THE EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Davis	**v**	**P2CG Limited**

Heard at: London Central **On**: 1-2 October 2024

Before: Employment Judge Glennie
Ms T Breslin

Representation:
Claimant: In person
Respondent: Mr B Carr KC and Ms T Barsam (Counsel)

REASONS

1. These reasons relates to the remaining issues on remedies following the Tribunal's judgments on liability and on the preliminary issue as to remedies. These written reasons have been provided at the Claimant's request.

2. On liability, the Tribunal found that the Claimant succeeded on 2 complaints of direct discrimination because of disability out of a larger number of complaints. On the preliminary issue as to remedies, the Tribunal found that, in the absence of the element of discrimination, the Claimant's employment would have terminated on the same date as was actually the case, that being 4 August 2016.

3. Since the previous hearing one member of the Tribunal, the employee panel member Ms Jaffe, has retired and both parties consented to this hearing being conducted by the employment judge and Ms Breslin without the addition of another member.

4. The issues to be determined were defined at a preliminary hearing on 13 February 2024 in the following terms: whether awards should be made for the following and if so in what amount:

(i) injury to feelings

(ii) aggravated damages

(iii) exemplary damages

(iv) interest

Injury to feelings

5. Awards for injury to feelings are compensatory, meaning that they are intended to provide recompense for the injury suffered by the Claimant as a result of such discrimination as the Tribunal has found occurred. It is important to note that the award should reflect the consequences of the Respondent's wrongful acts and not, for example, the consequences for the Claimant of being involved in the litigation as a whole, or injury suffered by reason of matters which the Tribunal has found did not amount to acts of discrimination.

6. The award is not intended to punish the Respondent in any way. Where, as here, a Claimant succeeds in some only of his complaints it can be understandably difficult for him, and indeed for the Tribunal, to apportion the injury to feelings to the successful complaints while leaving out of account the distress caused by the subject matter of the complaints on which he has not succeeded. The Tribunal nevertheless has to undertake that task.

7. In the present case it is clear from the Claimant's written and oral submissions that he is greatly distressed by what he regards as the Respondent's dishonest conduct of the litigation generally, and the Tribunal's failure to recognise that, to its full extent as seen by him. We cannot include these matters when assessing compensation for injury to feelings. We have to assess the injury caused by the two acts of discrimination which we have found occurred. As stated in our liability judgment, these were:

   (i) The Claimant's dismissal.

   (ii) The refusal by Mr Peel and Dr Rawling to acknowledge the Claimant's ill health.

8. The findings we made about these matters were as follows. In paragraph 124 of our reasons on liability we said this: "The inferences that we have drawn cause us to find against the Respondent's explanation that the decision to dismiss was purely because of the Claimant's performance and was not influenced by his disability. On the basis of the inferences that we have drawn the Tribunal finds that the Claimant's disability played some substantial part in the decision to dismiss him. We considered that, as a matter of probability, Mr Peel took into account the Claimant's disability as something that meant that his performance was unlikely to improve, or at least lessened the chances of that occurring".

9. With regard to the question of the denial of knowledge of the Claimant's ill health the Tribunal made the following findings in paragraphs 98 to 99: "The Claimant's evidence in paragraph 210 of his statement was that he said that he could not believe that he was being treated in this way given how long they, i.e. the 3 amigos had worked with him and given that he had been struggling with serious ill health." He continued that he was "gobsmacked" when Dr Rawling replied that he had "absolutely no knowledge" of his ill health. The Tribunal preferred the Claimant's account of this aspect of the exchanges with Dr Rawling.

10. Then in paragraphs 101 to 102 the Tribunal said this: "The Claimant's evidence continued that he said much the same to Mr Peel as he had said to Dr Rawling about not being able to believe what they were doing", including reference to his diabetes, and that Mr Peel replied in the same terms that he had absolutely no knowledge of his ill health. When cross-examined about this Mr Peel said that he did not believe that the Claimant spoke about diabetes at this time and further that he, Mr Peel, did not then know that the Claimant had diabetes.

11. The Tribunal has of course found that, in fact, he did know. The Tribunal again preferred the Claimant's account of this conversation. Then in paragraph 103.5 we stated that: "The Tribunal finds that the most likely explanation for Dr Rawling and Mr Peel saying to the Claimant in the same terms that they had no knowledge of his ill health, when they did have knowledge of it, is that they had agreed to take this line should he raise it."

12. Compensation for injury to feelings is governed by the bands identified in the well-known case of **Vento**. The top band is for the most serious cases, for example where there has been a lengthy campaign of discriminatory harassment. The middle band is for serious cases that do not merit an award in the highest band, while the lower band is for less serious cases, for example where there has been an isolated or one-off incident.

13. As we have indicated, the Claimant's submissions explained his genuine and serious distress arising from the litigation as a whole, the outcome of it, and the financial and other consequences for him. It is necessary to assess from that what measure of injury to feelings has been caused by the tortious acts that the Tribunal has found.

14. This case might be characterised as one where there was a single act of discrimination, namely the Claimant's dismissal, and that the denial of knowledge of his condition was an aspect of that. The Tribunal finds that dismissal is, in any event, a significant single act. In this particular case we find that the distress and injury to feelings which would naturally arise from a discriminatory dismissal would, as a matter of probability, be increased by Mr Peel's and Dr Rawling's untruthful denials of knowledge of the Claimant's condition.

15. We therefore find that the case falls within the middle **Vento** band, albeit in the lower part of that. We should apply the guidelines as to the amount of the award as at the date of the act of discrimination. The Respondent's counsel submitted, and we accepted, that as at August 2016 the middle band ranged from around £8,200 to around £25,000. We found that, taking into account the factors we have identified, the appropriate award for injury to feelings is £12,500.

Aggravated damages

16. The Tribunal had regard to the three categories of cases identified as examples of situations where aggravated damaged might be awarded in paragraph 22 of the judgment of Underhill J in **Commissioner of Police of the Metropolis v Shaw**. To the extent that the Claimant relies on the manner in which the wrong was committed, we have already reflected that in the untruthful denial of knowledge of his condition, which in a non-technical sense aggravated (by adding to) the injury to his feelings.

17. Beyond that, the Claimant relied on the manipulation of the John Lewis email as found by the Tribunal in its reasons on liability. This was something that came to light at a later date: it was not apparent at the time of the dismissal. Indeed, it is not clear to the Tribunal exactly when the manipulation was carried out. However, there is no evidence that the discovery of this added in any material way to the Claimant's distress caused by the tortious acts that the Tribunal has found.

18. The Claimant has also alleged much wider manipulation of documents by the Respondent. We are, however, bound by the findings we have made, and these do not include any finding as to wider manipulation as suggested by the Claimant. This cannot, therefore, be taken into account in relation to the injury to feelings arising from the tortious acts.

19. The other matter raised by the Claimant in the course of his submissions is that of the appeals which the Respondent made to the Employment Appeal Tribunal, and thereafter to the Court of Appeal. This Tribunal notes that both of those courts have power to deal summarily with appeals which are considered to be plainly lacking in merit. Although in the event both of the appeals failed, that did not occur here. We therefore found that this was not something that we could take into account as an aggravating factor. The Respondent was entitled to make the appeals that it did.

20. The Tribunal concluded that there should not be an additional award in respect of aggravated damages.

Exemplary damages

21. We also found that there should not be an award of exemplary damages. These may arise in two categories of case. One is where there has been oppressive conduct by a government agency or similar. The other is where the tortfeasor has profited by what they have done and/or were motivated by seeking to profit by the tortious act. Neither of these is applicable in the present case.

Interest

22. On the matter of interest, the usual position under regulation 6(1)(a) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 is that interest on an award of compensation for injury to feelings at the rate of 8% per annum from the date of the tortious act, up to the calculation date.

23. Under regulation 6(3) of the 1996 Regulations the Tribunal may calculate interest for a different period where there would be serious injustice if different dates were not used. There has been no suggestion of that, and indeed in submissions Mr Carr KC made an observation that indicated that the Respondent realised that interest would follow at the usual rate on the award for injury to feelings. As stated in our judgment, we have calculated interest as amounting to 8 years and 59 days at the rate of 8%.

Costs applications

24. Finally, there were also listed for determination in this hearing the parties respective applications for costs orders against each other, including an application by the Claimant to strike out the Respondent's application. In the event the Tribunal was not required to reach any determination of the issues as to costs. Mr Carr KC made an open offer to the Claimant to withdraw the Respondent's costs application if he would withdraw his. After some reflection, the Claimant accepted this proposal. Both parties' costs applications were therefore withdrawn, with no adjudication being made on them.

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Employment Judge Glennie

Dated: ……..……12 November 2024……....

Judgment sent to the parties on:

3 December 2024

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For the Tribunal Office