EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms D Clarke	**v**	**General Medical Council**

Heard at: London Central (in public; by video)

On: 13 March 2025

Before: Employment Judge **P Klimov**
Tribunal Member **P Keating**
Tribunal Member **J Tombs**

Appearances:

For the claimant: **Mr R Clement of counsel**

For the respondent: **Mr J Arnold of counsel**

JUDGMENT with oral reasons having been announced to the parties at the hearing on 13 March 2025, the written Judgment having been sent to the parties on 21 March 2025, and written reasons having been requested by the claimant on 22 March 2025, in accordance with Rule 60(4)(b) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction

1. This was a remedy hearing to determine compensation to the claimant for unfair dismissal and disability discrimination, pursuant to the Tribunal's liability judgment dated 1 November 2024 ("**the Liability Judgment**").

2. As part of the Liability Judgment the Tribunal held that "*The claimant's refusal to accept the offered alternative role in the Policy team was unreasonable*".

3. On 4 February 2025, the Tribunal issued a judgment that "*[a]ny compensatory award to the claimant shall be reduced by 100% to reflect the claimant's*

unreasonable failure to mitigate her loss" ("**the February Judgment**"). The reasons for that decision and the relevant background are set out in the February Judgment.

4. The claimant was represented at the hearing by Mr Clement, who did not appear for the claimant at the liability hearing, however he represented the claimant with respect to the issues determined by the February Judgment. Mr Arnold appeared for the respondent, as he did at the liability hearing. The Tribunal is grateful to both counsel for their submissions and other assistance to the Tribunal.

5. The claimant gave sworn evidence and was cross-examined by Mr Arnold. There were no witnesses for the respondent. The Tribunal was referred to various documents in a 294-page bundle of documents the parties introduced in evidence. All references in these Reasons in the format (p.xx) are to the corresponding page number in the hearing bundle.

6. The claimant presented a schedule of loss (p.266-271). The respondent presented a counter schedule of loss (p.291 – 294).

7. Mr Arnold presented a written skeleton, which he then supplemented by oral closing submissions. Mr Clement presented his arguments orally.

8. At the start of the hearing, Mr Clement confirmed that, in light of the February Judgment, compensation claims for loss of earnings (past and future) were no longer pursued by the claimant. Mr Clement said that he had "a one-line submission" for each of the claims for loss of statutory rights, costs of therapy sessions, private health insurance, and interests on loans. Mr Clement said that the claimant accepted the respondent's calculations of the basic award.

9. Following the claimant's evidence, before adjourning the hearing for the parties to prepare their final submissions, the Tribunal drew the parties' attention to the recent EAT judgment in the case *Eddie Stobart Limited v. Catlin Graham* [2025] EAT 14, in which Judge Barry Clarke, having reviewed the case law on injury to feelings awards, gave further guidance to employment tribunals on the correct approach in quantifying the appropriate level of compensation for injury to feelings, in particular the importance of evidence of injury caused by discriminatory conduct.

10. Having heard the parties' final submissions, the Tribunal adjourned for deliberations. Upon reconvening the hearing in the afternoon, the Tribunal announced its unanimous decision as follows.

Basic award

11. The sum of the basic award is agreed by the parties as £2,956.65. The tribunal therefore orders the respondent to pay the claimant a basic award for unfair dismissal in that sum.

Loss of statutory rights

12. The claimant seeks £650 for loss of statutory rights. Mr Clement argued that despite the claimant's compensatory award being reduced to zero, she should still be awarded compensation for loss of statutory rights, because, in his words, the question of mitigation must follow the dismissal, by which time the claimant had already lost her statutory rights by virtue of being dismissed, and therefore is due compensation for that, regardless of whether or not she has failed to mitigate her loss.

13. We make no award for loss of statutory rights. That is because it forms part of a compensatory award, which had been reduced by 100% percent by the February Judgment.

14. In our view, the alternative analysis advanced by Mr Clement is misconceived. The question of mitigation does not "follow the dismissal". It follows the question of loss; and it is the question of loss that follows the dismissal. In other words, the claimant must show what loss, arising from the unfairness of her dismissal, she has suffered. She is under the duty to mitigated all that loss. Therefore, if the claimant claims that she has suffered a financial loss by reason of losing her statutory rights, caused by her unfair dismissal, she is still under the duty to mitigate that loss. We see no principled reason why this particular type of loss should be excluded from the scope of the duty to mitigate. Mr Clement did not refer us to any authority on this point.

15. In any event, Mr Clement analysis does not help the claimant's case on the facts, as in her case her failure to mitigate her loss (by turning down the policy administrator role) came before and not after the dismissal. In short, had she not unreasonably refused the offered alternative role, she would not have been dismissed, and hence would not have lost her statutory rights.

16. Finally, the claimant receives the basic award, which function is to compensate the employee for the loss of job security caused by the unfair dismissal by awarding him/her a sum equivalent to a statutory redundancy payment. In that sense, the claimant has not "lost her statutory rights", but, on the contrary, she had them realised by the Liability Judgment, declaring the dismissal unfair, and by receiving the basic award as a compensation for having to re-start accruing the requisite qualifying service for certain employment rights

17. Therefore, in the circumstances, we find that it will not be just and equitable to award the claimant any compensation for loss of statutory rights.

Therapy sessions, loss of private insurance, and interest on loans

18. Equally, we make no award for therapy sessions, loss of private insurance, and interest on loans. All these are sub-headings of the alleged financial loss, which fall within the compensatory award that had been reduced to zero.

19. In any event, we had no evidence of the claimant actually sustaining any of these losses. The claimant accepted in cross-examination that she had not had any self-paid therapy sessions. She presented no evidence of any paid interest on the alleged loans. Her schedule of loss says that she borrowed money from friends and family, but she gave no evidence what interests on those borrowings she paid and to whom. She did not even quantify the alleged losses in her schedule of loss. Therefore, there is simply no evidential basis, upon which we could make any monetary award under any of these subheadings.

20. Mr Clement did not put any cogent case to us on what basis these compensation claims could be sustained, instead limiting his submissions by "adopting what the claimant's says". The claimant's case is unsustainable both as a matter of facts and law.

Injury to feelings

21. The claimant seeks an award exceeding £56,200 (above the top end of the Vento upper band, applicable at the time of the claim). Mr Clement argued that an award above the top end of the upper band was justifiable, because it was "the most exceptional case" by reason of the claimant suffering from depression, being vulnerable in many respects, and the stress causing her mobility problems and aggravating her skin condition.

22. Mr Arnold argued that the claimant's evidence as to the effects of the dismissal on her health must be taken with "a pitch of salt". There is no medical evidence before the Tribunal to corroborate the claimant's alleged depression. There is no medical evidence linking the alleged physical problems, such as fibromyalgia or skin disorder to the dismissal. Mr Arnold reminded the Tribunal that:

    a. in this case the only discriminatory conduct found by the Tribunal was the claimant's dismissal.
    b. it was not a case of a sustained discriminatory conduct by the respondent over a period, or of a campaign of harassment.
    c. the Tribunal said, when giving oral reasons for the Liability Judgment, that the respondent was doing "the right thing" by pausing the capability process in September 2022, making several occupational health referrals, extending the claimant's notice period, and generally not rushing with the dismissal, thus putting itself in a worse legal position than it would have been had it dismissed the claimant shortly after May 2022, when it became apparent that the claimant could not return to office working.

    Therefore, Mr Arnold argued, it was not a case that could sensibly be said as falling within the categories of the most exceptional, or the most serious cases.

23. Mr Arnold referred us to various employment tribunal cases, which support the respondent's argument that a case of this kind falls no higher than in the

middle of the middle Vento band, and the figure of £13,500, suggested by the respondent, was just and equitable compensation.

24. Before reaching its decision on the level of compensation, the Tribunal directed itself to the relevant statutory provisions and the case law (as conveniently summarised by Judge Clark in **Eddie Stobart Limited v. Catlin Graham** (at [30] – [50]). We also carefully considered the authorities referred to in Mr Arnold's skeleton.

25. We find that the claimant has not presented sufficient evidence to prove (on the balance of probabilities) that she suffered or suffers from depression, or that the alleged depression has been caused by the discriminatory dismissal.

26. In our judgment, the evidence before us is insufficient to establish either the fact of depression or the causal connection between the dismissal and the alleged depression. We agree with Mr Arnold's analysis on that. The highest it can be taken is that the claimant self-diagnoses herself with depression, but that self-diagnosis is not supported by any independent medical evidence.

27. The fact that the claimant's GP suggested to her that she could trial antidepressants does not mean that the GP or another medical professional has diagnosed her with depression. In the medical notes, relied upon by the claimant, there is no diagnosis of depression. The "Problem list" in the notes makes no mention of the depression. The "Visit notes" simply talk about mental health being low in setting up social stressors. The "Plan" talks about encouraging exploring talking therapies. The "Additional advice" simply recommends an annual review to check for the development of comorbidities, such as hypertension, ischaemic heart disease, osteoporosis and depression. There is no referral to any psychiatrist or another mental health specialist for further examination.

28. To be thorough and fair to the claimant we have also carefully considered her other medical evidence in the bundle. However, they do not advance the claimant's case on depression, let alone depression being cause by the dismissal, any further. In fact, the opposite picture emerges.

29. In the medical note of 7/10/24 (p.252 – 253) there is no reference to depression. The only active problem diagnoses is one of asthma. In her application form for a personal independence payment ("PIP"), completed on 31 May 2024, (p.215 – 221) the claimant lists 10 disabilities, but makes no mention of depression.

30. Equally, there is simply no credible evidence before us linking the alleged depression to the dismissal.

31. Unfortunately, the claimant suffers from several complex medical conditions related to her physical health, which undoubtedly affect her mental health and contribute to her feelings of anxiety and stress. She candidly described that in her PIP questionnaire: "*Because of my respiratory problems and pain it is hard to bend and clean my legs, feet especially as I am gasping for breathe.*

All of this impacts on my mental health and makes me feel undesirable and that I will be on my own forever. Makes me feel like no one will want me or understand how hard it is for me on a daily basis". (p.224)

32. She also describes (p.225) that loss of her job "*because the aircon system made me so ill that I could not physically go into the office and would be off sick if I did. This has caused me great distress and anxiety as I feel so different to others. Recently I went to a hotel stay for a friends birthday and became very ill because they would not turn off the aircon in the public area. It can be very depressing as I know I am putting myself at risk when I go out so I feel isolated from my friends and society most days*."

33. We also note that, following her medical assessment for the PIP benefit, the claimant was not awarded any points for limitations in day-to-day activities typically associated with mental health issues (such as communicating, reading, mixing with other people, making budgeting decisions, planning and following a journey).

34. Finally, it is also notable that despite the alleged depression, the claimant continued to earn a regular income by herself providing counselling services to others (p.120-121).

35. In summary, we find that the claimant has failed to establish that she suffered or suffers from depression, or that it has been caused by the discriminatory dismissal by the respondent.

36. We also reject Mr Clement's submission that the claimant's physical health problems, such as, fibromyalgia or skin rash, was caused by the dismissal. There is simply not credible medical evidence before us, upon which that connection could be established. The simple fact that the claimant was diagnosed with fibromyalgia or had a skin rash sometime after she had been dismissed by the respondent is wholly inadequate as the evidence that the dismissal was the operating cause of these conditions. Just because one event precedes another in time, does not mean that the earlier event is the effective cause of the later.

37. As I have already mentioned, the claimant, unfortunately, suffers from multiple complex medical conditions, and, judging by her PIP questionnaire, many of which predate her dismissal by a considerable period of time. We have no medical or other credible evidence to support the conclusion that fibromyalgia or her skin problems or other physical health problems were caused by the dismissal as opposed to the claimant's historic medical conditions or some other events in her life.

38. We, however, accept that the claimant's dismissal caused her anxiety and stress, and to this day she feels upset about losing her job. We also accept her evidence that the dismissal had a significant impact on her enjoyment of life, as it caused her to lose her financial security, and heighten her angst of, as she puts it in her PIP questionnaire, "*being different to others*", and not being able to find another job.

39. Evidently, any dismissal will usually be a traumatic experience for any employee. When you are dismissed because of limitations associated with your disability, in the circumstances where there are no other issues with your abilities, performance, or conduct, and where your limitations can and should be accommodated by your employer, is undoubtedly something that may have a serious impact on your self-esteem and quality of life, and make you feel isolated and humiliated.

40. On the other hand, in this case the respondent did not go about dismissing the claimant in a heavy-handed, malicious, insulting or oppressive manner. On the contrary, as was found by the Tribunal at the liability hearing, the respondent tried to accommodate the claimant's health problems the best it thought was possible, including by giving the claimant alternative duties on a temporary basis, suspending the capability procedure, extending the notice period, searching and finding a suitable alternative employment for the claimant.

41. It still fell short of the required standard, but it was not a deliberate act of discrimination. Nor was the respondent turning a blind eye on the claimant's health problems. It engaged with the problem and tried to solve it. The respondent's mistake, which caused it fall foul of its duties under the Equality Act 2010, was not to pause and consider whether in light of the developments on its digital ID checks project, the previous factually sound position, that the claimant's role required her to be present in the office, remained valid.

42. Therefore, considering the manner of discrimination as "*a tool by which the tribunal can properly draw an inference of secondary fact as to the injury suffered by a claimant*" (see **Eddie Stobard v C Graham** at [43]) we find that this evidence points a considerable way below the level of injury to feelings the claimant claims she has suffered.

43. Furthermore, we note what the claimant says in her witness statement about the sources of her anxiety and stress. In many cases, she links that not to her dismissal, but the events that followed. In particular, to the stress of having to deal with the tribunal litigation. We, however, can only award compensation to the claimant in respect of injury to her feelings caused by the respondent's discriminatory conduct, i.e. her dismissal, and not in respect to any injury to her feelings caused by subsequent events, such as having to deal with a stressful litigation process.

44. Stepping back and looking at all these factors, we agree with Mr Arnold's submissions that this case falls in the middle of the middle band of the Vento bands. In our judgment, this case does not come anywhere near the top band, let alone justifying an exceptional award, exceeding the upper end of the top band.

45. We also agree with the respondent's assessment that the figure of £13,500 is just and equitable compensation for the claimant's injured feelings caused by the discriminatory dismissal. We accordingly make the award in that sum.

Aggravated damages

46. We make no award for aggravated damages. We emphatically reject the claimant's submissions that the respondent's conduct of litigation was high-handed, malicious, insulting, oppressive, or otherwise inappropriate.

47. The fact that the respondent had not conceded disability earlier than the second day of the liability hearing does not mean that the respondent did not have a valid reason to contest the disability until, as Mr Arnold pointed out, further discussion had been had with the Tribunal at the beginning of the liability hearing. The claimant's case on what her claimed disability was was not straightforward and required further clarification. Once her claimed disability had been clarified by the Tribunal, the respondent very sensibly accepted that at the material time the claimant had that disability.

48. Equally, we reject the submission that there was any failure on the part of the respondent to disclose all relevant evidence. The fact that the digital ID check contract had been signed was stated in the respondent's witnesses' witness statements. The claimant knew that fact from when the statements had been exchanged. The fact that the contract itself was not in the hearing bundle might have been an omission, but it was not a deliberate attempt by the respondent to hide the evidence. In any event, it was quickly provided by the respondent when it was requested by the Tribunal.

49. In short, there are no proper grounds to make any award for aggravated damages.

ACAS Uplift

50. Finally, for the sake of completeness, we make no award for ACAS uplift. That is because we made no findings that the ACAS code of conduct applied, or that the respondent was in breach of it.

Total award

51. To sum up, we make a basic award in the sum of £2,956.65, and an award for injury to feelings in the amount of £13,500, plus interest on the injury to feelings award, to be calculated in the usual manner.

Interest

52. The Tribunal then asked the parties to make their interest calculations and confirm the figure. After a short adjournment the parties confirmed that the agreed interest sum was £1,946.95.

Employment Judge Klimov

6 April 2025

Sent to the parties on:

15 April 2025

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For the Tribunals Office