30,000 requires to be grossed up in accordance with section 401 of the Income Tax (Earnings and Pensions) Act 2003.
84. The awards that are required to be included for the purpose of grossing up are the compensatory award (£5,794.68), injury to feelings (£29,000) and aggravated damages (£5,000) which totals £39,794.68.
- Personal allowance = £12,570 (gross);
  - Basic rate = 20% on the next £37,700 (gross) leaving £30,160 (net);
  - Tribunal award £39,794.68 of which £30,000 will be tax free leaving £9,794.68.

The Claimant has earned a gross figure of £18,225.30 in the current tax year (06 April 2023 – 05 April 2024). The first £12,570 of the salary is free of tax. The remainder of the salary (£5,655.30) is taxable at the rate of 20%. This leaves £9,794.68 of the award in the remaining 20% tax bracket. As such, £9,794.68 of

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the award will be taxable at 20%. This means that the amount to be grossed up remains within the 20% tax band  $((9,794.68/0.2) - 9,794.68 = £2,448.67)$ .

Calculations and breakdown of awards

## Automatic Unfair Dismissal

## Basic Award

1 week x £228.96 **£228.96**

Loss of earnings to remedy hearing (29 November 2023)

- Average gross weekly pay with R - £228.96
- Average net weekly pay - £228.96
- EDT 19/06/21
- Date of remedy hearing 29/11/23
- EDT to remedy hearing = 128 weeks

19/06/21 – 14/07/21 (3 weeks) unemployed £686.88

15/07/21 – 29/08/21 (6 weeks) JD Wetherspoons  
(£228.96 – 145.60) £500.16

**Total loss claimed to remedy hearing = £1,187.04**

Pension loss to remedy hearing

3% of 228.96 = £6.87 per week pension loss x 10 weeks = **£68.70**

Loss of benefit (food)

We apply a loss of £7.50 per shift during the period of loss on basis the value of the food equivalent would not be £18

128 weeks loss to hearing x (7.50 x 3) **£2,880**

**Total pecuniary loss to hearing 1187.04+68.70+2880 = £4,135.74**

Loss of Statutory Rights **£500**

ACAS uplift of 25% of total loss to remedy hearing and loss of statutory rights

$(4135.74 + 500) \times 25\% =$  **£1,158.94**

**Total compensation for pecuniary loss £5,794.68**

Injury to feelings

PID detriments £3,000

Harassment £15,000

Victimisation £11,000

**Total £29,000**

**Aggravated damages** **£5,000**

Interest on past loss

Date of first discriminatory act (01 May 2021) to date of remedy hearing (29 November 2023) = 942 days

**Interest calculation – ((942/ 2 x 0.08) /365) x 5794.68 =** **£598.20**

Interest on injury to feelings awards

Harassment

Date of first discriminatory act (01 May 2021) to date of remedy hearing (29 November 2023) = 942 days

**Sexual orientation and race**

**((942 x 0.08) /365) x 1500** **= £309.70**

**Gender reassignment**

**((942 x 0.08) /365) x 1500** **= £309.70**

**Disability**

**((942 x 0.08) /365) x 1000** **= £206.47**

**Sexual Harassment (R1 and R4)**

**((942 x 0.08) /365 x 1500** **= £309.70**

**Sexual Harassment (R1 and R5)**

**((942 x 0.08) /365) x 9500** **= £1,961.42**

PID/ victimisation detriment and aggravated damages

Date of first discriminatory act (15 June 2021) to date of remedy hearing (29 November 2023) = 897 days

**897 x 0.08 x 1/365 x 3,000** **+ 589.80**

PID/ victimisation detriment and aggravated damages (dismissal)

Date of first discriminatory act (19 June 2021) to date of remedy hearing (29 November 2023) = 893 days

**((893 x 0.08) /365) x 16000** **= £3,131.62**

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Failure to provide S1 statement

2 weeks x £228.96

**£457.92**

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Employment Judge S Moore

Date: 7 April 2024

JUDGMENT SENT TO THE PARTIES ON 2 July 2024

FOR THE TRIBUNAL OFFICE Mr N Roche

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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