



EMPLOYMENT TRIBUNALS

Claimant: Mr T Ahmed

Respondent: The Commissioner of the Police of the Metropolis

Heard at: London Central (remote hearing) **On:** 12 July 2024

Before: Employment Judge B Smith (sitting with members)
Mrs Marsters
Mr Baber

REPRESENTATION:

Claimant: Mr Singh (Counsel)

Respondent: Mr Sendall (Counsel)

REMEDY JUDGMENT

In respect of the upheld claims of failure to make reasonable adjustments and harassment:

1. The tribunal makes the recommendations at **Annex A**.
2. The respondent shall pay the claimant the following sums:
 - a. Compensation for injury to feelings: £30,000
 - b. ACAS uplift (10%): £3,000
 - Total with ACAS uplift: £33,000
 - c. Interest on compensation calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: £3,761.10
 - Total award : £36,761.10**

Employment Judge Barry Smith
12 July 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

18 July 2024

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FOR THE TRIBUNAL OFFICE

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REASONS

1. These reasons must be read in conjunction with our Judgment dated 24 May 2024 (sent to the parties on 31 May 2024) and Reasons dated 17 June 2024 and sent to the parties on 20 June 2024.
2. A remedy must be awarded in respect of the upheld elements of the claim of failure to make reasonable adjustments for disability (ie. not implementing a non-permanent structure whereby the claimant's arrangement of working entirely from home is reviewed periodically, such as every 6 months) and harassment (namely requesting and pressuring the claimant to return to working in the office on 18 May 2023).
3. The parties agreed that the following elements should be considered in this case: injury to feelings; personal injury; aggravated damages; ACAS uplift; recommendations; and interest.
4. Compensation for injury to feelings is an award of general damages, that is, for non-pecuniary loss.
5. An award of compensation is made under s.124 Equality Act 2010. An injury to feelings award encompasses subjective feelings such as upset,

frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression: *Vento v Chief Constable of West Yorkshire Police (no. 2)* [2002] EWCA Civ 1871.

6. For claims presented on or after 6 April 2023 (the claim was issued on 24 May 23), the President Guidance on the bands establishes:
 - (i) a lower band of £1,100 to £11,200, for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence;
 - (ii) a middle band of £11,200 to £33,700, for cases that do not merit an award in the upper band; and
 - (iii) an upper band of £33,700 to £56,200, for the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race.
7. The focus of the award must be on the effect of the unlawful act on the claimant: *Base Childrenswear v Otshudi* UKEAT/0267/18.
8. We take into account what the claimant says about injury to feelings, the duration of the discriminatory conduct, the duration of its consequences, any recovery by the claimant and the prospects of future recovery, the effect on future work, the effect on health and personal life.
9. Awards for injury to feelings are compensatory and should be just to both parties, compensating fully without punishment: *Prison Service v Johnson* [1994] IRLR 509. The discrimination must have caused the injury: *Coleman v Skyrail Oceanic Ltd* [1981] IRLR 398. We must make an assessment under *Vento* about whether the injury is less serious, serious, or most serious. The focus is on the injury rather than the manner of discrimination. In *Shaw* UKEAT/0125/11/ZT it was held that '*It is natural for a tribunal, faced with the difficulty of assessing the additional injury specifically attributable to the aggravating conduct, to focus instead on the quality of that conduct, which is inherently easier to assess. This approach*

is not necessarily illegitimate: as a matter of broad common sense, the more heinous the conduct the greater the impact is likely to have been on the claimant's feelings. Nevertheless, it should be applied with caution, because a focus on the respondent's conduct can too easily lead a tribunal into fixing compensation by reference to what it thinks is appropriate by way of punishment or in order to give vent to its indignation.' (Underhill P).

10. The manner of discrimination must, in part, inform our findings on injury to feelings. It is our findings on injury to feelings which informs the correct Vento band to apply.
11. An award will generally be higher where discrimination has been overt and there is a positive discriminatory motivation: *Taylor -v- XLN Telecom Ltd* [2010] IRLR 49.
12. Aggravated damages are normally awarded where there are acts done in an exceptionally upsetting way such as through high handed, malicious, insulting or oppressive behaviour, where the discriminatory conduct is found to be based on prejudice or animosity or is done with, for example, a spiteful or vindictive motive, or where the proceedings have been conducted in an unnecessarily oppressive manner: *Commissioner of the Police of the Metropolis -v- Shaw* [2012] IRLR 291 (Underhill P). The ultimate question is '*what additional distress was caused to the particular claimant, in the particular circumstances of this case, by the aggravating feature(s) in question?*' [at 24]. The tribunal is conscious of avoiding double recovery from aggravated damages both to injury to feelings and in respect of any ACAS uplift (*Base Childrenswear -v- Otshudi* [2019] UKEAT/0267/18).
13. If a recognised injury can be attributed to unlawful discrimination then the tribunal has jurisdiction to award compensation subject to causation: *Sheriff v Klyne Tugs (Lowestoft) Ltd* [1999] IRLR 481 CA.

14. We were also referred to, and took into account, *Sutherland v Hatton* [2002] RECA Civ 76 and *BAE Systems (Operations) Ltd v Marion Konczak* [2017] EWCA Civ 1188. However, a detailed consideration of these authorities was not required given our findings below.
15. We must consider if there is a breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures and, if so, whether it is just and equitable to increase any award by no more than 25%.
16. We must consider whether any ACAS uplift which is significant in absolute terms is appropriate taking into account the respondent's level of culpability and harm to the claimant: *Acetrip Ltd -v- Dogra* UKEAT/0238/18/BA and *SoS for Justice -v- Plaistow* [2021] UKEAT/0016/20.
17. We must avoid double recovery between multiple claims or heads of loss: *Al Jumard v Clwyd Leisure Ltd* [2008] IRLR 345 EAT
18. No grossing up is required where the compensation is awarded not in connection with the termination of employment.
19. We acknowledge that we must only make an award for injury to feelings resulting from acts which were subject to the claims upheld and not any other acts.
20. We take the claimant as we find him when assessing compensation.

Findings

21. We acknowledge and repeat our earlier findings as follows. The discriminatory conduct was not a deliberate campaign by particular individuals against the claimant (Reasons paragraphs [120, 124, 126 and 128]).

22. We find that a significant element of how the claimant feels is because of his previous experiences of racism and other difficulties whilst employed at the respondent and also the respondent's actions after the time the claims were about, such as putting him through the unsatisfactory performance and attendance ('UPP') process. This is clear from his evidence, particularly about the original sources of his anxiety.
23. The claimant's condition was such that it affected his ability to exercise, engage with stress activities, look at a screen and travel to and from work (Reasons [34]). The claimant had previous experiences of racism (Reasons [37]).
24. There was no operational requirement for the claimant to attend the workplace (Reasons [45]). The respondent was aware of the claimant's disability for a long period of time (Reasons [93]). At all material times the respondent had knowledge of the effect on the claimant's disability (Reasons [55-65, 67-79]). DI Loftus himself accepted that it would be morally and ethically wrong to force the claimant back into the office (Reasons [122]). The act of harassment on 18 May 2023 as set out in Reasons [82] was against this background. This was where we previously found that the line was crossed by the respondent and the effect on the claimant was that his life had become intolerable (Reasons [122]).
25. The discriminatory acts took place against a background of occupational health findings (Reasons [63]) that the claimant had an underlying cardiac disease and gets chest pains when feeling stress and anxious, and the claimant should avoid situations which may increase his stress and anxiety at work. The claimant found travelling to the office stressful and attending the office carried a significant risk of a further heart attack (Reasons [96]).
26. The failure to make a reasonable adjustment commenced when the previous reasonable adjustment of working from home was revoked on 8 February 2023 (Reasons at [105]).

27. The respondent had provided no clear guidance or advice in respect of disabled officers requesting working from home as a reasonable adjustment (Reasons at [128]).
28. We also make the following findings. The claimant did not during the relevant period in fact work in the office or a police station, although the respondent's requests for him to do so caused him anxiety. We make this finding on the basis of the claimant's evidence.
29. Consistent with all of our findings above, we find that the effect of the respondent's conduct which formed the basis of the upheld claims was to make the claimant's life intolerable, accepting his evidence of this.
30. The parties agree that appropriate remedy should be within the middle Vento band to reflect serious injury to feelings. The respondent submitted that it should be at the lower end of the middle band. The claimant submitted it should be at the higher end of the middle band.
31. We consider it to be appropriate to award interest from 9 February 2023 which is when the failure to make reasonable adjustments claim runs from on our findings of fact about when the reasonable adjustment should have been in place from. We consider that because it would be artificial to distinguish between the two claims, and to avoid significant injustice to either party, this is a fair and equitable start date for the purposes of calculating interest. From 9 February 2023 to 12 July 2024 is 520 days.
32. We do not find that it is appropriate to make an award for psychiatric injury in this case. This is because we consider that there is insufficient evidence that the respondent through the acts which formed the basis of the claims upheld caused the psychiatric injury complained of. We consider that to the extent that the respondent's acts may have made the claimant's condition worse this is, as a matter of fact, indistinguishable from his injury to feelings which are part-and-parcel of his anxiety.

33. To be clear, this is not an attempt to make a global award for both elements. Rather, it is a recognition that we do not find that there is an evidenced separate psychiatric injury which the respondent caused through the acts subject to this claim. We accept the respondent's submissions that there is no reliable medical evidence which identifies any personal injury caused by a failure to make reasonable adjustments and or the acts of harassment found proven. It is not in dispute that the claimant had a serious health condition before the relevant acts happened and it was not caused by them. There is also no cogent evidence of any deterioration in the claimant's condition having been caused by the discriminatory acts which formed the basis of the claimant's claim. The same applies to the source of the claimant's depression and anxiety from a personal injury perspective. We are also conscious of the need to avoid double-recovery because any increased anxiety suffered by the claimant during the relevant time was part-and-parcel of his injured feelings. The claimant's submissions accepted that there is an overlap between the injury to feelings and personal injury alleged in this case (at paragraph [9]). We note that no claim for personal injury is made in relation to a specific new injury (as set out in the claimant's submissions at paragraph [10]).
34. Also, the claimant accepts that there is no direct medical evidence on causation of personal injury. We did not consider that the claimant's evidence, on what was effectively a chronological account of how he felt, or respondent's medical officer's letter dated 16 November 2023 about how the claimant was continuing to feel anxious, and the other medical evidence about how the claimant was feeling at particular times, was sufficient in the circumstances to establish causation of personal injury as distinct from the injury to feelings we are already compensating the claimant for.

Injury to feelings

35. We accept the claimant's submission that, as a result of the above findings, the circumstances relating to the claimant were significant and

serious because of the risks to the claimant if the reasonable adjustment was not in place and the anxiety that was felt.

36. We find also that there is a near complete factual overlap between the circumstances of the failure to make reasonable adjustments claim and the harassment claims which both relate to the same protected characteristic. A global award to reflect injury to feelings should be made in those circumstances. Both parties support this approach. Any attempt to distinguish between the two claims would be wholly artificial and require further artificial and arbitrary amendments to ensure that the overall award reflected the overall injury to feelings. This is particularly so because the acts forming the basis of the harassment claim are intrinsically linked to the factual basis of the failure to make reasonable adjustments claim and the harassment claim. Also, the harassment act found proven (ie. on 18 May 2023) is relatively limited.
37. We make global award to reflect both claims upheld. Bearing in mind all of the findings above, we consider that the global award (taking into account the additional harassment claim found proven) puts this at the higher end of the middle Vento band. In particular, we consider that the element of harassment, the knowledge of the respondent as to the extent of the claimant's disability (including the medical evidence) and the respondent's recognition of the ethnical dimension to their actions are factors which reflect the more serious effect this has had on the claimant. We were conscious that our award must be focussed on the injury to feelings caused by the specific acts which form the basis of the claims upheld.
38. Following all of our findings above, the appropriate award is £30,000 for injury to feelings.

Personal injury

39. We do not make an award for personal injury for the reasons outlined above.

Aggravated damages

40. The claimant relied on the manner in which the discrimination was committed and the defendant's conduct subsequent to it but in relation to it in support of the claim for aggravated damages. The reasons advanced by the claimant included that the failures by the respondent were contrary to medical (occupational health) advice, allusions to subjecting the claimant to disciplinary proceedings if he did not come into the office, seeking a stay of proceedings at the start of the case, and the respondent's knowledge of the harm that its conduct would cause.
41. We do not consider that any of the claimant's reasons for aggravated damages justifies an award of aggravated damages. This is because the facts relied on do not go materially beyond those facts which supported the findings essential to establish the claim as opposed to matters which aggravate what was done. We consider that the pressure put on the claimant to come into the office is sufficiently reflected in the fact that the harassment claim was upheld but it does not go beyond that. Also, we do not criticise the respondent for seeking a stay given the existing statutory (internal) proceedings taking place, even if though that was not granted. We do not consider that our findings as made are enough to fulfil the criteria in *Shaw* for aggravated damages. We do not consider that there is anything about this case that requires compensation above and beyond the standard award for injury to feelings. We feel that the features that make the injury to feel more serious are already adequately reflected in where the award fits in the *Vento* bands but do not go beyond that.

ACAS uplift

42. The claimant's grievance dated 26 January 2023 was unreasonably delayed until 31 January 2024. The respondent's only real submission about this was to ask us to recognise that there are delays by the

respondent in dealing with lots of grievances as opposed to this being personal to the claimant. Given the undisputed unreasonable delay, we consider a 10% uplift to be appropriate ie. £3,000 on the award above.

Recommendations

43. We make the recommendations as set out in **Annex A** of this decision. These are made by agreement between the parties. We decline to make any further recommendations because we consider that they would amount to an unnecessary level of interference in the respondent's operational matters. The respondent is well-aware of our decisions and no doubt will want to avoid any future claims being made under the Equality Act 2010. We also consider that the recommendations go as far as we consider appropriate in this remedy hearing. We have simply decided to limit our recommendations to those agreed by the parties and consider that nothing further is warranted by our decisions in this case as a remedy.

44. We do, however, having given the parties the opportunity to make submissions, make an additional recommendation. We recommend that the respondent puts in place a clear and detailed policy and guidance to its managers about how and when to permit working from home as a reasonable adjustment for police officers and staff who are disabled for the purposes of the Equality Act 2010. This is because there was no such policy in place at the relevant time and this plainly caused the various managers involved with the claimant difficulty. This should be done within 6 months of the date of this decision. We accept that the respondent is doing some work towards this but still feel that it is necessary to reduce the future effect on the claimant and to ensure that the work being done accurately takes into account the need for policy and guidance in the specific circumstances identified.

Interest

45. Interest for 520 days at 8% is calculated as £3,761.10.

Total award

46. This means that the total award is **£36,761.10.**

Annex A – Tribunal Recommendations

The following recommendations are made by agreement:

- 1) The Respondent will allow the Claimant to continue to work exclusively from home subject to periodic reviews as provided below.
- 2) The Respondent will discontinue the existing UPP procedure in respect of the Claimant.
- 3) Periodic reviews of the Claimant's permission to work exclusively from home will take place no sooner than every 6 months unless the parties agree otherwise or there is a significant improvement or deterioration in the Claimant's medical condition. For the avoidance of doubt, the parties may agree to a longer period between reviews, if it is clear to them that there has been no substantial change of medical condition since the previous review.
- 4) The periodic reviews will be taken initially by reference to medical evidence provided by the Claimant to the Respondent. The Respondent shall be authorised by the Claimant to provide such medical evidence to its Occupational Health advisors for the purpose of obtaining advice on the outcome of the periodic review. In the event that, upon consideration of the medical evidence provided by the Claimant, Occupational Health considers that:
 - a. some change may be necessary, either to the arrangements for the Claimant continuing to work from home; and
 - b. a consultation with Occupational Health is necessary in order to make appropriate recommendations to the Respondent, the Respondent may request the Claimant to be referred for a consultation with Occupational Health.
- 5) In normal circumstances there will be no requirement placed upon the Claimant to attend the office. The Claimant will only be requested to attend the office on the basis of a wholly exceptional need for him to do so, such as for IT reasons to dock a laptop. In such circumstances, the Claimant will be given as much notice of any need for him to attend as is reasonably practicable (where possible more than 48 hours) and will be consulted as to what support he requires for attendance. The Claimant shall be entitled to be accompanied on attending the office by his wife or his Welfare Officer, or other such suitable person. The Respondent will also make such other arrangements or provide such other support as may be reasonably necessary in order to facilitate his attendance. Attendance should only be required for as long as is necessary.
- 6) The Respondent acknowledges that there is no current 'operational requirement' for the Claimant to attend the office more often than is set out above and does not anticipate any change to that situation. In the event of a future organisational restructure that would entail necessary changes to the Claimant's role, the Respondent shall consult with the Claimant in respect of the same. If necessary, the Respondent will undertake a genuine and reasonable search across the Respondent's operations for a role which suits the Claimant's then existing needs for adjustments. Such search will include the possibility of identifying a role which could be adjusted in order to meet the Claimant's need for reasonable adjustments.
- 7) The above steps should be recorded in the Claimant's 'Disability Passport' (or other such facility that be in place from time to time) and stored on the Respondent's internal system. This is so that management have access to these recommendations, and they are not undermined by a change in line management.
- 8) There will be no further exploration of the possibility of ill-health retirement for the Claimant unless the Claimant expressly consents. For the avoidance of doubt, the parties may reasonably discuss the possibility of exploring ill-health retirement with the view to obtaining the Claimant's consent.

The tribunal's additional recommendation, recommendation 9, is that within six months of the date of this decision the respondent puts in place a clear and detailed policy and guidance to its

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managers about how and when to permit working from home as a reasonable adjustment for police officers and staff who are disabled for the purposes of the Equality Act 2010.