EMPLOYMENT TRIBUNALS

Claimant:	**Mr I Stanley**
Respondent:	**The Village Baker (Wrexham) Limited**
Heard at:	**Cardiff by video (CVP)**
On:	**30 September 2024 and 12 December 2024 (in Chambers)**
Before:	**Employment Judge R Brace**
Members:	**Mr S Moules and Mr A Fryer**
Representation	
Claimant:	**Ms M McLaren (the Claimant's wife)**
Respondent:	**Mr D jones (Counsel)**

RESERVED JUDGMENT
REMEDY

The unanimous judgment of the Tribunal is that the Respondent is ordered to pay to the Claimant the total sum of **£18,567.57** in compensation and interest for his successful discrimination complaints calculated as follows.

Financial Losses	£5,298.72	
Interest on Financial Losses	£229.95	
Injury to Feelings	£12,000.00	
Interest on Injury to feelings	£1,038.90	
Total		**£18,567.57**

Reasons

Background

1. This was a remedy hearing, heard by video (CVP) on 30 September 2024, following the liability hearing which had been heard over the course of three days on 7-9 May 2024 with a reserved judgment of 28 May 2024 being been sent to the parties on 30 May 2024.

2. The decision on remedy was also reserved due to the lateness of completion of evidence and submissions on the day of the remedy hearing and a Chambers Day for deliberation could not be arranged until 12 December 2024.

3. The Claimant had been successful in relation to certain complaints that the Respondent had failed to comply with the duty to make some reasonable adjustments (although not all relied on which were not well-founded and were dismissed) as well as his complaint of discrimination arising from disability in relation to his dismissal.

Evidence

4. The Claimant and his wife had submitted further witness statements for the purposes of the remedy hearing. A statement from Jason Page, HR Manager for the Respondent, was also relied on. All statements were taken as read and all witnesses were subject to questioning from the other party and some questions from the Tribunal.

5. The Tribunal also had a Bundle before it a Remedy Bundle of some 287 pages. Where reference is made in these reasons to a document in that Remedy Bundle, the page number is denoted by [ ].

Schedule of Loss

6. That Remedy Bundle also included the Claimant's Schedule of Loss [253].

7. Within the Schedule of Loss, the Claimant based what he had termed 'Past Loss':

    a. from 1 October 2023-31 October 2023, on a gross salary of £23,402.93 (and pension contributions at 3%); and
    b. from 1 November 2023 – 9 May 2024, being the last day of the liability hearing, on a higher rate of gross pay of £26,709.96, contending that he had been told during the application process for the role, that if he passed his probation his rate of pay would increase.

8. This 'Past Loss' amounted to £15,655.94

9. The Claimant claimed for a further loss of 12 months' gross pay and pension contributions, for what he called 'Future Loss', calculated on the basis that he estimated it would take him 12 months to find a new job from 9 May 2024. This amounted to a further £27,511.20.

10. The Claimant further claimed for childcare costs for 38 weeks per year, for Wrap Around and After School Club, in the sum of £1,976 as well as costs of travelling by taxi to work for 52 weeks amounting to £4,800.

11. Total financial losses claimed amounted to £49,943.02.

12. The Claimant claimed £35,000 for injury to feelings and placed his claim in the upper band of Vento and 25% uplift for failure to follow the ACAS Code. He also claimed aggravated damages and personal injury believing that the Respondent had acted in a particularly malicious, insulting, high handed or oppressive manner in the sum of £6,403.96.

13. The Claimant was also in receipt of benefits and whilst the Schedule of Loss referred to Universal Credit, he confirmed that he had also been in receipt of Carers Allowance since November 2023.

Issues on remedy and the law

14. The list of issues on remedy had been set out by me at the case management preliminary hearing that had taken place on 17 August 2023.

Findings of fact

15. The parties agreed and the Tribunal accepted that as at the date of dismissal:

    a. the Claimant's gross annual pay was £23,402.93;
    b. his net monthly pay was £1,717.59; and
    c. the net monthly employer pension contributions amounted to £48.65.

16. The Claimant worked a shift pattern of four shifts on and four off and by our calculation would work a total of 183 days per year. Net weekly pay amounted to £396.37.

17. The Claimant had been dismissed with one week's notice such that his employment ended on 30 August 2023 and at that point his pay ceased.

18. We did not accept that the Claimant's salary would increase if he passed his probation. We didn't consider the Claimant's evidence, that he had been informed of this during the recruitment process, to be reliable and preferred the

evidence of Jason Page that this was not the position, that salary increases were dependent on skill and that there was no guarantee salary would increase. We therefore based financial loss compensation on the net salary as at the date of termination.

19. We had made findings of fact in our liability judgment that the Claimant did not read the dismissal letter, when he was informed of his right of appeal as he was distressed and upset[1]. He had not appealed the decision to dismiss him.

20. We also accepted the evidence that he had given in his witness statements (for both the liability and remedy hearings, as well as what he had included in his Schedule of Loss,) of some of the impact that the dismissal had had on him.

21. We found that the Claimant was shocked, angry, embarrassed, ashamed and humiliated as a result of this dismissal. He felt that everyone at the factory had been laughing at him as he had failed his probation. He did not tell his wife of his dismissal straight away and it was a few weeks before he told family and friends, believing that they would see him as a failure. We also accepted that he was sad and angry; that he had prided himself on being hard-working and he felt that this had been taken away.

22. The emotional impact of having lost his job caused him to suffer stress, leaving him feeling low and have no interest in life. He started staying up late and drinking more, being impatient with his children and by the end of October 2023, the Claimant's wife encouraged him to visit his GP.

23. Very little medical evidence has been provided by the Claimant, despite the Respondent's representatives encouraging him to disclose all relevant medical evidence. We base some of our findings on the limited medical evidence that has been disclosed and contained in the Remedy Bundle which was a one page extract from the Claimant's GP notes of his assessments on 30 October 2023 and again on 1 November 2023 [39].

24. The notes reflect that on 30 October 2023, the Claimant told his GP that he was '*feeling a bit low'* since the previous year when he had broken his ankle but that since then *'now himself'*. His GP noted that he was told them that he was '*not sleeping well – lost his job'*. Whilst the note also recorded the Claimant as confirming that he had got a new job, we accepted that as a likely error and that the Claimant did not have a new job as at that point.

25. The Claimant attended the GP again the following day for a face to face consultation, reporting again that he had '*low mood'* for the last year and that he was not sleeping well. He was prescribed a low dosage (20mg) of Fluoxetine, a type of anti-depressant and sign-posted for counselling. He was

[1] Liability Judgment §62).

issued with a Fit note for '*Low mood and anxiety'* from 1 November 2023 - 1 January 2024.

26. This medication improved his mood and he became more involved with his children. Indeed, the Claimant became the children's main carer from around November 2023.

27. The Claimant and his wife have two children. Both children have received medical diagnoses in the last few years: one in December 2021 of diabetes and the other, in December 2022 of Coeliac Disease, both needing additional care as a result, with the Claimant's wife at some point being called in regularly to school deal with their child's diabetes.

28. We did not accept the Claimant's statement, made in the Schedule of Loss, that his wife had returned to work as a result of his dismissal. The Claimant's wife had commenced employment in July 2023 for financial reasons (home improvements, holidays etc.) around the same time that the Claimant began his employment with the Respondent.

29. By November 2023, the Claimant applied for Carers Allowance. He did not claim Job Seekers Allowance. The family were already in receipt of Universal Credit at that point, which they had claimed they say since 2020 [42].

30. Whilst the Claimant had indicated in his original witness statement, dated 5 April 2024, that he had been looking for jobs, and despite '*quite a few Production Operative Roles'* being available, he had not applied for any of them by April 2024, indicating at that stage that he had not felt mentally ready to apply[2].

31. We found that the Claimant's mood has continually improved since November 2023 and his medication has continued. Whilst the Claimant's wife had given evidence that he shows minimal interest in life, we found that this wasn't a constant theme or state of affairs as there was some evidence to suggest that from time to time the Claimant was able to socialise in the community and with friends.

32. In April 2024, the Claimant joined a men's club, Andy's Men's Club, a mental health charity for men and had joined a support group which increased his social interaction and improved his confidence socially. He also contacted Careers Wales and met with them in August 2024.

33. Whilst the Claimant gave evidence again in his remedy statement that he did not feel able to look for new employment, we found that the Claimant was not considering looking for alternative work in any event for an extended period as from November 2023 he was instead focussing on being responsible for the

[2] CWS§57

family's childcare, receiving Carers Allowance from some point that month. Indeed, this was supported by what was stated in the Claimant's email to the Respondent's solicitor on 12 March 2024 in which it was stated that the Claimant was caring for his son and was not required to work [46].

34. We also found that the Claimant did not in fact start looking for any alternative employment until late August 2024, towards the end of the school holidays that summer. He applied for one role between the date of his dismissal on 30 August 2023 and the date of this remedy hearing, when he applied on 19 August 2024 for a job at the Countess of Chester Hospital as an Eye Liaison Officer at Chester, around 45 minutes from Wrexham. He has applied for no other employment.

35. We also found that there were a number of vacancies production operative roles available within the Wrexham area, accepting the evidence of the Respondent's witness, Jason Page that since the Claimant's dismissal in August 2023 there had been over 344 suitable production roles advertised in the Wrexham area [94] where the Claimant could have travelled to work using his free bus pass, and where he had historically commuted.

36. To complete our findings, we noted that the Respondent had in the Grounds of Resistance [30] pleaded that:

    a. the name of the Respondent on the ET1 was not the same as the name of the Respondent on the EC certificate providing the correct name of the Claimant's employer; and
    b. at that point did not admit the Claimant was disabled, pleading that they were unaware of the extent of the condition or that the condition had a substantial adverse effect on his ability to carry out day to day activities. He was at that point, put to proof.

37. On 12 January 2024, disability directions were issued by Judge Sharp [32] and at case management on 19 January 2024, those directions were varied following discussion with the parties [40] and it was agreed that if the Claimant had documentation to support his claim that he had been certified as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist, then the Respondent could then confirm whether or not it accepted that the Claimant was disabled. This was undertaken and the Respondent in its Amended Grounds of Resistance confirmed that it admitted the Claimant's disability [55].

38. There appeared to be no disagreement from the Respondent that insufficient postage had been placed on a letter sent to the Claimant by the Respondent, when sending to him a copy of their agenda for the first case management hearing.

39. The Claimant alleged that the Respondent had forged his signature but we found that we had no reliable evidence from the Claimant that this in fact had arisen. The Claimant did not prove that his signature had been forged.

40. We had a letter in the Remedy bundle, from Pertemps to the Claimant regarding work opportunities available in the area for the Claimant [94]. We did not find that document included sufficient personal details of the Claimant for any third party to reasonably identify the Claimant.

Applicable Law

41. The Tribunal's powers in relation to remedy in a discrimination claim is set out in s.124 Equality Act 2010 which provides that the tribunal may

    a. make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate

    b. order the respondent to pay compensation to the complainant;

    c. make an appropriate recommendation.

42. An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate

43. The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court or the sheriff under section 119 EqA 2010.

44. Any recommendations we make should be practicable and should be capable of being implemented and for that to be assessed.

45. Further, s.119 Eqa 2010 confirms that compensation is awarded on a tortious basis and may include compensation for injured feelings. That is, so far as possible to put the Claimant into the position that he would have been had the act of discrimination not occurred (**Ministry of Defence v Cannock [1984] IRLR** 509**, De Souza v Vinci Construction UK Ltd [2017] EWCA Civ** 879.)

46. Financial compensation for discrimination is uncapped but the Tribunal is required to consider the question of the Claimant's loss.

47. In terms of injury to feelings in respect of the discrimination claim, the onus is on the Claimant to establish the nature and extent of the injury and guidance

has been given on awards for injury to feelings in **Vento** v **Chief Constable of West Yorkshire Police (No2)** 2003 ICRR 318 CA which identifies three bands which have subsequently been updated to reflect inflation.

48. The Court of Appeal has confirmed that there is considerable flexibility within each band, allowing Tribunals to fix what they consider to be fair and reasonable and adjust compensation in the particular circumstances of the case. We are also reminded that an award for injury to feelings is intended to compensate for hurt and humiliation suffered by the Claimant and not on the seriousness of the discrimination.

49. **Hatton v Sutherland** [2002] ICR 613 **BAE Systems (Operations) Ltd v Konczak** [2017] IRLR 893 are relevant with regard to cause and material contribution to harm suffered.

50. We also take into account that *'compensatory damages may and in some instances should include an element of aggravated damages where, for example, the defendant may have behaved in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination*' (**Alexander v Home Office** [1988] 2 All E R 118) and that the conduct of the Respondent, including defending the claim in an inappropriate manner, can increase the level of injury to feelings (**Commissioner of Police of the Metropolis v Shaw** [212] ICR 464).

51. Finally, as a Tribunal we are obligated to consider in interest on such awards and to state why an award has not been made even if the parties do not draw our attention to it.

Conclusions

52. The Tribunal did not accept that the Claimant should have compensation in respect of his gross pay as had been claimed by him. Rather, we concluded that that the Claimant should be awarded compensation to put him into the position that he would have been had the act of discrimination not occurred (**Ministry of Defence v Cannock**). We did not therefore, consider it appropriate to make an award based on gross losses, but on net losses from 1 September 2023.

53. In calculating any financial losses, on the basis of our acceptance of the evidence of Jason Page regarding pay increases, we calculated the Claimant's potential losses on the net salary that the Claimant received on dismissal and that we would not factor in any pay increases.

54. In this case, we considered what would likely have happened had the Respondent complied with its duty to make reasonable adjustments and not

discriminated against the Claimant in dismissing him on 30 August 2023. We also considered that we also had to make a judgement on whether, if at all, the Claimant's employment would have been confirmed at the end of the three month's probationary period and the likelihood of him not being dismissed at that point.

55. We concluded that it was more likely than not that the Respondent would have used at least the full three month probationary period to arrange for and implement the reasonable adjustments i.e. the Claimant would not have been dismissed before 18 October 2023. Further, we also concluded that it was more likely than not that the three month probationary period would also have been extended by a month or so, until the end of the year, for these adjustments to have been put in place. This would have therefore extended the employment of the Claimant to at least such a date.

56. We also considered the possibility of whether or not the Claimant would have been retained in employment at the end of that probationary period. This was a difficult assessment. The Claimant had previously worked in production for nearly two decades, and we concluded that it could not be said that he would never have reached the required standard or that his employment would likely have ended at the end of his probationary period. We did however acknowledge that this was a different production environment to his previous employment and the Claimant had been experiencing significant difficulties in adapting to the new work environment.

57. In the Tribunal's view, we concluded that the Claimant had little a more than a 50/50 chance i.e. in our judgement, there was no more than a 50% chance of the Claimant reaching the standard required at the end of that probationary period with adjustments and continuing in employment beyond the probationary period as extended. We considered that we needed to factor in that reduced chance into any assessment of losses that we awarded from the end of December 2023, being our view of when it was likely that any probationary period would have ended.

58. We considered the Claimant's immediate loss i.e. the loss incurred from 1 September 2023 to the date of the remedy hearing on 30 September 2024.

59. When having regard to the financial loss incurred by the Claimant as a result of the discrimination, of the failure to make reasonable adjustments and the subsequent dismissal, we concluded that in the period up to December 2023, the Claimant was not in a position emotionally to look for alternative work but that position had changed by the end of November/beginning of December 2023 after his medication likely started to impact.

60. Significantly, we were not persuaded that the Claimant had been unable to look for work after this date due to his anxiety and low mood, but rather he had not in fact looked for work because of his own decision that he would not but would instead be responsible for childcare for the family's two children. This conclusion was also supported by the evidence that in November 2023, the Claimant had applied for Carers Allowance not Job Seekers Allowance.

61. Despite being able to look for work, and accepting the Respondent's evidence that there were plenty of operative roles in a reasonable travelling distance, the Claimant had in fact looked for work.

62. We were persuaded that the Respondent had demonstrated that the Claimant had not acted reasonably in seeking to mitigate his loss and we were persuaded by the Respondent that the Claimant, by the end of November 2023, had made a decision not to look for alternative work but instead remain responsible for childcare.

63. As such, we concluded that any immediate financial losses i.e. financial losses to the date of the remedy hearing, in any compensatory award for should be reduced so as to cover only financial losses that were incurred from date of dismissal to 30 November 2023, being the end of the month that the Claimant commenced claiming Carers Allowance. After that date, the Tribunal concluded that the Claimant was not entitled to seek compensation from his previous employer for the discrimination that he had been subjected.

64. As a result of that decision, no award is made for any further immediate loss (up to date of remedy hearing) or future loss of earnings after 30 September 2024 (date of remedy hearing). Likewise, no adjustments would be made for any social security benefits received by the Claimant.

65. We did not consider that the Claimant was entitled to recover childcare costs for Wrap Around or After School Club as these were not costs that had been incurred or caused by the discrimination. A sum in respect of these costs were therefore not awarded.

66. Likewise, the Claimant has not in fact or looked for alternative employment that would result in him incurring travel expenses. No award is made in respect of the taxi fares claim. What we would say is that in any event, the Claimant had used his free bus pass to travel to the previous roles that he had been employed and the likelihood was that had he found alternative work, he could have continued to use such free travel. No amount would have been awarded in any event, had our conclusions on immediate loss differed in any event.

67. We therefore award the Claimant financial losses from 1 September 2023 to 30 November 2023, a period of three months loss of net salary and employer

contributions, at the rate of £1717.59 and £48.65 respectively amounting to **£5,298.72**.

Injury to feelings

68. We concluded that an award of **£12,000**.**00** for injury to feelings was appropriate in this case.

69. In reaching this decision, we took into account that the award of injury to feelings compensates for '*subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on' (***Vento*** para 50) and that the purpose of the award was to compensate the Claimant not punish the Respondent (**Cannock**).

70. We had analysed the impact of the discrimination on the Claimant, accepting that unlawful discriminatory behaviour may affect different individuals differently and that overt discrimination was likely to heighten the level of injury to feelings (**Taylor v XLN** [2010] ICR 656).

71. We repeat our findings set out in §19-21 of this remedy judgment, of the impact on the Claimant of his dismissal, which we had found was discriminatory and following a failure to comply with the duty to make reasonable adjustments.

72. We concluded that the discrimination had particularly and significantly impacted the Claimant in the weeks following dismissal; that he was extremely low and unable to function socially or with family leading to his appointment with his GP two months later.

73. Whilst we did take into account that the Claimant's documented GP notes had indicated that he had been '*low'* for an extended period before the discrimination as a result of a broken ankle and absence from his previous employment the year prior to his employment with the Respondent, we concluded that the discrimination he had suffered likely exacerbated and led to the effects on him as he had described. We acknowledged that the GP notes were just notes and not a detailed reflection of the patient consultation and did not conclude that all of the Claimant's low mood and anxiety could be attributed to his broken ankle, but that the Claimant's emotional state as at the date of the GP appointment was likely caused by the dismissal .

74. Having received medication, we then considered the continuing injured state of the Claimant's feelings following on from that appointment and concluded that the feelings of hopelessness and humiliation (as well as those set out at §19-21 of this remedy judgment) were easing by April 2024 and again, by the summer of 2024, had all but dissipated when the Claimant was able to and started looking for alternative employment again.

75. We took into account the Judicial College Guidelines for the Assessment if General Damages in Personal Injury Cases and the Sixth Addendum to the Presidential Guidance on Employment Tribunal awards for injury to feelings and psychiatric injury following **De Souza v Vinci Construction (UK) Ltd** [2017] EWCA Civ 879 and that in respect of claims presented on or after 6 April 2023, the "Vento bands" shall be as follows: a lower band of £1,100 to £11,200 (less serious cases); a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200.

76. We did not consider that this was a less serious case warranting a bottom band award. The failures, albeit unintentional, had not been an isolated incidence but had lasted for a number of weeks and had in our judgement fed into and led to the Claimant's dismissal. Equally, we did not consider that this was a lengthy campaign that would justify the top band. Rather, this was in our view a case that merited an award in the middle band case, it not meriting an award in the highest band.

77. We took into account what comparable awards had been made in other cases reported and relied on by the Respondent, all of which were lower band cases, with the maximum award in any such cases not exceeding £7,500. We considered this this case was not comparable as we did have evidence of injured feelings, albeit the Claimant's own evidence and the award to the Claimant justified an award just into the middle band of Vento at £12,000.

ACAS uplift

78. We did not consider that the ACAS Policy applied in this case being a termination for performance, not conduct. We therefore concluded that any adjustment regarding non-compliance by either party was not appropriate. In any event, the Claimant had failed to appeal his dismissal such that if we were wrong on that, we would have concluded that any uplift in the award would be cancelled out by his failure to appeal his dismissal.

Aggravated Damages

79. The Tribunal has not awarded an amount for aggravated damages. The Tribunal repeats its findings in its Liability Judgment. We had not found that there had been anything in the manner in which the discrimination was committed, we had not found that there had been any ulterior motive for the failure,).

80. We concluded that the Respondent's conduct, in initially not admitting the Claimant's disability immediately did not warrant an award, concluding that this was not high-handed, malicious, insulting or oppressive that would warrant an award of aggravated damages. Whilst our view might differ if the Respondent had continued to dispute disability to the final hearing, it had not as at the first preliminary hearing, there had been a discussion as to what evidence was required and all that was required was a certification from the Claimant's ophthalmologist. Once received, the Respondent conceded disability.

81. Likewise, there was nothing in the Respondent's conduct in challenging the differences in the name of the Respondent in the EC certificate to the ET1 that warranted an award. That the Respondent may have omitted to include the correct postage on a particular letter to the Claimant likewise did not warrant an award. We had no evidence before us to support a finding that the Claimant's signature had been 'forged' on the probation review form. No award for aggravated damages is made in respect of this.

82. We were not persuaded that the Claimant could be identified from information on the Claimant's CV being shared by the Respondent in relation to this Remedy hearing and in that regard, that too did not warrant an award for aggravated damages and that the Claimant had been appropriately compensated for any injury to feelings in any event within the £12,000 awarded.

Interest

83. We have calculated and added interest at 8% on the Claimant's compensation[3]:
    a. From the half-way/midpoint between the date of dismissal (30 August 2023) and the calculation/date of the remedy hearing (30 September 2024) for financial losses; and
    b. from the 30 August 2023 (act complained of) for the injury to feelings.

84. The period from 30 August 2023 to 30 September 2024 is 395 days

198 days x 0.08 x £5,298.72 x 1/365 = £229.95

395 days x 0.08 x £12,000.00 x 1/365 = £1,038.90

[3] Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996

_____

Employment Judge Brace
Dated: 19 December 2024

Reserved Remedy Judgment sent to the parties on
20 December 2024

Katie Dickson
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS