



EMPLOYMENT TRIBUNALS

Claimant: Mrs Z Fatima

Respondent: Mediscan Diagnostic Services Ltd.

Heard at: Manchester

On: 5-6 December 2024
7 January 2025 (in chambers)

Before: Employment Judge Barker
Ms L Atkinson
Ms J Whistler

REPRESENTATION:

Claimant: In person, with the assistance of Mr Ejaz Ahmed, interpreter

Respondent: Mr Mahmoud, solicitor

JUDGMENT ON REMEDY

The total award made by this Tribunal to the claimant is £51,217.14

This is payable by the respondent immediately. Failure to pay can result in the claimant taking enforcement action against the respondent in the county court. Information about how to enforce payment is provided to the parties with this judgment.

(I) The claimant is entitled to be paid a basic award for unfair dismissal of £461.53 by the respondent.

(II) The claimant is entitled to be paid a compensatory award for unfair dismissal by the respondent as follows:

- a. Loss of maternity pay for 6 weeks at 90% of her weekly pay (£370.89) = £2225.34
- b. Loss of wages from the date of dismissal to the date when we find she would have been dismissed anyway (2 July 2021), minus 6 weeks when she would have been on maternity leave and receiving maternity pay: 30.5 weeks at £412.10 per week = £10,096.45;
- c. No award is made for loss of earnings for unfair dismissal beyond 2 July 2021
- d. No uplift is made for breaches of the ACAS Code of Practice, as this only

applies for dismissals which involve disciplinary or grievance issues whereas the claimant was dismissed in an alleged redundancy situation;

(III) The total compensation payable to the claimant for unfair dismissal is £12,783.32

(IV) The claimant was dismissed without full payment of notice monies, however her notice pay is accounted for in the sums above for financial loss and will not be awarded separately.

(V) The respondent breached the claimant's contract by failing to pay her for mileage which she incurred and claimed for. She is awarded £306.

(VI) The claimant is awarded compensation for the discriminatory dismissal in 2020 as follows:

- a. For injury to feelings as a result of the discriminatory dismissal of £12,000;
- b. Interest on the award for injury to feelings at the rate of 8% calculated from the date of the discriminatory act (11 November 2020) to the date of calculation (7 January 2025) which is 1518 days, which interest amounts to £3992.55.
- c. The total award for injury to feelings for the dismissal, and interest is £15992.55.

(VII) The claimant is awarded compensation for the victimisation in 2022 and 2023 as follows:

- a. For injury to feelings as a result of the victimisation of £16,000;
- b. Interest on the award for injury to feelings at the rate of 8% calculated from the date of the discriminatory act (3 October 2023) to the date of calculation (7 January 2025) which is 462 days, which interest amounts to £1620.16.
- c. For financial losses caused by the victimisation of £3444.84
- d. Interest on the award of financial losses at the rate of 8% calculated from the mid-point between the date of the discriminatory act (3 November 2022) to the date of calculation (7 January 2025) which is 398 days, which interest amounts to £300.50
- e. The total award for victimisation and interest is £21,365.50

(VIII) The total compensation payable to the claimant for maternity discrimination is £37,358.05

(IX) The claimant is awarded compensation for the lack of a maternity risk assessment as follows: £659.36.

- a. Interest on the award for financial losses for the maternity discrimination at the rate of 8% calculated from the mid-point from the date of the discriminatory act to the date of calculation which is 764 days which interest amounts to £110.41. The total award is therefore **£769.77**

(X) Tribunal awards must take into account how such awards will be treated for tax. The compensation for discrimination that was unconnected with the claimant's dismissal is not taxable, that is, the compensation for victimisation and the lack of a maternity risk assessment. This amounts to £22,135.27. The rest of the award amounts to £29881.87 and is notionally taxable, but as it is less than £30,000 it benefits from a tax-free allowance. Therefore none of this award is taxable in the hands of the claimant. (Income Tax Earnings and Pensions Act 2003).

(XI) The Recoupment Regulations do not apply to this judgment and award of compensation.

REASONS

Preliminary Matters and Issues for the Tribunal to Decide

1. The purpose of this hearing was to determine the amount of compensation payable to the claimant, following the judgment in her favour dated 21 June 2024, following a hearing on 25-30 April 2024. There was a case management hearing on 4 July 2024 at which a list of issues was drawn up for this remedy hearing, and case management orders were made. That List of Issues is attached to this judgment as an appendix.
2. The claimant provided a remedy witness statement and schedule of loss and accompanying documents to the Tribunal, as well as a witness statement from her husband, Mr Khalil. The respondent provided documents in support of its argument about the suspension of its operations following a Care Quality Commission (CQC) letter and letters from the NHS Manchester Clinical Commissioning Group suspending its contracts with the respondent as a result. The Tribunal had been provided with the respondent's counter-schedule of loss and witness statements from Mrs Khan and Dr Ehsan. The statement of Dr Ehsan did not assist the Tribunal. Although he is the respondent's CEO and attended each day of the liability hearing, his witness statement dealt with matters that had already been determined by the Tribunal and indeed it contradicted the oral evidence that he gave to the Tribunal at the liability hearing in April 2024. He was therefore not called to give evidence and did not attend the hearing.
3. The claimant was assisted by Mr Ahmed, the interpreter. He ably assisted the claimant at this hearing, at the remedy case management hearing and at the liability hearing. We are grateful for the diligence and care with which he carried out his duties.

4. Turning to the preliminary and case management issues that arose at the outset of the hearing, it became apparent that relations between the claimant and the respondent's representative had become strained since the case management hearing in July 2024. The claimant complained about the respondent's conduct of this stage of the litigation in that they persisted in referring to her alleged misconduct that the Tribunal had not accepted in evidence on the last occasion. The respondent told the Tribunal that the claimant had made very late disclosure of several documents that he had not had an opportunity to consider. The Tribunal adjourned to consider the evidence and statements before it and asked the respondent's representative to spend that time considering the claimant's new disclosure. After the adjournment the respondent's solicitor told the Tribunal that the claimant's new disclosure was, in fact, already contained within the remedy hearing bundle. We therefore proceeded with the hearing.

Findings of Fact

5. The claimant was dismissed on 30 November 2020. She was put on notice that she would be made redundant in an "at risk" letter dated 3 November 2020, having informed the respondent of her pregnancy on 23 October 2020. We found that the redundancy was because of her pregnancy and that although the respondent was looking to reduce its workforce, it selected the claimant before making any general assessment of the numbers it sought to reduce its workforce by, due to her pregnancy. The claimant had a meeting with the respondent's Mrs Khan and Mr Rizvi on 10 or 11 November 2020 at which the meaning of the "at risk" letter of 3 November 2020 was explained to her.
6. At the meeting, which for the purposes of this judgment we will assume was on 11 November 2020, the parties not being able to provide any clearer evidence as to when it was, the claimant asked the respondent for alternative roles. She was told that she would be dismissed, and that no other roles were available to her. We find that the claimant knew that this was not correct; she knew that her colleagues were not being made redundant at that time. She asked to exercise her right of appeal and was told by Mr Rizvi not to bother, and both Mrs Khan and Mr Rizvi told her that the best thing for her to do would be to return to her home country, Pakistan, and get a job in a government hospital. They told her that she should send them the receipts for her airline tickets so that they could inform the Home Office that they were no longer her visa sponsors.
7. The claimant told the Tribunal that she told the respondent on 11 November 2020 that she had not lived in Pakistan for many years and that she did not possess the right qualifications or experience to get a job in a government hospital. The respondent also knew that the claimant had brought her husband and two small children with her and of course that she was pregnant. We find that this conversation with the respondent caused the claimant great distress and panic and that the respondent's derisory attitude to her difficulties made the pregnancy discrimination worse.
8. The claimant gave evidence, which we accept, that this meeting and the information that she should book plane tickets for her and her family to return to Pakistan threw her into a panic and that she immediately began to investigate how she could switch her visa and how she might obtain new sponsorship for

her visa from a new employer. She said that she telephoned the Nursing and Midwifery Council (NMC) who told her that they were not able to sponsor her. She also called the Home Office for advice, and she told the Tribunal that the Home Office advisor was very helpful to her. They also told her what steps she could take to complain about the discrimination that she had faced.

9. As a result of the conversation with the Home Office advisor, the claimant began ACAS Early Conciliation on 11 November 2020, before she was told formally by the respondent that she was being dismissed. The respondent asked the claimant in cross examination why she had contacted ACAS to begin early conciliation first, instead of looking for work. We accept the claimant's evidence that she was not able to look for work because she had to switch her visa and get sponsorship for a new visa and she had no idea how to do that given that the country was in the COVID pandemic.
10. She told the Tribunal that she could not apply for jobs because of Home Office conditions on her visa as she understood that she was sponsored on a nurse's job code, so could not work as a healthcare assistant, and needed to get her NMC PIN number first. As she was sponsored as a nurse on her visa but had not yet been able to take her NMC exam, she did not consider herself able to get a healthcare assistant job. There is evidence in the bundle of the claimant contacting employers speculatively for work and sponsorship but we accept that because of her pregnancy and issues with her visa, she and her husband took the decision that she would stay at home and look after the children and that he would try to find work as a mechanic.
11. The respondent disputed the claimant's understanding of the restrictions on her work visa and suggested that she would not have been as restricted as she believed she was in finding other work. However, we accept that whether the claimant was right about her visa restrictions, she did not act unreasonably in considering that she was restricted in this way. She was relatively new to the UK, and would we find have been unable to afford to contact any immigration lawyers for advice as to what she needed to do next.
12. The claimant was given a letter by the respondent dated 16 November 2020 which gave her notice of termination of her employment on 30 November 2020. The claimant has a written contract of employment which entitles her to 3 months' notice if she has reached the end of her probation period. The claimant reached the end of her probation period after a year and the respondent did not extend it. We therefore found on the balance of probabilities in the liability judgement that the claimant successfully completed her probationary period after 12 months and was entitled to three months' notice.
13. The claimant's daughter was born on 5 May 2021. During this time, the respondent's operations were suspended following a Care Quality Commission (CQC) letter and letters from the NHS Manchester Clinical Commissioning Group suspending its contracts with the respondent. This was because of inspections which found gross breaches of patient safety, failures of hygiene control, and possible breaches of the Modern Slavery Regulations. The contract with the NHS Manchester Clinical Commissioning Group was suspended for 13

weeks from 23 June 2021, for services including diagnostic and screening procedures, which was the claimant's area of work.

14. We accept the respondent's evidence that most of their staff were dismissed on or before 2 July 2021. The claimant said that she understood from her former colleague and fellow Saudi nurse, Shagufta, that the respondent in fact has opened a new company and transferred its staff to that new enterprise, but we have no evidence before us that this was the case. In any event, we find that the respondent company, the claimant's employer, had no option but to suspend its operations and that therefore the claimant would have been dismissed on 2 July 2021 along with the majority of the respondent's staff.
15. The claimant alleges she would have been kept on by the respondent as Shagufta was kept on as a nurse. Mrs Khan accepted that Shagufta was kept on, but gave evidence that she was part of a very small number of staff and that she was involved in "IPC compliance" for the CQC. We do not find on the balance of probabilities that the claimant would have been kept on in this way, we find she would likely have been dismissed along with everyone else particularly as she at that point did not have her NMC "PIN".
16. Therefore, we find that had she not been dismissed on 30 November 2020, her dismissal date would have been 2 July 2021. She would have been dismissed along with the majority of the respondent's staff. Her losses for the unfair dismissal element of her claim therefore stop on 2 July 2021. She would have lost her job on that day in any event.
17. There is no adjustment to be made to any award to be given to the claimant, for a failure to comply with the ACAS Code of Practice as this does not apply to redundancy dismissals. There is no adjustment to the claimant's award for contributory conduct, as there was no evidence whatsoever that she committed any acts of misconduct or did anything that contributed to her dismissal.
18. As we find that the claimant would have been dismissed in any event by 2 July 2021, the period of loss of earnings for her is 1 December 2020 to 2 July 2021. This is a period of 30.5 weeks (minus 6 weeks maternity leave) at £412.10 per week, which equals £10,096.45.
19. We accept the claimant's evidence that, as she was the primary earner she would not have taken a long period of maternity leave. She told us that she did not know what maternity leave she would have been entitled to in the UK and would have assumed that it was the same as in Saudi Arabia, where maternity leave is 40 days. She would therefore most likely have taken 40 days maternity leave. Even if she had not begun her leave until her due date, 40 days leave would have resulted in her returning to work before 2 July 2021, when we find she (and the majority of the other staff) would have been dismissed. Her maternity pay period would have been 40 days in total.
20. Due to her length of service by her due date, the claimant would be entitled to Statutory Maternity Pay which is 90% of gross weekly pay for 6 weeks. 90% of the claimant's gross weekly pay is £415.38, which after tax and National Insurance would be a net weekly rate of approximately £370.89 (using an

approximate calculation method of 90% of usual net pay). 40 days (or 6 weeks for ease of calculation) at £370.89 equals £2225.34

21. £2225.34 maternity pay plus 30.5 weeks loss of earnings of £10096.45 equals a total loss of earnings for unfair dismissal of £12,321.79.
22. The respondent asserts that the claimant has not taken reasonable steps to replace her lost earnings, for example by looking for another job. We accept that she made very few attempts to look for a job during the period of loss (that is, from 30 November 2020 until when she would have been dismissed anyway, on 2 July 2021). However, we do not accept that this was unreasonable and therefore we do not consider a reduction in her compensation to be just and equitable. We accept her evidence and that of her husband that the dismissal was tremendous shock to her. She was the primary breadwinner and was concerned also what the loss of her job would mean for the family's ability to remain in the UK. We accept that the difficulties of finding sponsorship for a visa, the pandemic and the claimant's pregnancy put up barriers for her to find work.
23. In the immediate period after the dismissal, the family became aware that they would not be able to afford their current rent and knew that the claimant would struggle to find work such that they needed to move house to reduce the demands on their finances. This was an additional drain on the claimant's time and resources that reasonably this restricted her ability to look for other work.
24. The claimant is also entitled to a basic award for unfair dismissal, based on her age, pay and length of service. This is £461.53, based on one year's service 4 November 2019 until 30 November 2020 and a gross pay of £461.53 per week.

Discrimination

25. We found that this dismissal was automatically unfair in that the claimant was unfairly selected for redundancy and dismissed because of her pregnancy. As found above, we consider the meeting on 11 November 2020 to have caused additional injury to her feelings. We find that although this was a single event of discrimination, it had severe practical and therefore emotional consequences. There were aggravating features present that the claimant (and her family) was concerned that they would have to leave the UK and have nowhere to live and faced the threat of deportation.
26. While we accept that some of this would have applied on dismissal on 2 July 2021 in any event, in that she would have had to look for a new sponsor and a new visa, on 11 November 2020 there were aggravating factors because her selection for dismissal was based on her telling them she was pregnant on 23 October 2020, and the claimant knew that, so in the meeting with Mrs Khan and Mr Rizvi, their comments were, we find, made that were particularly distressing.
27. As her pregnancy progressed, her mental health issues became apparent to her midwife and she was referred to mental health services after a routine midwife appointment. The claimant told us that her midwife had become very concerned for her health and therefore for the health of the unborn baby. We

accept that claimant's evidence that this situation, of being unable to properly afford food and rent for her and her family, while pregnant, placed almost intolerable stress and strain on her at this time. Had she not been unfairly selected for redundancy and dismissed over six months before everyone else, she would not have had this stress during her pregnancy.

28. We also found that the claimant was subjected to unlawful discrimination because of her pregnancy in that the respondent did not conduct a proper pregnancy risk assessment when she returned to the workplace from furlough on 23 October 2020, despite the Covid pandemic at the time and despite the claimant being clinically vulnerable due to her diabetes. She worked for 6 days with no risk assessment, and when she asked for one was placed on furlough instead on 31 October 2020, which resulted in her incurring financial losses of 20% of her salary from that date until the termination of her employment on 30 November 2020. This amounts to £659.36 which is 20% salary, which is £164.84 x 4 weeks.
29. A separate complaint of victimisation, which the claimant became aware of around 3 October 2023, was also successful. The discriminatory act was committed on 3 November 2022, when the inaccurate reference was sent by Mrs Khan to the NHS. The Tribunal was provided with an email receipt from that date which we accept establishes that 3 November 2022 was the date the reference was sent. However, although the claimant was concerned that she may have been given a poor reference, she did not see a copy of the reference, which included an entirely untrue comment that the claimant had been the subject of a substantiated disciplinary sanction, until 3 October 2023.
30. The impact of the poor reference was felt before the claimant saw it. The claimant applied for a band 2 healthcare assistant job with the NHS in August 2022, but we find that the poor reference caused a delay to her starting this job of two months on the balance of probabilities, based on the claimant's new manager Ms Julie Lehman's evidence in the bundle in her letter dated 15 November 2024. The claimant began work on 23 January 2023 and we find on the balance of probabilities that she would have started work at the beginning of December 2022 without the delay caused by the bad reference which caused Ms Lehman to need to seek a reference from her care home employer. She therefore has suffered financial losses caused directly by the victimisation of two month's wages plus interest. £1722.42 x 2 months = £3444.84.
31. The claimant and her family were evicted from their home around this time. The claimant and her husband gave evidence that had she started work sooner, they could have paid off their rent arrears sufficiently to avoid the distress and further losses of the eviction. We accept that losses were also caused by this delay and the eviction, but no evidence was available to the Tribunal to calculate what those losses amounted to. However, we accept that this will have increased the injury to the claimant's feelings when she subsequently found out that the cause of the delay, and the eviction, was Mrs Khan's inaccurate reference.
32. The claimant has remained in work, despite the victimisation. She has now obtained her NMC PIN and became a band 5 nurse in March 2024. She is to

be congratulated for her resilience in achieving her goal of working as a nurse in the NHS, despite the circumstances she and her family have found themselves in.

33. The Tribunal needs to consider what injury to feelings the victimisation caused the claimant and how much compensation should be awarded for that. We find, considering the claimant's evidence and that of her husband, that the hurt of discovering the deceit and vindictiveness of the reference was considerable. She read the reference and complained to the Tribunal immediately afterwards on 3 October 2023. The claimant also has suffered injury to her feelings because of the impact of the poor reference on her job and the lack of security. She was only awarded a one-year contract by the NHS and therefore only a one-year visa, due to the poor reference. This had the impact of increasing the uncertainty and lack of security for her and her family. This is particularly significant because the Tribunal was told (by the claimant and her husband, but also in the letter from Ms Lehman) that the rules relating to visas and sponsorship have changed, and had she been given a 3 year contract straight away, which Ms Lehman writes would have been done without the bad reference, the visa issues would have been resolved very quickly for her and her family, whereas they currently face yet more uncertainty about her husband and children's right to remain even at the date of this remedy hearing.
34. The claimant's mental health, we find, is now poor. She was sent to occupational health and assessed by a doctor, who diagnosed her with severe depression and severe cognitive impairment in May 2024. She is in receipt of regular prescriptions for sleeping tablets and antidepressants. Her husband reports her as having ongoing anxiety and irritability and preoccupation with the injustice done to her, which affects her relationships with him and her children significantly.
35. We accept that had the claimant been made redundant in July 2021 in any event she would have faced some financial hardship and visa uncertainty as a result, but this has been significantly exacerbated by the victimisation. As we found in paragraph 103 of the liability judgement

"It is apparent from Mrs Fatima's evidence that the respondent's actions have had catastrophic consequences for her physical and mental health and her financial situation. Furthermore, as she is a migrant to the UK, and the main earner for her husband and young children, the consequences have been catastrophic for them as well. She did not have recourse to public funds and was pregnant and seeking work at the same time. The impact of the discriminatory dismissal was then compounded by the reference which was inaccurate and highly damaging to Mrs Fatima's attempts to find work."

36. Although the victimisation has had a significant detrimental impact on the claimant's physical and mental health, we have not exercised our discretion to make a separate award for personal injury, but instead have increased the injury to feelings award to account for this.
37. The Tribunal received evidence about the impact of the discrimination and unfair dismissal on the claimant's children and spouse in these proceedings.

The Tribunal is aware that compensation for their injured feelings cannot be directly awarded in these proceedings as the compensation is for the claimant's injured feelings alone. However, the impact on the claimant of the distress caused to her family is reflected in the award we have made as she was the primary earner for her family and their right to remain in the UK was dependent on her finding stable employment and a visa sponsor.

38. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that? We consider £16,000 an appropriate award for victimisation, which is in the middle band and £12,000 for the discriminatory dismissal, which again is in the middle band.
39. Overall, we have awarded £28,000 for injury to feelings. This is in the top band but we consider this to be appropriate given the devastating impact on the claimant of the respondent's actions, which was unwarranted and unjustified. Also, two different instances of discrimination, both of which had separate long-lasting impacts on the claimant and which had a cumulative effect on her mental health.

Interest

40. Interest on the award for injury to feelings for the discriminatory dismissal – the time period from date of incident to date of calculation is 1518 days $\times 0.08 \times \frac{1}{365} \times 12,000 = £3992.55$.
41. Interest on the award for injury to feelings for the victimisation – the time period from date of incident to date of calculation is 462 days $\times 0.08 \times \frac{1}{365} \times 16000 = £1620.16$
42. Interest on the award for financial losses for the victimisation – the time period from runs from the mid-point from the date of the incident to date of calculation - 796 days / 2 = 398 days $\times 0.08 \times \frac{1}{365} \times £3444.84 = £300.50$
43. Interest on the award for financial losses for the maternity discrimination – the time period from runs from the mid-point from the date of the incident to date of calculation - 1529 days / 2 = 764 days $\times 0.08 \times \frac{1}{365} \times 659.36 = £110.41$

Mileage claim and notice claim

44. The claimant was also successful in her claim for a breach of contract by reason of a failure to pay mileage claims. The claimant's contract terms, which were before the Tribunal, are that mileage is payable for journeys in excess of 20 miles at 25 pence per mile. Evidence in the bundle demonstrated that in November and December 2019, her journeys over 20 miles amounted to 612 miles. We find that the claimant was similarly engaged in January 2020 and February 2020 and so assume she accrued the same average mileage. She therefore recovers 612 miles $\times 2 \times 0.25 = £306$. As of the end of February, the claimant took a period of leave and then the country went into national lockdown for Covid before she returned to work in March 2020. She therefore incurred no further mileage claims before her dismissal, save possibly for the 6 days in October 2020 for which we have been given no evidence. We have considered

whether the claim for mileage was presented to the Tribunal out of time and concluded that it was not. It was outstanding on the termination of her employment and was presented to the Tribunal within three months of the termination date itself, and so was presented to the Tribunal in time.

45. The claimant was dismissed in breach of her notice terms in her contract, which entitled her to 3 months' notice, and she was only given two weeks. She should be compensated for this based on her net weekly pay of £412.10 for 3 months. However, this has been compensated for in her unfair dismissal and pregnancy discrimination claims. As it cannot be awarded twice, it has been dealt with under those heads of loss and not for breach of contract.

The Law

46. Compensation for unfair dismissal consists of a basic award and a compensatory award. The basic award is a statutory formula based on age, length of service and gross weekly wages. (section 119 Employment Rights Act 1996).
47. The compensatory award for unfair dismissal has two aspects – immediate losses (that is, losses from the date of the dismissal to the date of the remedy hearing) and future losses (that is, losses from the date of the remedy hearing to a point in the future when the claimant can be said to have mitigated her losses in full), section 124 Employment Rights Act 1996.
48. A claimant is under a duty to mitigate her losses and must show, on the balance of probabilities, that she has done so, irrespective of whether her efforts in securing alternative work have been successful or not.
49. If a respondent can persuade the Tribunal that the claimant would have been dismissed in any event at some future point, the claimant's losses for unfair dismissal and discriminatory dismissal will stop at the date of that future event.
50. Compensation for discrimination and victimisation falls into two broad categories. The Tribunal must consider what financial losses the discrimination or victimisation caused the claimant. The damages available to a claimant are limited in that only those losses that are caused by the unlawful act will be recoverable, so for example where an individual would have lost their job at some point anyway, and if the discriminatory dismissal they have suffered has not damaged their job prospects, the losses suffered after the date when the individual would have been dismissed anyway are not caused by the discriminatory dismissal.
51. Compensation for injury to feelings of the claimant (s119(4) Equality Act 2010) is awarded on the basis of the principles set out in *Prison Service and ors v Johnson 1997 ICR 275, EAT* which are:
- a. awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party
 - b. an award should not be inflated by feelings of indignation at the guilty party's conduct

- c. awards should not be so low as to diminish respect for the policy of the discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches
- d. awards should be broadly similar to the range of awards in personal injury cases
- e. tribunals should bear in mind the value in everyday life of the sum they are contemplating, and
- f. tribunals should bear in mind the need for public respect for the level of the awards made.

52. Guidance on applying these principles to fix the amount of the award are based on three categories of seriousness of injury caused by the discrimination or victimisation, as set down in *Vento v Chief Constable of West Yorkshire Police (No.2) 2003 ICR 318, CA*. The Court also described some of the elements that can be compensated under the head of injury to feelings, such as '*subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on*'.

53. In *Vento* the Court of Appeal identified three broad bands of compensation for injury to feelings and gave the following guidance (however, see below for revised figures):

- 1) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000;
- 2) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band;
- 3) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

54. Within each band there is considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case.

55. Following this, the Presidents of the Employment Tribunals in England & Wales and Scotland issued '*Presidential Guidance: Employment Tribunal Awards for Injury to Feelings and Psychiatric Injury Following De Souza v Vinci Construction (UK) Ltd*'. This Guidance, the third addendum of which was released on 27 March 2020 taking into account changes in the RPI All Items Index released on 25 March 2020, updated the bands as follows for any claims on or after 6 April 2020 but before 6 April 2021 (the claimant's case applies):

- Upper Band: £27,000 to £45,000 (the most serious cases);
- Middle Band: £9,000 to £27,000 (cases that do not merit an award in the upper band); and
- Lower Band: £900 to £9,000 (less serious cases).

56. The 'most exceptional cases' are capable of exceeding the maximum of £45,000.
57. Interest is payable on awards of compensation for discrimination at 8%. The period of calculation for injury to feelings awards is as follows: interest is awarded on injury to feelings awards from the date of the act of discrimination complained of until the date on which the tribunal calculates the compensation (Reg 6(1)(a) IT(IADC) Regulations 1996).
58. The period of calculation of interest for all other sums than injury to feelings is from the mid-point of the date of the act of discrimination complained of and the date the tribunal calculates the award (Regulation 6(1)(b) IT(IADC) Regulations 1996). The mid-point date is the date half-way through the period between the date of the discrimination complained of and the date the tribunal calculates the award (Regulation 4 IT(IADC) Regulations 1996)

Employment Judge Barker

Date: 17 January 2025

RESERVED JUDGMENT AND REASONS

SENT TO THE PARTIES ON

Date: 28 January 2025

FOR THE TRIBUNAL OFFICE

Annex

Remedy Hearing List of Issues

Compensation for unfair dismissal

- 1.1 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 1.1.1 What financial losses has the dismissal caused the claimant?
 - 1.1.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 1.1.3 If not, for what period of loss should the claimant be compensated?
 - 1.1.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 1.1.5 If so, should the claimant's compensation be reduced? By how much?
 - 1.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 1.1.7 Did the respondent or the claimant unreasonably fail to comply with it?
 - 1.1.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - 1.1.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
 - 1.1.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - 1.1.11 Does the statutory cap of fifty-two weeks' pay apply?
- 1.2 What basic award is payable to the claimant, if any?
- 1.3 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

2. Remedy for discrimination and victimisation

- 2.1 What financial losses has the discrimination caused the claimant?
- 2.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 2.3 If not, for what period of loss should the claimant be compensated?
- 2.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

- 2.5 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 2.6 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 2.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 2.8 Did the respondent or the claimant unreasonably fail to comply with it?
- 2.9 If so is it just and equitable to increase or decrease any award payable to the claimant?
- 2.10 By what proportion, up to 25%?
- 2.11 Should interest be awarded? How much?

Other sums claimed

- 3. Did the respondent do the following:
 - 3.1.1 Fail to pay the claimant for mileage claimed for the period November 2019 to February 2020
 - 3.1.2 Fail to pay the claimant in full for her notice period?
- 3.2 Was that a breach of contract? Was it an unlawful deduction from wages?
- 3.3 How much should the claimant be awarded?



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2400980/2021**

Name of case: **Mrs Z Fatima** v **Mediscan Diagnostic
Services Ltd**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: **28 January 2025**

the calculation day in this case is: **29 January 2025**

the stipulated rate of interest is: **8% per annum**.

Paul Guilfoyle
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:

www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.