



EMPLOYMENT TRIBUNALS

Claimant: Ms Rowena Owens

Respondent: Network Rail Ltd

By CVP
On: 30 June 2025 , 2 June 2025
and in chambers on 3 June 2025

Before: Employment Judge Martin
Ms Denton
Ms Omer

Representation
Claimant: Mr Kohanzad - Counsel
Respondent: Ms Ferber KC - Counsel

RESERVED JUDGMENT ON REMEDY

1. The unanimous judgment of the Tribunal is that the Respondent shall pay to the Claimant as compensation the following amounts:

Injury to feelings	£ 45,000.00
Interest	£ 34,933.98
Personal injury	£ 35,000.00
Interest	£ 13,591.24
Therapy costs	£ 9,427.66

TOTAL AWARD **£138,012.88**

2. The Claimant's application for costs will be considered separately and a judgment will be issued in due course.

RESERVED REASONS

1. The Tribunal found that the Respondent discriminated against the Claimant on the protected characteristic of sex. That judgment sets out detailed findings of fact which are not replicated here.
2. The Tribunal found that items 1 – 25 of the Scott Schedule were well founded but dismissed the other complaints relating to the grievance process which followed the matters set out in items 1 – 25. In summary, the Tribunal found that the Claimant was subjected to prolonged discrimination on the protected characteristic of sex, of the most serious kind.
3. The Claimant has brought a subsequent case against the same Respondent which is listed to be heard on in 2026. The parties agreed between themselves the parameters of this hearing as follows:
 - (i) psychotherapy cost;
 - (ii) injury to feelings (and interest);
 - (iii) personal injury (and interest); and
 - (iv) the Claimant's costs application

Future losses and whether there should ACAS uplift, to be put off until after the hearing of the Second Claim. If that claim is successful, then these outstanding items can be dealt with by that Tribunal. If it is not, then it will be dealt with by this Tribunal.

4. The Equality Act 2010 provides that where an employment tribunal finds that a complaint of unlawful discrimination presented to it is well-founded the tribunal shall make such of the following as it considers just and equitable: '...an order requiring the Respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court ...
5. The Tribunal may make an additional award in cases where the claimant has suffered psychiatric damage because of the discrimination.
6. The Court of Appeal in *Vento v Chief Constable of West Yorkshire Police (No 2)* [2003] IRLR 102 considered the appropriate level of compensation for injury to feelings in discrimination cases. In giving general guidance to tribunals as to the proper level of award for injury to feelings and other forms of non-pecuniary loss (including psychiatric damage), the Court identified three broad bands of compensation for injury to feelings:
 - (i) The top band sums in this range should normally 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.
 - (ii) The middle band should be used for serious cases, which do not merit an award in the highest band.
 - (iii) Awards of between £500 and £5000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence....

The amount attached to each band has changed over time.

7. 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...Common sense requires that regard should also be had to the overall magnitude of the sum total of the awards of compensation for non-pecuniary loss made under the headings of injury to feelings, psychiatric damage and aggravated damage. Double recovery should be avoided by taking appropriate account of the overlap between the individual heads of damage..’.

The hearing

8. The Tribunal had before it the Claimant’s witness statement prepared for this hearing, an agreed bundle of documents comprising 204 pages, a costs schedule and written submissions from both parties. The Respondent did not cross examine the Claimant’s statement which is therefore unchallenged. The Tribunal accepts the Claimant’s evidence in full.
9. The Respondent accepted that, based on the Tribunal’s findings of fact, that any injury to feelings award would fall within the top Vento band. Its position is that it should be towards the bottom of the band; the Claimant’s position is that it should be at the top of the band.
10. The parties agreed the following issues for this hearing in relation to the claim for personal injury:
 - i. Is the psychiatric harm to the Claimant (as described in her medical evidence) divisible; or is it a single, indivisible harm? That is: can the Tribunal identify – however broadly, and on a rational basis – a particular part of the suffering which is due to the unlawful discrimination (para 71 of **BAE Systems v Konczak [2017] EWCA Civ 1188**)?
 - ii. If the harm is indivisible, did the unlawful discrimination materially contribute to it?
 - iii. If the harm is divisible, how should the ET apportion the harm (as between the effect of the unlawful discrimination, which is compensatable; and the effect of subsequent events, which have been found not to amount to unlawful discrimination)?
11. In addition to written submissions the parties gave detailed oral submissions which have been considered.

Injury to feelings

12. The Tribunal is mindful that an injury to feelings award must only consider the effect on the Claimant and should not be based on the gravity of the discriminatory acts or be punitive. However, in considering the impact on the Claimant, the gravity of the discrimination has relevance. It was not disputed that this was very serious discrimination. As the Claimant submitted, it was “*a pattern of discriminatory conduct of exceptional severity and persistence.*” It was serious and sustained discrimination, which the Tribunal has rarely come across, spanning about 18 months and involving approximately twenty people including shift managers. These factors must be considered when looking at the impact of the discrimination on the Claimant.
13. The Claimant was not cross examined and her witness statement evidence is therefore not challenged. The Tribunal accepts all she says about the profound impact on her life and how this extends to third parties (for example family and friends) as well. The precise details are not set out in full in this judgment. It is sufficient to say that the effect on the Claimant is pervasive. The following quote from her statement encapsulates the effect the discrimination had on her.

"The impact of the discrimination I have suffered has been severe, persistent, and life changing. It has robbed me of years of happiness, professional fulfilment, possible professional advancement, and personal growth that I can never recover".

14. The Respondent concedes that the discrimination was serious and agrees that the top Vento band is applicable. It argues that an award for injury to feelings should be at the bottom of this band. The reasons given are that the Claimant does not *"separate her feelings about incidents 1-25 from her feelings about what happened after May 2017; and perhaps it is impossible for her to do so. But that supports R's concern that the figure of £45,000 in C's schedule of loss is attributable in very large part to what happened to C once she had raised her grievance in 2017. That is not a lawful assessment of her injury to feelings award in this claim"*.
15. The Claimant argues that the award should be at the top of the top Vento band but does not argue that it is one of the exceptional cases to justify an award higher than £45,000 which is the top of the top band. The Claimant submitted that the factors such as the length of time the discrimination took place over, the number of people involved, and the specific discriminatory acts are factors which place the award at the top of the top band.
16. The Tribunal accepts the Claimant's submission that the injury to feelings award should be at the top of the top band. What the Claimant describes is a profound and exceptional effect on her. We are satisfied that it was the discrimination that caused this effect. It was the discrimination that caused the Claimant to go on sick leave on 26 May 2017 which was some time before she sent her grievance letter on 3 November 2017 and that process began. There is no doubt that it was the events found to be discriminatory that caused the injury which resulted in her going on sick leave. The discriminatory treatment was the root of everything that happened after.
17. The Tribunal does not accept the Respondent's submission about the Claimant's witness statement focussing on the grievance process rather than the discriminatory acts. We find that where the Claimant talks about discrimination in her witness statement she is referring to the discrimination which the Tribunal found. We accept that there is reference to the subsequent grievance process but do not accept the Respondent's submission that her statement is predominantly about the grievance process rather than the discriminatory acts themselves. It was open to the Respondent to cross examine the Claimant about this, but it chose not to do so.
18. We do not doubt that grievance process and the appalling way it was handled influenced the Claimant. It would be wrong not to recognise this. However, by that time the injury had already happened. The grievance was a natural consequence of the discriminatory behaviour.
19. The Tribunal has noted the perception of the Claimant as set out in her witness statement and noted the prolonged, sustained, serious discrimination conducted by many people (including management) and considers that it is reasonable to find this conduct had the effect described by the Claimant. Looking at the factors that have been identified as justifying awards at the top of the top Vento band the Tribunal finds that an award at the top of the Vento bands is appropriate.

The Tribunal awards the Claimant £45,000 for injury to feelings this being the top of the top Vento band given the lengthy campaign of discriminatory harassment, by multiple people including management, on the ground of sex or race.
20. Interest is agreed at 8%.

21. The calculation for interest is:

Start date for calculation: 5 November 2015
Date calculation made: 18 July 2025
Number of days: 3,543

$£45,000 \times 8\% = £3,600$
 $£3,600 / 365 = £9.86$
 $£9.86 \times 3,543 = £34,933.98$

Total interest £34,933.98

Personal Injury

22. The agreed issues in relation to personal injury are:

- a. Is the psychiatric harm to the Claimant (as described in her medical evidence) divisible; or is it a single, indivisible harm? That is: can the Tribunal identify – however broadly, and on a rational basis – a particular part of the suffering which is due to the unlawful discrimination (para 71 of BAE Systems v Konczak [2017] EWCA Civ 1188)?
- b. If the harm is indivisible, did the unlawful discrimination materially contribute to it?
- c. If the harm is divisible, how should the ET apportion the harm (as between the effect of the unlawful discrimination, which is compensatable; and the effect of subsequent events, which have been found not to amount to unlawful discrimination)?

23. Judicial College Guidelines 17th Ed, Chapter 4 – Psychiatric Psychological Damage, provides the following guidance:

Section (A) - Psychiatric Damage Generally

The factors to be taken into account in valuing claims of this nature are as follows:

- (i) the injured person's ability to cope with life, education, and work;
- (ii) the effect on the injured person's relationships with family, friends, and those with whom he or she comes into contact;
- (iii) the extent to which treatment would be successful;
- (iv) future vulnerability;
- (v) prognosis;
- (vi) whether medical help has been sought.

(a) Severe

In these cases the injured person will have marked problems with respect to factors (i) to (iv) above and the prognosis will be very poor. £66,920 to £141,240

(b) Moderately Severe

In these cases there will be significant problems associated with factors (i) to (iv) above, but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases involving psychiatric injury following a negligent stillbirth or the traumatic birth of a child will often fall within this bracket. Cases of work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category. £23,270 to £66,920

(c) Moderate

While there may have been the sort of problems associated with factors (i) to (iv) above there will have been marked improvement by trial and the prognosis will be good. Cases of work-related stress may fall within this category if symptoms are not prolonged. £7,150 to £23,270

(d) Less Severe

The level of the award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were affected. Cases falling short of a specific phobia or disorder such as travel anxiety when associated with minor physical symptoms may be found in Chapter 14: Minor Injuries. £1,880 to £7,150

24. The Judicial College Guidelines establish four key factors for assessing psychiatric damage claims: the injured person's ability to cope with life, education, and work; the effect on relationships with family, friends, and associates; the extent to which treatment would be successful; and future vulnerability and prognosis.
25. It was agreed by the parties that the injury to the Claimant falls within the moderately severe category - £23,270 to £66,920.
26. We had before us a medical report by Dr Natalie Brunt a Chartered Clinical Psychologist dated 18 March 2025. The summary says: *"Following the discriminatory behaviour suffered by Ms Owen from November 2015 onwards and the subsequent grievance procedure and legal action being taken, she is experiencing general anxiety disorder. On the balance of probability, these symptoms are directly attributable to the index events and the events related to her employment that have followed"*.
27. The index events are defined as: *"Ms Owen reported that on 5th November 2015, she was moved at work to a signal centre at Wimbledon. She reported that whilst working here she experienced serious continued discrimination and harassment for eighteen months up until she went off sick on 31st May 2017. Ms Owen reported that she has not returned to work since then. She reported that she raised a grievance in November 2017 which was ultimately rejected and that she submitted a claim to the Employment Tribunal in November 2017 which asserted that during her time at the Wimbledon signal box she was subject to discriminatory treatment. Ms Owen reported that her employers have attempted to redeploy her but that until December 2024 she was not offered a role. She reported that she was due to commence this role in January 2025 but was unable to due to mental health problems and that as a result of this her employers are proposing to terminate her employment on the grounds of ill health. Ms Owen reported that the mental health difficulties she experiences are a result of the treatment she has been subject to by her employers"*.
28. The definition of the index events appear to embrace not just the discrimination at items 1 – 25 of the Scott Schedule but all events following including those not found to be discriminatory. This is notwithstanding the letter of instruction which limited the events to be considered to items 1 – 25 of the Scott Schedule. It appears that the Claimant's representatives did not go back to Dr Blunt to clarify its instructions.

29. The difficulty this causes, is in relation to the question of divisibility. That is, what caused the injury: the discrimination; the grievance or matters post grievance. Given that the letter of instruction only requested a report on items 1 – 25 in the Scott Schedule there was no instruction to make a report on divisibility and divisibility was not considered by Dr Blunt.

30. The Claimant submitted:

The evidence demonstrates profound and sustained impairment across all domains of the Claimant's functioning. Most significantly, the Claimant has been unable to work for eight continuous years since May 2017, despite being offered redeployment by the Respondent in December 2024. This lengthy period of incapacity goes far beyond temporary disruption and represents a fundamental alteration in her ability to sustain employment. The expert evidence reveals that her cognitive capacity has been so severely affected that she now believes she can only undertake basic employment such as supermarket work or roles with the National Trust, representing a dramatic decline from her previous position as a skilled railway signaller in a safety-critical role

Her daily functioning has been comprehensively compromised. Dr. Brunt's report details how the Claimant now performs only essential housework, has ceased cooking entirely and relies on ready meals, and has abandoned previously enjoyed activities. She has stopped running due to lack of energy, walks her dog only minimally, and reports feeling "mentally and physically exhausted" as a direct consequence of her condition. These are not minor lifestyle adjustments but represent a wholesale deterioration in her ability to manage the basic activities of daily living.

The psychiatric injury has caused substantial deterioration in the Claimant's relationships across multiple domains. She reports feeling very guilty towards her daughter for having to endure this experience with her and has been compelled to rely on her daughter for financial support, fundamentally altering their relationship dynamic. The expert evidence reveals that she "sees very little of her friends now" and has become significantly more withdrawn socially. Dr. Brunt's assessment specifically notes that the Claimant's trust in people has been damaged and that she socialises much less than prior to the index events

These relationship impacts extend beyond mere social preference changes to represent a fundamental alteration in her capacity for interpersonal connection. The guilt she experiences about the impact on her daughter, combined with her social withdrawal and damaged trust in others, demonstrates the pervasive effect of her psychiatric condition on her ability to maintain meaningful relationships.

31. The report gives an optimistic prognosis for recovery with treatment.

32. In relation to quantum the Claimant submitted:

The expert evidence establishes significant problems across all relevant factors identified in the Judicial College Guidelines, coupled with the crucially optimistic treatment prognosis that characterises the Moderately Severe category. The exceptional duration of eight years, the comprehensive life impact across work, relationships, and daily functioning, and the complete alteration in employment capacity justify an award towards the upper end of the bracket. The Tribunal is respectfully invited to award damages of £55,000 to £60,000, reflecting the severe and long-standing nature of this work-related psychiatric injury while recognising the optimistic prognosis that prevents classification in the higher Severe category.

33. The Respondent's written submission in relation to personal injury focussed on causation and the lack of comment about this in Dr Brunt's report:

There has been no attempt at all to apportion the injury between events pre-May 2017 and post-May 2017; nor to analyse what injury C might (or might not) have sustained had the events after May 2017 not taken place. Since it is for C to prove causation, that lack of evidence is fatal to her claim for personal injury caused by incidents 1-25.

Applying the principle in Prison Service v Salmon, the illness diagnosed by Dr Brunt – generalised anxiety disorder – manifests in symptoms which are very close to feelings already taken into account by the Tribunal in assessing the award for injury to feelings: the symptoms described under the heading “Psychological Symptom Profile” [83-86] include worry, difficulty sleeping, exhaustion, feelings of disappointment and being let down by R, and feelings of humiliation and of being picked on and bullied.

34. It is regrettable that the report compiled by Dr Blunt did not reflect the letter of instruction. It is perhaps surprising that the Claimant’s representatives did not ask her to amend the report to focus only on the matters 1 – 25 of the Scott Schedule. As the Respondent says, it is impossible from the report to ascertain whether the injury identified was as a result of the events at 1 – 25, the grievance or matters occurring after the grievance.

35. The parties referred to BAE Systems (Operations) Limited v Marion Konczak

71. What is therefore required in any case of this character is that the tribunal should try to identify a rational basis on which the harm suffered can be apportioned between a part caused by the employer’s wrong and a part which is not so caused. I would emphasise, because the distinction is easily overlooked, that the exercise is concerned not with the divisibility of the causative contribution but with the divisibility of the harm. In other words, the question is whether the tribunal can identify, however broadly, a particular part of the suffering which is due to the wrong; not whether it can assess the degree to which the wrong caused the harm.

72. That distinction is easy enough to apply in the case of a straightforward physical injury. A broken leg is “indivisible”: if it was suffered as a result of two torts, each tortfeasor is liable for the whole, and any question of the relative degree of “causative potency” (or culpability) is relevant only to contribution under the 1978 Act. It is less easy in the case of psychiatric harm. The message of Hatton is that such harm may well be divisible. In Rahman the exercise was made easier by the fact (see para. 57 above) that the medical evidence distinguished between different elements in the claimant’s overall condition, and their causes, though even there it must be recognised that the attributions were both partial and approximate. In many, I suspect most, cases the tribunal will not have that degree of assistance. But it does not follow that no apportionment will be possible. It may, for example, be possible to conclude that a pre-existing illness, for which the employer is not responsible, has been materially aggravated by the wrong (in terms of severity of symptoms and/or duration), and to award compensation reflecting the extent of the aggravation. The most difficult type of case is that posited by Smith LJ in her article, and which she indeed treats, rightly or wrongly, as the most typical: that is where “the claimant will have cracked up quite suddenly, tipped over from being under stress into being ill”. On my understanding of Rahman and Hatton, even in that case the tribunal should seek to find a rational basis for distinguishing between a part of the illness which is due to the employer’s wrong and a part which is due to other causes; but whether that is possible will depend on the facts and the evidence. If there is no such basis, then the injury will indeed be, in Hale LJ’s words, “truly indivisible”, and principle requires that the claimant is compensated for the whole of the injury – though, importantly, if (as Smith LJ says will be typically the case) the claimant has a vulnerable personality, a discount may be required in accordance with proposition 16.

36. The Tribunal has considered this issue carefully and whilst noting the limitations of the medical report, it has found that despite this, the Claimant has proved causation. The Tribunal accepts her evidence about the injury she has sustained. This was not challenged by the Respondent. As noted above, the Claimant went on sick leave (and did not subsequently return to work) on 17 May 2017 before any of the subsequent events occurred and before making her grievance. It seems to us more than probable that the injury was caused by the time she went on sick leave.

37. The Tribunal, recognising that subsequent events will have had an impact on the Claimant turned its mind to whether the harm was divisible. The Tribunal has no doubt that the way the grievance process was undertaken by the Respondent exacerbated the injury caused by the discriminatory acts and that a division is appropriate.

38. The Respondent submitted that the appropriate division should be 1/3 for the discrimination, 1/3 for the grievance process and 1/3 for matters after this.
39. The Claimant submitted that the appropriate division should be 2/3 for the discriminatory acts and 1/3 for the effects of the grievance and post grievance matters. This is because the whole reason why the Claimant went off sick is because of discriminatory acts found 1-25 The core is the discrimination found, dragging the grievance out made it worse but this is not as serious as the incidents themselves.
40. The Tribunal accepts the Claimant's submissions and finds that the division should be 2/3 for the discriminatory acts.
41. In relation to quantum, the Claimant submitted that damages of £55,000 to £60,000 was appropriate to reflect the severe and long-standing nature of this work-related psychiatric injury while recognising the optimistic prognosis that prevents classification in the higher severe category.
42. Both parties accepted that there was an overlap with the personal injury award and injury to feelings. The Claimant suggested that a discount of £5,000 would reflect this, the Respondent suggested a discount of between £5,000 and £10,000.
43. The damages awarded (without divisibility or discount for overlap with injury to feelings) is £60,000 to reflect the severity of the injury. The 2/3 division results in a figure of £40,000 to which a discount for double recovery is applied of £5,000. The total damages award for personal injury is therefore £35,000.
44. Interest is agreed at 8%.
45. The calculation for interest is:

Start date for calculation:	5 November 2011
Date calculation made:	18 July 2025
Number of days:	3,544
Midpoint	1,772 days

$£35,000 \times 8\% = £2,800$
 $£2,800 / 365 = £7.67$
 $£7.67 \times 1,772 = £13,591.24$

Total interest £13,591.24

Therapy costs

46. The Claimant claims compensation for therapy costs incurred because of the discrimination in the sum of £14,140
47. In principle, the Respondent had no objection to the Tribunal ordering a sum to compensate the Claimant for her out-of-pocket expenses relating to psychotherapy treatment.
48. However, the Respondent submitted it was concerned that the email evidence from the Claimant's psychotherapist covers 7.5 years' psychotherapy beginning in January 2018; whereas the acts of discrimination (as found by the Tribunal) ended at some time before May 2017 and were soon superseded by other events, beginning with allegation 26 in November

2017, which have seriously affected Claimant's mental health but which have been found not to amount to discrimination. The Respondent was also concerned about the lack of invoices provided by the Claimant.

49. The Respondent considers that the therapy which started in January 2018 after the grievance had been sent by the Claimant relates to the stresses of the grievance process which the Tribunal found not to be discriminatory rather than to the acts the Tribunal found to be discriminatory.
50. The Claimant submitted that the Respondent chose not to cross examine the Claimant so even though there are no invoices, the Claimant is credible and referred to the Respondent's witnesses saying they considered the Claimant to be credible during the liability hearing. The Tribunal found the Claimant to be credible and there is no reason to doubt her evidence. It was submitted by the Respondent, that the reason for therapy was to help her through the difficult grievance process, but the damage was done by the discrimination which predated this process.
51. The Tribunal accepts the Claimant's submissions and finds that the Respondent should pay the therapy costs incurred by the Claimant. Utilising the same formula as in the personal injury case, the Tribunal has discounted 1/3 of the amount claimed on the basis that 2/3 of the reason or the need for therapy emanates from the discriminatory acts and the remaining 1/3 for other matters. The amount claimed is £14,140 and consequently the amount awarded for therapy costs is £9,427.66.

Approved by Employment Judge Martin
Date: 18th July 2025

Reserved judgment sent to parties on
Date: 8th August 2025

For the Tribunal Office