



EMPLOYMENT TRIBUNALS

Claimant

Mr Jeff Martins

Respondent

Network Rail Ltd

v

Heard at: Cambridge Employment Tribunal
On: 7 October 2024
Before: Employment Judge Andrew Clarke KC
Members: Ms H Gunnell
Mr D Sagar

Appearances

For the Claimant: In person
For the Respondent: Mr J Raizon (counsel)

REMEDY JUDGMENT

1. For injury to feelings consequent upon the respondent discriminating against the claimant with regard to his age, the claimant is awarded the sum of £8,000.
2. Pursuant to the Employment Tribunals (Interest on Awards and Discrimination Cases) Regulations 1996, the claimant is entitled to simple interest at the rate of 8% on the sum awarded for injury to feelings from the date of the initial act of discrimination, being 7 August 2022. The sum awarded by way of interest is £1,386.67.
3. Pursuant to Rule 39 (5)(a) of the Employment Tribunals Rules of Procedure, the sum of £500 paid by the claimant by way of deposit pursuant to the order of Employment Judge Brown of 10 July 2023, is to be paid to the respondent.

REASONS

1. In our reasons, sent to the parties on 11 April 2024, we found that the claimant had been discriminated against because of his age but we dismissed the claim for discrimination because of trade union membership. We must now deal with the appropriate remedy for the age discrimination claim which succeeded and also consider what to do about the £500 deposit which was paid consequent upon the order of Employment Judge Brown made in May 2023. That order related only to the trade union membership aspect of this case.

2. Having heard again from the claimant, and refreshed our memories as to the evidence he previously gave, we are satisfied of the following:
 - 2.1 The relevant decision maker, Mr Engelbretson, decided not to take the claimant's application further when he read the claimant's age which appeared at the start of his CV. The claimant was, of course, unaware of this at the time.
 - 2.2 The claimant's CV showed that he did meet most of the essential criteria for the job applied for. When rejected on the basis that he did not, he pointed this out. The respondent however continued to assert that he did not meet those criteria.
 - 2.3 The respondent's conduct of this case has been, in many respects, unsatisfactory. We set out how the case has changed over time and make other comments as to the respondent's conduct in paragraphs 5 onwards of our previous reasons.
 - 2.4 Being rejected on what he rightly saw as an obviously incorrect basis upset the claimant considerably. He was convinced that the respondent was concealing the true reason for his rejection: in that he was correct.
 - 2.5 The claimant's confidence and sense of self-worth were damaged. He felt discouraged from applying for further similar jobs for fear of further rejections.
 - 2.6 The claimant, ashamed of his rejection and given his diminished sense of self-worth, isolated himself from his family and friends as a result.
 - 2.7 The fact that the respondent would not acknowledge what it had done and the reasons for its conduct, but continued to assert that the claimant did not meet the essential criteria for the job, further upset the claimant. He was particularly upset by the way that the respondent continually changed its case whilst still not accepting that what it had done was wrong.
 - 2.8 The claimant soldiered on until January 2024 without seeking help for his mental health conditions. Eventually, pressed by an ex-partner, he did seek help from his GP and has been on antidepressant tablets since then.
 - 2.9 When describing these matters to us, he was clearly upset and embarrassed at both his rejection and the impact it had had upon him. He was also upset by the respondent's conduct of the case.
3. We have approached the assessment of the amount of the award for his very apparent injury to feelings on this basis:
 - 3.1 This was a one-off act or incident, but one with continuing consequences for the claimant.

- 3.2 The injury to his feelings has been aggravated by the respondent's conduct both when he first asked for an explanation and reconsideration of his rejection and thereafter as its case changed.
 - 3.3 Our role is not to punish the respondent, but to compensate the claimant for the act of discrimination and its impact on him.
 - 3.4 We have considered what was said by the Court of Appeal in Alexander v Home Office [1988] ICR 685 and by Underhill J, as he then was, in Commissioner of Police of the Metropolis v Shaw [2012] ICR 464 as to the correct approach to assessing the worth of injury to feelings.
 - 3.5 There was a discriminatory motive in this case albeit that the claimant could only suspect that to be so at the time. This was no inadvertent act and the respondent's continued refusal to set out what happened in a clear and accurate way consistent with what the claimant knew, made matters worse.
 - 3.6 The respondent's conduct of the matter amounts to a significant aggravating factor. It made the injury to the claimant's feelings significantly worse than it would otherwise have been and caused it to persist far longer than might otherwise have been the case.
 - 3.7 We have not sought first to assess a sum which would have been appropriate but for the aggravating factors, rather we have kept those in mind when deciding how to value the award appropriate to this particular claim.
4. The lower Vento band when this claim was made was between £990 and £9,900. We consider that this claim fits into that band, but towards its upper end. That is appropriate in our view because we consider the impact on the claimant to have been both significant and persistent. We bear in mind the real prospect that the final resolution of this matter, coupled with our reasoned judgment previously given, may bring closure for the claimant and may help resolve his current mental health problems. Nevertheless, we are satisfied that they have persisted since mid-2022 and that the necessary causative link to the respondent's conduct, as set out above, is established.
 5. In all the circumstances, we consider the appropriate award to be £8,000.
 6. We then turn to the question of interest. We are obliged to consider this pursuant to the Employment Tribunal's (Interest on Awards in Discrimination Cases) Regulations 1996.
 7. Regulation 6(1)(a) makes specific provision for the award of interest in respect of claims giving rise to an award for injury to feelings. In those circumstances, simple interest is awarded from the date of the discriminatory act, or the earliest of a series of acts, until the date of assessment. The rejection here took place in early August 2022 and we shall assume for the purposes of the present calculation, that it took place on 7 August. The current simple interest rate is 8% per annum. For the

period of 26 months between that date and now the sum of interest is £1,386.67.

8. We turn finally to the issue of the deposit paid by the claimant in the sum of £500. Rule 39(5) of the Employment Tribunal Rules of Procedure provides as follows:

“Deposit orders

...

- (5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

- (a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown.”

9. Employment Judge Brown’s reasons for making her order appear in paragraph 8, which begins as follows:

“The complaint is poorly articulated and there is little evidence, aside from the bare fact that there was a paragraph in his Curriculum Vitae about this, for the assertion by the Claimant that his failure to secure the role was related to his membership of a Trade Union. I consider that the complaint has little reasonable prospect of success and, accordingly, that the threshold test is met for making a Deposit Order.”

10. In essence, therefore, the reason for the making of the deposit order was the paucity of the evidence which it appeared might be advanced to support this aspect of the claim.
11. Our reasons for rejecting the claim for discrimination on the grounds of trade union membership appear in paragraphs 48 and 49 of our previously given reasons. In short, we found a lack of any evidence that there had been such an act of discrimination. The evidence, or rather the lack of it, was such that the burden of proof remained with the claimant and did not “shift” under s.136 of the Equality Act 2010.
12. Our reasons are therefore substantially the same as Employment Brown’s reasons for making the deposit order in the first place. Hence, pursuant to the rules, the £500 must be paid to the respondent and we so order.

Employment Judge Andrew Clarke KC

Date: 24 October 2024

Sent to the parties on: 05/12/2024

For the Tribunal Office

Recording and Transcription

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