



EMPLOYMENT TRIBUNALS

Claimant: Mr C Dyer

Respondent: Scania (Great Britain) Limited

Heard at: Bristol Employment Tribunal (by video)

On: 31 January 2025

Before: Employment Judge Ferguson

Members: Mr K Ghotbi-Ravandi
Ms D England

Representation

Claimant: In person

Respondent: Mr R Wayman, counsel

REMEDY JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. In respect of unfair dismissal, the Respondent shall pay the Claimant the following sums:
 - a. A basic award of **£2,572**.
 - b. A compensatory award of **£728.20**.
2. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:
 - a. The total monetary award (i.e. the compensatory award plus basic award) payable to the claimant for unfair dismissal is £3,300.20.
 - b. The prescribed element is £728.20.
 - c. The period of the prescribed element is from 6 July 2023 to 31 January 2025.
 - d. The difference between (a) and (b) is £2,572.
3. In respect of discrimination arising from disability, the Respondent shall pay the Claimant the following sums:
 - a. Compensation for past financial losses: £1,421.56
 - b. Interest on compensation for past financial losses calculated in

accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: £192.55;

- c. Compensation for injury to feelings: £1,100;
- d. Interest on compensation for injury to feelings calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: £150.44.
- e. TOTAL: **£2,864.55**

- 4. The total amount the Respondent shall pay to the Claimant (subject to recoupment) is **£6,164.75**.

REASONS

INTRODUCTION

1. By a judgment delivered on 8 October 2024, we upheld the Claimant's complaint of unfair dismissal, but found that if the Respondent had conducted a fair procedure the Claimant would have been fairly dismissed three weeks later (i.e. on 27 July 2023 instead of 6 July 2023). We also upheld the Claimant's complaint of discrimination arising from disability relating to the Respondent paying him statutory sick pay instead of full pay from 19 to 30 May 2023 inclusive. All of the Claimant's remaining complaints failed and were dismissed. In particular, the Claimant had claimed failure to make reasonable adjustments by not allowing him to use manual time sheets, instead of the electronic clocking system used by all technicians, and by not excusing him from training or arranging alternative training to enable him to achieve a higher rate of pay. We rejected both of those complaints.
2. As part of our judgment on liability, we found that the Claimant effectively stopped engaging with the process of managing his return to work and would not have attended any further absence management meetings after the first week of June 2023. We also found that by 7 June he had no genuine intention of returning to work. He was signed off sick from that date for three months.
3. The Claimant confirmed during discussions after we had delivered our liability judgment that he wished to be reinstated or re-engaged.
4. He was ordered to produce a witness statement limited to 3,000 words to include:
 - a. The Claimant's work history since his dismissal on 6 July 2023, including any benefits received in that period
 - b. The Claimant's current health situation and fitness to work
 - c. Details of any reasonable adjustments the Claimant says he would need if reinstated or re-engaged
 - d. Any other evidence the Claimant wishes to give on the issue of whether an order for reinstatement or re-engagement would be practicable

- e. The Claimant's evidence about any injury to feelings sustained as a result of the Respondent's failure to pay him full pay when he was deemed fit to work from 19 to 30 May 2023
- 5. The Claimant has produced a very brief witness statement.
- 6. The Respondent was ordered to produce a document setting out its calculations of the Claimant's financial losses and the amounts it says should be awarded to the Claimant as compensation. It was also permitted to produce witness evidence, limited to 3,000 words in total.
- 7. It was agreed at the start of the hearing that the only issues in dispute are whether we should make an order for reinstatement/ re-engagement, and the amount of any award for injury to feelings. The Claimant did not take issue with the Respondent's calculation of his financial losses, save that he argued the additional three weeks he would have been employed should be calculated by reference to full pay.
- 8. We heard evidence from the Claimant. On behalf of the Respondent we heard evidence from Rob Godfrey.
- 9. The hearing took place by video with the agreement of the parties and for the same reasons as explained in our liability judgment.

FACTS

- 10. The totality of the Claimant's evidence about his health situation and fitness to work was as follows:
 - "Looking for work with reasonable adjustments hoping for re-engagement or reinstatement to previous job with the use of manual timesheets and adjustments previously agreed to in bundle and pay not to be linked to training."
- 11. As to injury to feelings, the Claimant said:
 - "I suffered severe injury to feeling and personal injury from my unfair dismissal and discrimination arising from disability including not receiving full pay from 19 to 30 may 2023 and refusal of reasonable adjustments.
 - Details include sleepless nights, severe depression and anxiety and withdrawal and many more."
- 12. The Claimant has provided his GP records, pursuant to case management orders, which do not show any attendances in or around May 2023.
- 13. In his oral evidence the Claimant said that he carried out some work in the summer of 2024, around 3-4 weeks in total. He says he has not worked since then, but that he has been looking for work and applied for some jobs without success. He has not produced any evidence of such applications. The Claimant

was in receipt of Employment Support Allowance from August 2023 to May 2024. He has been in receipt of Universal Credit from October 2024 to date.

14. Rob Godfrey, who is currently Head of Customer Workshop Services for the Respondent, gave evidence that the Respondent did not recruit a direct replacement for the Claimant after his dismissal, but an apprentice was used to assist with tasks until he became a fully qualified Technician. That evidence was not challenged.
15. He said there are no Technician vacancies and there is no requirement or financial scope for recruiting a new Technician. Again, that was not challenged. He said that productivity levels had dropped to 86% and additional headcount would not be considered unless productivity rose to 95%. He mentioned a potential vacancy for a supervisor role, but said that he did not consider the Claimant suitable for the role, not least because it would involve using the electronic system that the Claimant had issues with as a technician.

THE LAW

16. The Tribunal has a discretion whether to make an order for re-instatement or re-engagement where a complaint of unfair dismissal has been upheld.
17. Pursuant to s.116 of the Employment Rights Act 1996, in considering either type of order, the Tribunal must take into account three matters:
 - 17.1. whether the claimant wishes to be reinstated or re-engaged;
 - 17.2. whether it is practicable for the employer to comply with an order for reinstatement or re-engagement;
 - 17.3. where the claimant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement or re-engagement.
18. It is well established that awards for injury to feelings are compensatory not punitive. The Employment Appeal Tribunal has given guidance on the approach to injury to feelings awards in Eddie Stobart Limited v Graham [2025] EAT 14. Judge Barry Clarke underlined that the burden is on the claimant to show that their feelings have been injured and to what extent. He suggested four matters that may be helpful to consider:
 - 18.1. The claimant's description of their injury;
 - 18.2. Duration of consequences;
 - 18.3. Effect on past, current and future work;
 - 18.4. Effect on personal life or quality of life.
19. The updated Vento bands applicable to this case are:
 - 19.1. a lower band of £1,100 to £11,200 (less serious cases);

19.2. a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band);

19.3. an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200.

CONCLUSIONS

Unfair dismissal

20. We observe that an order for reinstatement or re-engagement is an usual and serious step to take because it compels the parties to enter into an employment relationship in circumstances where the Respondent does not wish to do so.

21. Looking at the mandatory factors, in terms of the Claimant's wishes, we accept that he wants to be reinstated or re-engaged, but he has said he would still want the adjustments regarding manual time sheets and pay/training that he has consistently argued for and the Respondent was not willing to agree to. He said in his oral evidence he was not sure whether he could return to work without the adjustment to allow him to use manual time sheets. The Claimant's wishes are therefore conditional. We have found there was no obligation on the Respondent to make those adjustments.

22. As for practicability, the main issue is the Claimant's health. It is clear from the evidence we heard at the liability hearing that he suffered from very serious mental health issues in early 2023 that resulted in two relatively lengthy admissions to hospital. Although the Claimant was after some time deemed fit to work with adjustments, subject to a risk assessment, at the time of his dismissal he was signed off work for a further two months due to unspecified "mental health problems". Apart from small amounts of work in the summer of 2024, the Claimant has not worked since. There is no evidence of him having applied for other jobs. He has also been in receipt of benefits including benefits that apply to those unable to work or restricted in their ability to work for health reasons. Because of that background we ordered the Claimant to give evidence in his witness statement about his current health and fitness to work, and to disclose medical records. The Claimant has given very limited evidence on this issue and has not satisfied us that he would be fit to work for the Respondent in any role.

23. Further, we accept Mr Godfrey's evidence that there are no vacancies for technicians at the moment, and that even if the Respondent decides to recruit for the supervisor role, the Claimant would not be suitable for it. The health concerns apply equally to that role, plus the additional concerns about the Claimant's ability to use the electronic system that he had difficulties with as a technician.

24. We also agree with the Respondent that as a consequence of our factual findings about the Claimant ceasing to engage with the process, we have concluded that the Claimant contributed to his dismissal to some extent.

25. Taking into account all of those factors this is clearly not a case where we should make an order for reinstatement or re-engagement. It would not be just to do so.
26. The basic award is agreed at £2,572.00.
27. As for the compensatory award, we expressly found in our liability judgment that the Claimant would have received statutory sick pay for the three weeks we found he should have been employed after the date of dismissal. There is no reason for us to calculate the compensatory award on any other basis. It is agreed that statutory sick pay for the period would have amounted to £328.20 so we award that sum.
28. We also award £400 for loss of statutory rights.

Discrimination arising from disability

29. Financial losses are agreed at £1,421.56, being the difference between statutory sick pay and full pay for the relevant period.
30. We also award interest on that sum at 8% from the mid-point (25 May 2023) to date (618 days): £192.55
31. As for injury to feelings, the Claimant was ordered to provide evidence of injury to feelings relating specifically to the discriminatory act that we upheld. He has not done so. His witness statement refers to that issue as well as the alleged failure to make reasonable adjustments, which we rejected. His email response to the Respondent's counter schedule of loss also said that he did not agree with the injury to feelings figure suggested by the Respondent because he was appealing the parts of the judgment that did not uphold his other discrimination complaints.
32. The only evidence of injury to feelings relating to the specific act of discrimination we have upheld is a bare assertion by the Claimant in response to a question from the Tribunal that it did cause him injury to feelings not to be paid full pay for those 12 days. He says this included loss of sleep, depression, anxiety and withdrawal.
33. It was clear from the evidence we heard at the liability hearing that the Claimant's main concern and upset at the time was about not being able to return to work, and the partial refusal of his request for adjustments. There is no evidence, other than his assertion, and the fact that he brought a claim about it, that the failure to pay him full pay after he was deemed fit to work was something that was on his mind at all at the time.
34. We agree with the Respondent that this could arguably be an exceptional case in which no award for injury to feelings should be made. We bear in mind, however, that the Respondent's own counter schedule suggests an award of £1,500. We also are also prepared to accept that not being paid full pay during a period when the Claimant was asking to return to work caused some additional upset to the Claimant, albeit at a very low level. Indeed it is difficult to think of a scenario that would be less serious than this in terms of injury to

feelings. We therefore make an award at the very bottom of the lower band, i.e. £1,100.

35. We award interest at 8% on that sum for the period 19 May 2023 to date (624 days): £150.44

Employment Judge Ferguson

Date: 31 January 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

12 February 2025

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FOR THE TRIBUNAL OFFICE