EMPLOYMENT TRIBUNALS

Claimant: **Mrs Audrey Pereira**

Respondent: **(1) Wellingtons Antiques Limited**
(2) John Michael Wellington

Heard at: Reading Employment Tribunal (By video)

On: 24 February 2025

Before: Employment Judge Annand
Ms Telfer
Ms Brown

Representation

Claimant: Mr Van Heck, Counsel
Respondents: Ms Millin, Counsel

CORRECTED REASONS

An oral judgment and reasons, regarding remedy, having been given to the parties at the hearing on 24 February 2025, and written reasons having been requested at the hearing in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

Introduction

1. The parties attended a final hearing in this case between 2-5 September 2024 at Reading Employment Tribunal. An oral judgment, which addressed the issue of liability, was given on 31 January 2025. The reasons for the delay in giving judgment have already been explained to the parties.

2. Prior to 31 January 2025, the parties were notified that the hearing was listed on that day to allow the Tribunal to give an oral judgment on liability and then proceed to deal with remedy. However, on 31 January 2025, after the oral judgment on liability, the Respondents requested an adjournment of the remedy hearing on the basis that the Second Respondent had flu, and because they wanted time to consider the decision on liability before making submissions on remedy. The Tribunal agreed to the request mainly because the Tribunal members were able to offer an alternative date for the remedy hearing that was only a few weeks away. A remedy hearing was therefore

listed on 24 February 2025 to be heard by video. At the hearing on 31 January 2025, the Respondents requested written reasons for the oral judgment on liability. Those written reasons have now been sent to the parties.

3. At the remedy hearing on 24 February 2025, the Tribunal was provided with a bundle of documents, two witness statements from the Claimant, a Schedule of Loss and a Counter Schedule of Loss from the Respondents. At the remedy hearing, the Tribunal heard evidence from the Claimant, and submissions from both parties. The Tribunal gave an oral judgment, and the Respondent requested written reasons.

Findings of fact

4. In the liability judgment the Tribunal found that the Claimant's employment with the Respondent ended on 7 March 2023.

5. On 11 March 2023, the Claimant was admitted to hospital having made a laceration to her left wrist when in a moment of considerable distress. In her medical notes, it was noted that her son advised the doctor that he knew the issues with her previous employer had put a huge strain on his mother's well-being. The Claimant was seen at the Accident and Emergency Department (A&E) and was discharged later that day.

6. In the same month, the Claimant started seeing a psychologist. She attended therapy sessions from March 2023 to April 2024.

7. In May 2023, the Claimant started applying for new roles. She applied for numerous roles in the relevant sector. In other words, in jewellery, accessories and antiques businesses. She applied for numerous vacancies, dropped off her CV at various possible employers, and tried to make contact with prospective employers through social media.

8. In 2024, when the Claimant had been unsuccessful in obtaining a role in her preferred field, she broadened her search and applied for roles as administrators, with estate agents, and in the music business.

9. By the date of the remedy hearing, the Claimant had not found a new role.

The relevant law

Financial losses, *Chagger* and Mitigation of loss

10. Under section 124(6) of the Equality Act 2010, any award of compensation for discriminatory acts will be assessed under the same principles as apply to torts. The aim is to put the claimant in the position, so far as is reasonable, that he or she would have been had the tort not occurred (*Ministry of Defence v Wheeler* [1998] IRLR 23 and *Chagger v Abbey National plc* [2010] IRLR 47). Only those losses caused by the unlawful act will be recoverable. Where an individual would have lost their job at some point in any event, the losses suffered after the date when the individual would have been dismissed anyway have not been caused by the discriminatory dismissal, and are not recoverable.

11. A claimant is expected to mitigate the losses they suffer as a result of an unlawful act, and the tribunal will not make an award to cover losses that could reasonably have been avoided. A claimant is expected to take reasonable steps to minimise the losses suffered as a consequence of the unlawful act.

12. In *Fyfe v Scientific Furnishing Ltd* [1989] IRLR 331, it was found that the burden of proving a failure to mitigate is on the respondent. It is insufficient for a respondent merely to show that the claimant failed to take a step that it was reasonable for them to take, rather, the respondent has to prove that the claimant acted unreasonably. There is a difference between acting reasonably and not acting unreasonably. If the claimant has failed to take a reasonable step, the respondent has to show that any such failure was unreasonable (*Wright v Silverline Car Caledonia Ltd* UKEATS/0008/16).

Injury to feelings and personal injury

13. Under section 119(4) of the Equality Act 2010, injury to feelings awards are available where a tribunal has upheld a complaint of discrimination. The award of injury to feelings is intended to compensate the claimant for the anger, distress and upset caused by the unlawful treatment they have received. It is compensatory, not punitive. Tribunals have a broad discretion about what level of award to make. The focus is on the actual injury suffered by the claimant and not the gravity of the acts of the respondent (*Komeng v Creative Support Ltd* UKEAT/0275/18/JOJ).

14. In *Vento v Chief Constable of West Yorkshire Police* (No2) [2003] IRLR 102, the Court of Appeal identified three broad bands of compensation for injury to feelings and gave the following guidance:

    1) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.

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

    3) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

15. The Vento Bands are revised in Presidential Guidance issued by the Presidents of the Employment Tribunals in England & Wales and Scotland. In this case, the Claimant submitted a Claim Form to the Employment Tribunal against the Respondents on 14 April 2023. In respect of claims presented on or after 6 April 2023, the “Vento bands” were as follows: a lower band of £1,100 to £11,200 (less serious cases); a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and an upper

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

16. In *Vento v Chief Constable of West Yorkshire Police (No2),* it was held that the matters compensated for by an injury to feelings award encompass subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.

17. Employment tribunals can make separate awards for injury to feelings and personal injury. Where separate awards are made, tribunals must be careful to avoid double recovery. There is clearly a danger in discrimination cases of an overlap between an award for pain, suffering and loss of amenity arising from psychiatric injury and an award for injury to feelings resulting from the same discriminatory acts. In *HM Prison Service v Salmon* [2001] IRLR 425, the EAT acknowledged that, although the two awards are distinct in principle, they are not easily separable in practice. The EAT notes that tribunals could treat the personal injury as having been compensated for under the heading of injury to feelings.

Aggravated damages

18. Aggravated damages are an aspect of injury to feelings, and are awarded only on the basis, and to the extent that the aggravating features have increased the impact of the discriminatory act on the claimant and therefore the injury to feelings. They are compensatory, not punitive. The appropriate acts include:

    1) Where the act is done in an exceptionally upsetting way. In *Commissioner of Police of the Metropolis v Shaw* UKEAT/0125/11/ZT, the EAT referred to “high-handed, malicious, insulting or oppressive’ behaviour”.

    2) Discriminatory conduct that is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is likely to cause more distress than if done without such a motive, for example as a result of ignorance or insensitivity.

    3) Where the act is aggravated by subsequent conduct. For example, conducting the trial in an unnecessarily oppressive manner, failing to apologise, or failing to treat the complaint with the requisite seriousness. (*Bungay & Anor v Saini & Ors* UKEAT/0331/10 and *Zaiwalla & Co v Walia* [2002] UKEAT/451/00).

19. It is important for Tribunals to consider the risk of double recovery and consider whether the overall award of injury to feelings and aggravated damages is proportionate to the totality of the suffering caused to the claimant.

Acas Uplift

20. Under section 207(A) of the Trade Union and Labour Relations (Consolidation) Act 1992, an award for compensation can be increased or reduced, by up to 25%, if the employer or employee has unreasonably failed

to comply with the Acas Code of Practice on disciplinary and grievance procedures.

21. In *Rentplus v Coulson* [2022] EAT 81, the EAT held that tribunals are concerned with substantive compliance with the requirements of the Code. The EAT suggested that a Tribunal should ask:
1) Is the claim one which raises a matter to which the Acas Code applies?
2) Has there been a failure to comply with the Acas Code in relation to that matter?
3) Was the failure to comply with the Acas Code unreasonable?
4) Is it just and equitable to award an uplift because of the failure to comply with the Code and, if so, by what percentage, up to 25%?

22. The court held in *Slade v Biggs* [2021] EA-2019-00687 that the award has both compensatory and punitive elements.

Written statement of particulars

23. The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 amended sections 1 to 7B of Part I of the Employment Rights Act 1996. The amendments mean that workers are entitled to receive a written statement of employment particulars no later than the first day of their new job. An employee may bring a claim to a tribunal alleging that his or her employer has not complied with these obligations (section 11(1) of the Employment Rights Act 1996).

24. There is an additional right to a remedy from a tribunal where a claim has been brought within the list of jurisdictions in Schedule 5 to the Employment Act 2002, which includes claims under Section 23 of the Employment Rights Act 1996 for unauthorised deductions from wages. Under sections 38(1) to (5) of the Employment Act 2002, where under such a claim the tribunal finds for the employee, whether or not it makes an award in respect of that claim, and where when the proceedings were brought the employer was in breach of the duty to give written particulars, the tribunal will make an award of 2 weeks' pay unless it would be unjust and inequitable to do so, and may if it considers it just and equitable in all the circumstances make an award of 4 weeks' pay.

25. In *Govdata Ltd v Denton* UKEAT/0237/18/BA it was held that for such an award to be made, the employer must be in breach of the obligation at the time the proceedings have begun. Where the employer has complied with its obligations under section 1, even belatedly, before the proceedings have begun, the tribunal has no power to make such an award.

Interest on discrimination awards

26. Under section 139 of the Equality Act 2010, and the Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013, a tribunal is able to award interest on awards of compensation made in discrimination claims. The tribunal may award interest on past financial loss and injury to feelings awards, as well as other types of compensation.

27. The interest rate to be applied is 8% and interest is calculated as simple interest accruing from day to day (Regulation 3(1) of the Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013).

28. Under Regulation 6(1)(a), interest is awarded on injury to feelings awards from the date of the act of discrimination complained of until the date on which the tribunal calculates the compensation.

29. Under Regulation 6(1)(b), interest is awarded on all sums other than injury to feelings awards from the mid-point of the date of the act of discrimination complained of and the date the tribunal calculates the award. The mid-point date is the date half way through the period between the date of the discrimination complained of and the date the tribunal calculates the award (Regulation 4).

30. Under Regulation 6(3), where a tribunal considers that serious injustice would be caused if interest were to be calculated according to the approaches above, it can calculate interest on such different periods as it considers appropriate.

Grossing up

31. Awards will be 'grossed up' by a tribunal where the sum to be received by the claimant will be taxed. Grossing up therefore applies to awards where section 401 of the Income Tax (Earnings and Pensions) Act 2003 operates to tax the sum in the claimant's hands. Section 401 applies to payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with: a) the termination of a person's employment; b) a change in the duties of a person's employment; or c) a change in the earnings from a person's employment, by the person, or the person's spouse, blood relative, dependant or personal representatives.

32. In this case the recipient enjoys a tax free amount of £30,000 in any particular tax year and will then pay tax on sums in excess of this figure. To avoid disadvantage to the claimant, the tribunal should 'gross up' any award it makes over £30,000. This requires the tribunal to estimate the tax the claimant will have to pay on receipt of the award and add a sum for that tax back on to the award, therefore cancelling out the tax burden to the claimant.

The Tribunal's findings

Breach of contract – sales commission

33. The Tribunal has already concluded as a part of the liability judgment that the Claimant is entitled to £2,000 as a commission payment, which was agreed between the Claimant and the Second Respondent.

34. At the remedy hearing, the Respondents argued a figure of £150 was appropriate. However, the Tribunal had already made factual findings on this point as a part of the liability judgment. The Tribunal therefore awarded £2,000 in respect of this claim.

Breach of contract - employer pension contributions

35. The Tribunal upheld the Claimant's claim of breach of contract in respect of the failure of the First Respondent to provide the Claimant with a pension. The Claimant is therefore entitled to the employer pension contributions which she should have been paid throughout her employment.

36. The parties were agreed the Claimant's gross salary was £13,440. The minimum employer contribution is 3% under auto enrolment. 3% of £13,440 is £403.20 per annum. The Claimant was employed from 20 October 2021 to 7 March 2023. This is 16 months and 15 days. £403.20 divided by 12 is £33.60, which is the monthly employer contribution. £33.60 multiplied by 16.5 is £554.40. The Tribunal therefore awarded £554.40 in respect of this claim.

Breach of contract – wrongful dismissal

37. The Claimant was dismissed without notice and is entitled to one week of pay. The parties were agreed that the Claimant's net weekly pay was £210. The Tribunal therefore awarded £210 in respect of this claim.

Compensation for discrimination

Financial losses

38. The Tribunal considered what financial losses had arisen as a result of the acts of victimisation which it had upheld, which included putting the Claimant on garden leave in January 2023 and then failing to reinstate her from garden leave in March 2023, and thus ending her employment.

39. The Claimant claimed her loss of income from the Respondents from the end of her notice period, which was 13 March 2023, to the date of the remedy hearing, which was a period of 102 weeks. When the Claimant was working for the First Respondent, she was paid a net income of £210 per week and so claims 102 weeks at a rate of £210 per week. This comes to £21,420.

Would the Claimant's employment have been terminated in any event?

40. At the remedy hearing, the Respondents argued that the Claimant's employment would have come to an end within 4 weeks of 7 March 2023 even if she had been reinstated from garden leave. It was argued that the Claimant would have been dismissed within 4 weeks of returning from garden leave for conduct on the basis that the Claimant was perceived as unreliable.

41. The Tribunal did not accept that argument for a number of reasons:

    a) There was no evidence presented by the Respondents that the Claimant would have been dismissed within 4 weeks of returning from garden leave or that she would have been dismissed for conduct.
    b) To support this argument the Respondents pointed to a single sentence in paragraph 33 of the Second Respondent's witness statement for the liability hearing, where it was noted, "I additionally find it extraordinary that the Claimant considered there was any scope for continuation of her

employment, as it was clear that the employment relationship had irretrievably broken down, arising from the actions of the Claimant." There is nothing in this paragraph which said the Second Respondent intended to dismiss the Claimant for conduct reasons due to unreliability. This sentence followed a sentence about the Claimant having submitted a grievance and said nothing about the Claimant's alleged unreliability. The Second Respondent's oral evidence to the Tribunal was that he considered that the relationship was irretrievably broken down because the Claimant had alleged that he had discriminated against her.

c) In addition, the Tribunal was not shown documentary evidence which suggested either that the Claimant was unreliable or that the Respondents were concerned about this. The Claimant's oral evidence at the remedy hearing, which the Tribunal accepted, was that it was never suggested to her by the Respondents that she was unreliable. The Tribunal saw no evidence of any warnings, or any disciplinary processes having been started. Quite the contrary, the Tribunal saw evidence which suggested the Claimant worked additional hours when the Second Respondent's father was on holiday during half term and saw evidence that the Claimant was regularly rostered to work up until Christmas in 2022, including working additional shifts in the week before Christmas day.

d) It was put to the Claimant in cross examination that she had taken time off on Christmas eve to go Christmas shopping and failed to return to work. The Claimant's evidence was that she went shopping in her lunch break, but said she had returned, and she named a number of items she said she had sold in the afternoon after she had returned to work. The Tribunal accepted that the Claimant went shopping in her lunch break, returned to work and then made a number of sales as she described in her evidence.

42. As a result, the Tribunal did not accept the Respondents' argument that the Claimant would have been dismissed within 4 weeks of 7 March 2024.

Mitigation of loss

43. The Respondents did not seek to argue the Claimant had failed to mitigate her loss by suggesting she had behaved unreasonably. The Respondents did not identify any steps she had failed to take in terms of looking for work or seek to persuade the Tribunal she had failed to make sufficient applications. The Respondent did not provide the details of any vacancies which they argued the Claimant should have applied for. The Tribunal kept in mind that the case of *Fyfe v Scientific Furnishing Ltd* has held that the burden of proving failure to mitigate is on the Respondent and they have to prove the Claimant acted unreasonably. No arguments were put forward about the Claimant acting unreasonably.

44. In any event, the Tribunal concluded that the Claimant had taken reasonable steps to mitigate her losses. She provided evidence which showed she had applied for a large number of roles in the areas that she has experience in, and having been unsuccessful in that field, she had significantly broadened her search and applied for numerous other administrative roles as well.

45. As a result, the Tribunal concluded the Claimant was entitled to claim her loss of income from the end of her notice period, 13 March 2023, to the date of the remedy hearing. As set out above, this is a net total of £21,420.

Injury to feelings and personal injury

46. The Claimant asked the Tribunal to make separate awards for injury to feelings and for personal injury.

47. The Claimant had produced a report from her therapist who she saw for 12 months. He diagnosed her with having severe post traumatic stress disorder. He describes that she was suffering from anxiety, chronic insomnia, fatigue, and low self esteem, which significantly impacted her life.

48. The Tribunal also took into account the Claimant's evidence in her witness statements about the profound impact that her employment had on her health and well-being.

49. The Tribunal was very careful in this case to keep in mind that a considerable amount of the Claimant's distress and stress whilst she was employed arose from the fact she had to repeatedly asked to be paid, and the fact she wished to be treated in the same way as other employees by being paid by way of PAYE, regularly and on time, and the fact that she wanted a contract of employment and a pension. A considerable amount of the distress that the Claimant suffered was also attributable to her feelings that she was being discriminated against on the grounds of her sex and race by the Respondents' failure to pay her properly and offer her a contract, a pension, and holiday pay.

50. The Tribunal were mindful therefore that the compensation for injury to feeling had to be for the injury to feelings caused to the Claimant by the discriminatory events which the Respondents *had been found to be liable for*, and not for those which were not upheld, or for matters such as her unpaid wages, for which the Claimant cannot be awarded damages for injury to feelings.

51. The Tribunal concluded the Claimant's mental health was significantly adversely affected by the two acts of victimisation which brought about the end of her employment – putting her on garden leave and the failure to reinstate her from garden leave. The Claimant was still attending work in December 2022 and even working additional shifts that month. Despite her claim for wages having been instigated by solicitors, she was still able to continue to work. In January 2023, she was put on garden leave. In March 2023, she was not reinstated from that leave. By 13 March 2023, her health had deteriorated to such an extent that she needed to attend A&E due to an act of self-harm, and then immediately start therapy. There was a significant increase in the Claimant's distress when it became apparent that the employment relationship was over, and a significant decline in her mental health.

52. It was suggested to the Claimant in cross-examination that the reason why she self-harmed and attended A&E was because of her family situation. The Tribunal rejected any suggestion that the Claimant's visit to A&E was related

to her family or personal life. The Tribunal accepted she felt she was in a crisis as a result of what had occurred in her work life, and particularly, the fact she had been put on garden leave, was not paid while on garden leave, her grievance was ignored, she was not reinstated from garden leave, and her employment therefore terminated.

53. The Tribunal also took into account that it took the Claimant a full year of attending therapy sessions every week for her to be able to recover sufficiently such that she was able to stop.

54. The Tribunal also took into account that the litigation itself has been extremely stressful for the Claimant. The Respondent did not participate properly in the case management process, which meant the preparations for the final hearing were unnecessarily stressful for the Claimant, who was unrepresented for a long period of time.

55. The Tribunal carefully considered the Claimant's report from her therapist but decided not to make a separate award for personal injury and instead decided to take into account the impact of the discriminatory acts, which were upheld, on the Claimant's mental health when setting the amount of the award for injury to feeling. The Tribunal decided to adopt this course of action because the Claimant's report relates to the symptoms the Claimant experienced as a result of all the ways she was treated by the Respondent, including the failure to pay her, and the failure to provide her with a contract or a pension. These are matters which the Tribunal cannot award the Claimant damages for injury to feeling or personal injury. The report is also based on the Claimant's belief she was discriminated against on grounds of race and sex, and similarly the Claimant did not succeed with her claims of direct discrimination. As a result, it would be very difficult to properly attribute the Claimant's personal injury to the parts of the Claimant's claims which succeeded and for which she could be compensated.

56. The Tribunal did however accept that the Claimant's mental health worsened significantly when her employment ended, for the reasons already explained. Therefore, while the Tribunal would have awarded £14,000 for injury to feeling, it decided to increase the award to £16,000 to take into account the significant impact that losing her employment had on the Claimant's mental health.

57. The Tribunal rejected the Respondents' argument that the award should be within the lower *Vento* band. The Claimant's employment ended. She greatly enjoyed the role. The impact on her in terms of her personal life, health, well-being, and quality of life, as described in her witness statements, were serious, and therefore the Tribunal concluded an award of £16,000 was appropriate.

Aggravated damages

58. The Claimant sought an award of aggravated damages in this case, but the Tribunal decided not to make an award for this type of damages.

59. The Tribunal did not consider that the criteria were met in respect of the first two categories, namely 1) where the act is done in an exceptionally upsetting way and 2) where the motive is spiteful or vindictive.

60. The Tribunal were only able to take into account the discriminatory acts that were upheld. The manner in which the Claimant was put on garden leave, and then not returned from garden leave, were not done in an exceptionally upsetting way. As already indicated, the Tribunal appreciated that the end of the employment relationship had a profound effect on the Claimant, but we did not conclude the manner in which it was done was high handed, malicious, insulting or oppressive.

61. The Tribunal also did not consider that the Respondents' motive was such that we could award aggravated damages on that basis. The Second Respondent's evidence was such that he effectively admitted the victimisation. He considered that the relationship had broken down after she had accused him of being racist and sexist. However, we did not find that he was acting maliciously or spitefully when he concluded the relationship had broken down and concluded that she could not return because she had made that allegation.

62. Finally, we considered the third ground on which a Tribunal can award aggravated damages, that is when the subsequent conduct warrants it. The Tribunal concluded that there was some merit in this argument. The Claimant has not received an apology. Mr Van Heck pointed out that the Second Respondent did not take responsibility for his actions despite the Claimant clearly being owed wages, and the wages were only paid when the Tribunal ordered them to be paid. This is a valid point but does not relate to the Claimant's discrimination claims. The way the Respondents approached the preparations for the final hearing were not ideal. However, overall, the Tribunal did not find that this reached the threshold that warranted an award of aggravated damages. Further the Tribunal considered the stress of the litigation is a matter which the Claimant has been adequately compensated for in her award for injury to feelings.

Uplift for a breach of the Acas Code of Practice

63. The Claimant asked the Tribunal to make an uplift to the compensatory award because of the Respondents' breaches of the Acas Code of Practice on disciplinary or grievance procedures.

64. The Tribunal concluded that the Acas Code of Practice on disciplinary or grievance procedures did apply because the Claimant raised a grievance. The Tribunal found that the Respondent unreasonably failed to comply with paragraphs 33, 40 and 41 of the Code, in that the grievance was ignored, the Claimant was not invited to a grievance meeting, and she was not given a grievance outcome. She was not offered a right of appeal.

65. The Tribunal concluded it would be just and equitable to increase the compensatory award in this case. In reaching the decision about how much to increase the compensatory award by, the Tribunal took into account the fact that the First Respondent is a small company, without a dedicated HR resource. That said, the Code is easily accessible to employers online. By

the time the grievance was submitted the parties were corresponding through solicitors, so it is surprising that the Respondents did not take any steps to deal with the grievance properly. The Tribunal also took into account the fact that there has not been any explanation for why the grievance was not dealt with, and the fact that it was ignored was a matter which caused the Claimant considerable additional distress. As a result, the Tribunal decided to make an uplift of 15%.

66. A 15% uplift increases the award for loss of income from £21,400 to £24,610 and increases the award for injury to feeling from £16,000 to £18,400.

Failure to provide written particulars of employment

67. The Claimant asked the Tribunal to make an award of four weeks of wages due to the First Respondent's failure to provide written particulars of employment.

68. The Tribunal concluded that it was just and equitable in this case to make an award of four weeks wages for the failure to provide the Claimant with written particulars of employment.

69. The Claimant asked for a contract of employment. The Second Respondent's evidence to the Tribunal was that the Claimant was not entitled to a contract because she was a probationer. However, the Claimant's colleague was given a contract of employment. The Tribunal accepts the Second Respondent ran a small business but found he failed to take steps to ensure some of the most fundamental and basic steps of employing staff were in place. For example, the Claimant should have been given a contract of employment, paid by PAYE like the other staff were, should have been provided with pay slips, should have been paid on time, and should have been offered a pension. If the Respondents are going to employ people, they need to ensure they are aware of the legal obligations on an employer. In this case, the Claimant should not have needed to ask for a contract of employment. She should have been provided with written particulars of employment on her first day of work. In these circumstances, the Tribunal considers an award of four weeks' pay is just and equitable. The Tribunal therefore awards 4 x £210 which is £840.

Interest

70. Under the Regulations, the Claimant can be awarded interest at a rate of 8% on her financial losses from the midpoint to the date of the remedy hearing, and a rate of 8% on her losses for injury to feeling from the date of the discriminatory act to the date of the remedy hearing.

71. The Claimant's loss of income is £24,610. The midpoint between 7 March 2023 and the date of the remedy hearing, 24 February 2025, is 2 March 2024. 8% on £21,420 from 2 March 2024 to 24 February 2025 is £1,937.34.

72. Under the Regulations, the Claimant can be awarded interest at a rate of 8% on her damages for injury to feeling from the date of the discriminatory act. The first discriminatory act took place in November 2021 (the act of harassment related to sex), the second took place in January 2023 (the first

act of victimisation), and the third took place in March 2023 (the second act of victimisation). The majority of the award for injury to feelings relate to the second and third acts of discrimination, namely the two acts of victimisation, which led to the Claimant's employment ending. These two acts of discrimination were considerably more serious than the comments which the Tribunal found amounted to harassment related to sex.

73. As a result, the Tribunal considered that serious injustice would be caused if the interest were calculated from November 2021. Therefore, the Tribunal considered the date of the second act of discrimination, when the Claimant was put on garden leave, was the appropriate date from which the Tribunal should award interest on the injury to feelings award. Interest at a rate of 8% from 9 January 2023 to the date of the remedy hearing, on £18,400 is £3,133.55.

Expenses – Therapy sessions

74. The Claimant asked the Tribunal to compensate her for the costs incurred as a result of attending therapy sessions. However, the Tribunal decided not to make an award for these expenses.

75. The Tribunal were not confident that the Claimant would not have required therapy sessions for the considerable distress she was caused in respect of the way she was treated by the Respondent, but for which she cannot be compensated under a discrimination claim. For example, the failure to pay her wages, the failure to give her a contract, or pay slips, or offer her a pension. Even if the Claimant had not suffered the one act of harassment related to sex and the two acts of victimisation which the Tribunal upheld, the Claimant may well have still to attend therapy sessions to deal with her belief she had been discriminated against on the basis of her sex and race. As a result, the Tribunal decided not to make an award for these expenses.

Grossing up

76. The total amount of the Claimant's claim is £51,685.29. This is made up of £2,000 for breach of contract in respect of the commission payment, £554.40 for breach of contract for employer pension contributions, £210 for notice pay, £24,610 for loss of income including a 15% uplift, interest on her financial losses in the amount of £1937.34, £18400 for injury to feeling including a 15% uplift, interest on her injury to feeling award in the amount of £3133.55 and £840 for failure to provide written particulars of employment.

77. As this award exceeds £30,000 it needs to be grossed up to account for the tax that the Claimant will be asked to pay on it. The first £30,000 of the award is tax free. Therefore, the Tribunal has awarded an additional 20% on the figure of £21,685.29, which is the amount that the award exceeds £30,000 by. This is £4,337.05. Therefore, the total figure awarded to the Claimant is £56,022.34.

Approved by:

Employment Judge Annand

6 April 2025

Corrected on 30 August 2025

JUDGMENT SENT TO THE PARTIES ON

7 April 2025

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/