



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Shakil

Respondent: Samsons Limited

Heard at: Birmingham

On: 6 March 2025

Before: Regional Employment Judge Jones
Mrs J Whitehill
Mr P Simpson

REPRESENTATION:

Claimant: Mr C MacDonald (counsel)

Respondent: Mr M Saleem (Director)

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

- 1 The respondent is to pay to the claimant £25,000 as injury to feelings for discrimination, plus £6,860 in interest, totalling **£31,860**.

REASONS

Introduction

- 1 The claimant's claim for pregnancy discrimination was successful following a hearing on 17 and 18 April 2023 before Employment Judge Mensah, Ms S Campbell and Ms H Russell (the original Tribunal). In a judgment sent to the parties on 20 April 2023, the original Tribunal made an award of compensation for discrimination which included £5,000 for injury to feelings. Written reasons for the original Tribunal's decision were sent to the parties on 20 June 2023. The claimant appealed against the award for injury to feelings, arguing that it was too low.
- 2 Following a hearing in the Employment Appeal Tribunal (EAT) before His Honour Judge James Tayler, sitting with Members, by a judgment dated

11 December 2024 the appeal was allowed and the case was remitted to the Employment Tribunal, with a direction that a different panel should assess afresh the appropriate award for injury to feelings. It is this fresh assessment of the appropriate award for injury to feelings that we have heard and now determine.

- 3 The claimant, who represented herself when these proceedings were last before the Tribunal, was represented by Mr Macdonald under the pro bono representation scheme Advocate. The respondent was represented by Mr Saleem, a Director, as it has been throughout these proceedings.
- 4 The Tribunal was provided with a joint bundle of documents comprising 123 pages. This included the claimant's witness statement (pages 22-28), the claimant's application to amend her claim to include a claim for aggravated damages (pages 29-36), the claimant's skeleton argument (pages 8-15) and the respondent's skeleton argument and statement from Mr Saleem (pages 16-21). References to page numbers in these reasons are references to the pages of that joint bundle, unless otherwise stated.
- 5 There was a separate bundle of statutory material, Presidential Guidance and 10 reported cases,¹ which the claimant submitted (although did not refer to all of them).
- 6 The claimant gave oral evidence to the Tribunal and was cross-examined. The respondent called no oral evidence on the factual matters the Tribunal had to decide.

Findings of Fact

- 7 The Tribunal noted that the original Tribunal made the following findings of fact:
 - 7.1 The claimant was employed by the respondent, a property development company, as an accountant/book keeper. The claimant's employment commenced on 5 October 2020 and ended when she was dismissed with effect from 1 October 2021, when she began maternity leave.
 - 7.2 The claimant became pregnant with her first child in early 2021. On 30 March 2021 the claimant telephoned Mr Saleem and advised him that she was feeling unwell due to morning sickness. The respondent became aware on that date of the claimant's pregnancy.
 - 7.3 The following day, 31 March 2021, the respondent unilaterally reduced the claimant's hours of work from full-time to 2 days per week. This was less favourable treatment because of the claimant's pregnancy-related ill-health. The claimant's response to the reduction in her hours was to request that the respondent consider

¹ See appendix 1

placing her on furlough due to the alleged reduction in work. She explained in an email dated 1 April 2021 that it would be a financial struggle for her to accept the reduction to 2 days per week. On 30 April 2021 the claimant indicated that she had decided to resign due to the adverse financial impact of the reduced hours.

- 7.4 The claimant's employment continued, however, until she was later dismissed on 30 September 2021. She secured a second job to supplement her income, continuing to work for the respondent on a reduced hours basis. She was motivated to stay with the respondent as she had accrued sufficient pre-pregnancy service to qualify for maternity leave, which would not be the case with new employment.
 - 7.5 The claimant's dismissal was because of her pregnancy. It was not because of redundancy, as the respondent alleged both at the time and to the Tribunal and it was not due to the claimant's poor performance in her role, which the respondent alleged in its response to the claim but did not pursue as an argument during the hearing.
 - 7.6 There was no evidence whatsoever that the claimant had taken or retained a computer belonging to the respondent, as was alleged by Mr Saleem.
- 8 The Tribunal found the claimant to be a straightforward and honest witness who did not seek to exaggerate the impact upon her of the respondent's unlawful discrimination. Based on the claimant's written and oral evidence, which the Tribunal accepted, it made the following additional findings of fact:
- 8.1 The claimant's husband joined her in the UK from abroad in or about February 2021. He was not able to find work until approximately July 2021 when he obtained some part-time hours working for the claimant's father in his business. The claimant's full-time employment with the respondent was therefore the family's main source of income. On the strength of this income, the claimant and her husband had obtained accommodation and planned to live independently of the claimant's family when their baby was born.
 - 8.2 The claimant experienced stress, anxiety and panic from the time that the respondent reduced her hours to part-time. She did not know how she and her husband were going to manage financially and how she would be able to afford all the things needed for a new baby.
 - 8.3 The claimant's anxiety manifested itself over the period after 1 April 2021 in sleepless nights, low self-esteem ("I felt like rubbish"), frequent tearfulness, rumination and being "plagued by worrisome thoughts day and night", including doubts about whether she had

done the right thing to have a baby at all when she was not financially stable. She experienced panic attacks.

- 8.4 The claimant also had feelings of fear that she would not be able to obtain alternative or additional work if prospective employers found out she was pregnant. This led her to set about concealing her pregnancy with baggy clothes or by asking for interviews to be conducted remotely. This inhibited the claimant's enjoyment of her pregnancy because she felt she had to conceal it much of the time. During interviews she would feel embarrassed and anxious.
- 8.5 By mid-May 2021 the claimant had successfully obtained a full-time contract position in a second finance role. She hoped that, if she did this job alongside the part-time hours she still had with the respondent to make ends meet, she would be able to return to full-time hours with the respondent once she returned from maternity leave.
- 8.6 Practically speaking, this meant that the claimant had to work from 8.30am to 4.30-5pm five days per week in her second job. She had to commute for 40-45 minutes to that job once per week. She then had to fit in the additional two days' of work for the respondent during evenings and weekends, as well as travel to the respondent's office from time to time to collect and return paperwork.
- 8.7 In August 2021 the claimant contacted Mr Saleem with her MATB1 form but received no acknowledgement which upset her. The claimant's baby was due on 5 November 2021. She felt confused by the respondent's lack of acknowledgement or discussion with her about her pregnancy or maternity and the lack of any clarity about her future employment or hours. This was compounded when, on 12 September 2021, the claimant emailed Mr Saleem to advise him that she wished to commence her maternity leave on 11 October 2021, and again received no reply.
- 8.8 The claimant suffered complications during the latter part of her pregnancy leading to her continually fainting. She was admitted to hospital on two occasions. By the end of September 2021, blood tests had revealed a potentially serious condition which the claimant was told put her baby at risk of still birth. As a consequence, the hospital booked the claimant in to have the baby induced on 17 October 2021. The claimant emailed Mr Saleem again on 27 September 2021 advising him that she would need to commence her maternity leave on 1 October 2021, but she again received no response, which caused her further stress and worry. Two days later, the claimant received correspondence from the respondent referring to a letter it claimed had been sent to her on 20 September 2021, which she had not received, putting her role at risk of redundancy.

- 8.9 The claimant commenced her maternity leave on 1 October 2021 and had a baby boy on 18 October 2021. Following the birth, the claimant and her husband had to move back to live with the claimant's parents due to the financial pressure that the claimant's loss of employment and lack of maternity pay had created. On 10 January 2022 the DWP rejected the claimant's claim for maternity allowance arguing that the respondent was responsible for paying her maternity pay. The claimant had to engage with HMRC in an effort to try and secure her maternity pay from the respondent.
- 8.10 The claimant's early weeks and months with her new baby were marred by the need to devote time to trying to resolve her financial predicament and bringing the employment tribunal proceedings. The claimant sent a letter of grievance to the respondent on 25 October 2021 and was upset to receive no response. She commenced ACAS early conciliation and felt that the respondent was unconcerned for her when it did not engage with ACAS.
- 8.11 Having commenced tribunal proceedings, the claimant then received a copy of the respondent's response. This asserted, contrary to the contemporaneous documents, that Mr Saleem had been unaware of the claimant's pregnancy. The respondent also alleged that the claimant's dismissal was linked to her poor performance in the role and further that she had tried to make or cause the respondent to make an unlawful furlough claim. The poor performance allegation, which the original Tribunal found to be without merit, particularly upset the claimant and made her self-conscious. She became worried that her future employment opportunities would be damaged by a poor reference from the respondent.
- 8.12 On 20 December 2022 Mr Saleem sent the claimant an email in the following terms (p34):

"Good morning Sadia,

I hope that you are well.

As you know I am very disappointed in the actions that you have taken. I have now prepared my case and will be hiring a barrister to represent me amongst our evidence we will be advising that by your very own submission you have stated that you had resigned from your employment and on top of that data evidence has been obtained to show that when you were employed at Hawthorns House how much time you spent on websites which were not associated with your work on top of that I have also obtained evidence which shows how much actual time you spent on the actual software which was associated with your work.

On top of that I will be asking the local press and TV to be reporting on this court case. Please do the honourable thing and withdraw the case.

Kind regards
M.Saleem”

- 8.13 The claimant interpreted this email as an attempt to pressurize her into withdrawing her case because Mr Saleem, knowing that she is a burns victim with scarring, would know that she would be very uncomfortable at the thought of being in the presence of the media and would be likely to withdraw the claim rather than face what she saw as potential public humiliation. This media threat knocked the claimant’s confidence.
- 8.14 In Mr Saleem’s witness statement he also accused the claimant of misappropriating a company laptop, which upset her a great deal. He accepted during the original Tribunal hearing that there was no evidence to support this allegation.
- 8.15 During the hearing the claimant was upset and tearful as a result of Mr Saleem’s evidence because he said her pregnancy was embarrassing and he was accusing her of things that were not true and she felt belittled by him.
- 8.16 Following the hearing, the claimant received an email from Mr Saleem dated 24 June 2023 (p35) which read:

“Good morning

Further to the decision by the Tribunal please confirm the total payment due to you as well as the account number and sort code you wish the payment to go to. I hope that you have a wonderful time utilising the monies gained from me.

Only God knows if I was in the wrong or you were in the wrong and no doubt we will be justly rewarded in our next life.

The money I am sending to you will make no difference to me but I hope it makes a tremendous difference to your life.

Kind regards
M Saleem”

- 8.17 The claimant found this email “disturbing” and “nasty”. She was horrified by the comment that she should have a wonderful time spending the money as she felt it was only the money that was lawfully due to her and she was shocked that Mr Saleem could be so spiteful to her.
- 8.18 The claimant is now in new employment but the effects of her treatment by the respondent persist in that she is fearful of her new employer reacting in the same way if she has another baby.

The law

- 9 **Section 124(2)(a) Equality Act 2010** (the Act) provides that a Tribunal may order a respondent to pay compensation to a claimant where, as here, a contravention of the Act has been found. This is compensation of an amount which could be awarded by a county court under section 119 of the Act. This expressly includes an amount for injury to feelings (section 119(4)).
- 10 In the case of **(1) Armitage, (2) Marsden and (3) HM Prison service v Johnson** [1997] IRLR 162 the EAT set out five principles to consider when assessing awards for injury to feelings in cases of discrimination, as follows:
- 10.1 Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the [employer]. Feelings of indignation at the [employer's] conduct should not be allowed to inflate the award.
 - 10.2 Awards should not be too low as that would diminish respect for the policy of the legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to untaxed riches.
 - 10.3 Awards should bear some broad general similarity to the range of awards in personal injury cases. This should be done by reference the whole range of such awards rather than to any particular type award.
 - 10.4 In exercising discretion in assessing a sum, the Tribunal should remind themselves the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power by reference to earnings.
 - 10.5 The Tribunal should bear in mind the need for public respect for the level of awards made.
- 11 Further guidance was given on awards by the setting of three bands for compensation for injury to feelings by the Court of Appeal in the case of **Vento v Chief Constable of West Yorkshire Police (No.2)** [2003] IRLR 102 in order, as was later said by the Court of Appeal in **Kemeh v Ministry of Defence** [2014] IRLR 377 "to ensure a measure of consistency and fairness in the way in which tribunals approach their task".
- 12 Those bands (subject to the adjustments referred to below) were described in **Vento** as follows:
- "The top band should normally be from £15,000-£25,000. Awards in this range should be awarded in the most serious cases, such as

where there has been a lengthy campaign of discriminatory harassment...

The middle band between £5,000 and £15,000 should be used in serious cases, which do not merit an award in the highest band.

Award 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..."

- 13 These figures are now adjusted annually by way of Presidential Guidance. The guidance relevant to this case is the fourth addendum which applies to claims presented on or after 6 April 2021 and provides for a lower band of £900 to £9,100 (less serious cases), a middle band of £9,100 to £27,400 (cases that do not merit an award in the upper band) and an upper band of £27,400 to £45,600 (the most serious cases), with only the most exceptional cases capable of exceeding £45,600.
- 14 Compensation for discrimination may include an element of aggravated damages where, for example, a respondent has "behaved in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination" (**Alexander v Home Office**, [1988] ICR 685, CA).
- 15 Aggravated damages can be awarded where there has been conduct such as that described in **Alexander** in the defence of the proceedings as well as in committing the act of discrimination, although such cases are likely to be infrequent (**Zaiwalla & Co v Walia** [2002] UKEAT 451).
- 16 The Tribunal also had regard to the [Employment Tribunals] (Interest on Awards in Discrimination Cases) Regulations 1996. Where a Tribunal makes an award under the Act, these regulations provide that it may include interest and must consider whether to do so. Interest on injury to feelings awards is calculated from the date of the discrimination giving rise to the injury to the date of calculation. The rate of interest is the Judgment Act rate, which is currently 8%.
- 17 Finally, the Tribunal had regard to the Employment Tribunal Rules 2024, the Presidential Guidance on Case Management and the principles in **Selkent Bus Company Ltd v Moore** [1996] IRLR 661 and **Vaughan v Modality Partnership** (UKEAT/0147/20BA) in relation to the application to amend the claim. In summary, a Tribunal may permit a party to amend its claim or defence at any time during proceedings but, in considering whether to do so, must weigh up the hardship to the applying party if the application is refused against any hardship that would be suffered by the other party if it were granted.

Application to amend

- 18 On 18 February 2025 the claimant made a written application to amend her claim to include a claim for aggravated damages (p29). Mention of the intention to make such an application was made at the EAT hearing in December 2024, and again on 3 February 2025 when the Tribunal held a preliminary hearing to give directions for the preparation of the case for today's hearing.
- 19 In doing so, the claimant listed 5 aspects of the respondent's conduct that she said entitled her to aggravated damages. These were (in summary) as follows:
 - 19.1 Mr Saleem ignoring her emails, post and calls before she was dismissed and not engaging with ACAS or HMRC when she attempted to resolve her concerns about her treatment after her dismissal;
 - 19.2 Mr Saleem denying knowledge of the claimant's pregnancy and making accusations about her performance, faking Covid claims and stealing a laptop during the proceedings;
 - 19.3 Mr Saleem's email of 20 December 2012 threatening media involvement (see paragraph 7.12 above);
 - 19.4 Mr Saleem making "spiteful and hateful comments" during the first hearing such as that her pregnancy was "embarrassing";
 - 19.5 Mr Saleem's email of 24 June 2023 after the claim had been determined (see paragraph 7.16 above).
- 20 The claimant's explanation for the delay in bringing this claim was that she did not know she could claim aggravated damages until she received legal advice through the Advocate scheme at the EAT hearing. Mr Macdonald identified the potential prejudice to the claimant if the amendment was not allowed as being the risk that the seriousness of the respondent's conduct might not be fully reflected in any award without it. He added that there was a policy reason for awarding aggravated damages. The claimant accepted that, with or without an amendment to claim aggravated damages, all 5 of the matters identified above had injured the claimant's feelings and were thus material to any award of compensation for injury to feelings in any event.
- 21 The respondent opposed the application to amend (paragraphs 4-6 of the respondent's skeleton argument, p19), arguing that it was prejudiced because a claim of aggravated damages would significantly alter the nature of the proceedings and asserting that this was not an appropriate case for aggravated damages on the merits.

Conclusions

- 22 This was a case in which the Tribunal had the benefit of clear and cogent evidence from the claimant about the way in which the unlawful discrimination had affected her. This evidence was, and remained, the focus of the Tribunal's attention during its deliberations in relation to injury to feelings. It is not necessary to rehearse that evidence in its totality here, which is set out in our findings of fact. The Tribunal considered the following to be the salient points.
- 23 The discrimination took place at a time in the claimant's life which she had hoped and planned would be exciting and happy – the pregnancy, birth and early life of her first child. Instead, she suffered physical and emotional symptoms of anxiety and distress. These included sleepless nights, panic attacks, intrusive anxious thoughts and tearfulness. There was evidence that the claimant's confidence and self-esteem were damaged by the discrimination. These symptoms persisted from the time she was told that her hours had been cut to two days per week, until her baby was born. The symptoms did not stop then, however, because of the claimants' ongoing financial struggles.
- 24 The claimant had to take a second job to mitigate the effects of the discrimination. This meant she has to work very long hours during what was a difficult pregnancy.
- 25 The claimant was confused and distressed by Mr Saleem's behaviour during the period prior to her dismissal. This included his failure to respond to her communications relating to her pregnancy and her arrangements for maternity leave. Mr Saleem was someone known to the claimant's family and considerably senior to the claimant in age and authority in the organisation and in the claimant's community.
- 26 The claimant's feelings were further hurt by her dismissal on the sham basis, as the original Tribunal found, that her job was redundant. The effects of the discriminatory dismissal were ongoing at the time of the hearing, 4 years later, because the claimant is still worried that she might have a similar experience with her new employer if she decides to have another baby.
- 27 The claimant's feelings were also significantly adversely affected by Mr Saleem's decision to defend the proceedings by denying that he knew the claimant was pregnant, by alleging that the reason for her dismissal was actually redundancy and by accusing her, wrongly, of poor performance and, later on, of stealing a company laptop, although Mr Saleem retracted this allegation at the outset of the original hearing.

- 28 The proceedings have been lengthy and the claimant was further upset and felt pressured by the two emails referred to above which were sent to her by Mr Saleem (paragraphs 7.12 and 7.16 refer). The Tribunal concluded that it was both likely and reasonable that a litigant in person such as the claimant felt intimidated and upset by both of these emails. The first was pressuring her to withdraw the proceedings and the second, the Tribunal concluded, was petulant and unprofessional in its tone and content.
- 29 Taking all of these factors into account it was clear to the Tribunal that this was a serious case of discrimination which fell within the middle band of Vento. This was the claimant's counsel's submission and Mr Saleem, sensibly, accepted that the alternative was not seriously arguable in light of the comments of His Honour Judge Tayler in the EAT that "it is hard to see how the injury to feelings would not come within the middle band having regard to the period over which the treatment occurred and the effect the claimant said the treatment had on her" (paragraph 25).
- 30 The Tribunal then considered where in that band this case should fall. Having considered the length of time over which the claimant suffered an impact from the discrimination, which was ongoing at the time of the hearing, the severity of the symptoms the claimant suffered to her health and well-being during her pregnancy, the impact on her lifestyle, financial security and home life, the lasting effect on her memories of her pregnancy and her child's early life, the impact on her work and the effects on her of the respondent's conduct of the litigation, the Tribunal concluded that the appropriate award in this case was towards the top of the middle band, namely £25,000.
- 31 The Tribunal went on to consider the question of aggravated damages. The Tribunal was minded to grant the claimant's application to amend having weighed up the balance of hardship to each party. However, it is not necessary to say more about that because, having examined the evidence, the Tribunal concluded that this was not a case in which a separate award of aggravated damages was appropriate.
- 32 Mr Saleem represented the respondent without legal support. His conduct of the proceedings, whilst the Tribunal found that it did at times add to the claimant's injured feelings, could not be described as "high-handed, malicious, insulting or oppressive". His conduct in the Tribunal was calm and respectful and he did not ask inappropriate or aggravating questions of the claimant nor seek to denigrate her evidence of her hurt feelings. His poor communication during the claimant's pregnancy was certainly unhelpful but it was common ground that he was out of the country at the time and, whilst this did not absolve the respondent from its duties to the

claimant as an employee, it led the Tribunal to conclude that this was unlikely to have been a malicious or deliberate act.

- 33 Mr Saleem's emails to the claimant during and after the proceedings caused hurt and distress. The Tribunal has already taken that into account in the award that it has made in relation to injury to feelings. In an adversarial Tribunal system, these emails were not in and of themselves high-handed, malicious, insulting or oppressive in the Tribunal's judgment. The original Tribunal made no findings to indicate that Mr Saleem's evidence during the first hearing was such as to fit that definition either.
- 34 The Tribunal considered whether to award interest on the award for injury to feelings and concluded that there was no reason to depart from the norm in doing so; indeed the respondent put forward no such reason. Whilst these proceedings have been ongoing for some time, the Tribunal reminded itself that the Vento brackets that have been applied are those that date back to 2021 when the discrimination occurred. Interest is designed to compensate for the intervening period.
- 35 There were two acts of discrimination – the reduction in hours (1 April 2021) and the dismissal (1 October 2021). The Tribunal took the latter of these dates to avoid over-recovery and applied the rate of 8% to the award of £25,000. This produced an award of interest of £6,860, being 1252 days at the rate of £5.48 per day.
- 36 The total award of injury to feelings, including interest, was therefore £31,860.
- 37 The Tribunal reiterates its apologies for the time it has taken to send this judgment to the parties, who are thanked for their patience.

**Approved by:
Regional Employment Judge Jones
on 14 May 2025**

Appendix 1 – Authorities submitted by the claimant

- 1 Evans v Oaklands Nursing Home Group Ltd [1999] EAT/331/99
- 2 Vento v Chief Constable of West Yorkshire Police (No.2) [2003] ICR 318
- 3 Miles v Gilbank & Another [2006] ICR 1297
- 4 Da'Bell v NSPCC [2010] IRLR 19
- 5 Taylor v XLN [2010] ICR 656
- 6 Commissioner of Police of the Metropolis v Shaw [2012] ICR 464
- 7 Komeng v Creative Support Ltd UKEAT/01275/18/JOJ
- 8 Alexander v Home Office [1988] ICR 685
- 9 Zaiwalla & Co v Walia [2002] UKEAT 451
- 10 Eddie Stobart Limited v Graham [2025] EAT 14