EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Ziga	**v**	Anglian Windows Limited

Heard at: Norwich **On:** 4 August 2025

Before: Employment Judge M Warren

Members: Mrs J Buck and Mr A Chin-Shaw

Appearances
For the Claimant: In person
For the Respondent: Mr Ashley, Counsel

RESERVED JUDGMENT on REMEDY

1. The Claimant's complaint of the Respondent's failure to make reasonable adjustments contrary to the Equality Act 2010 having succeeded before this Tribunal, by a Reserved Judgment sent to the parties on 1 August 2024, the Respondent shall pay the Claimant compensation as follows:

1.1.	In respect of injury to feelings:	£ 4,000.00
1.2.	Interest thereon:	£ 1,493.84
	TOTAL amount payable in the sum of:	**£ 5,493.84**

REASONS

Background

1. The Hearing of this case as to liability was between 13 and 21 May 2024. That Hearing was listed to deal with both liability and remedy. Unfortunately, time did not permit for us to deal with remedy but nonetheless, the parties were to have attended that hearing ready to give their evidence as to remedy.

2. In our Liability Judgment we made the following findings:

2.1. Paragraph 1:

"Mr Ziga's complaint of the Respondent's failure to make reasonable adjustments succeeds in so far only as it relates to a period of 4 shifts on 1 to 4 December 2020. Subject to hearing evidence and submissions on remedy, it is likely that the compensation the Tribunal will award Mr Ziga in this respect will be modest."

2.2. Paragraph 3:

"If any further case management orders are necessary, the parties should write to the tribunal by email explaining what they consider to be required."

2.3. Paragraph 78:

"On 1 August 2019, the Respondent's occupational health advisors, UNITY, reported … that Mr Ziga was currently working a reduced 10 hour night shift and that he was, "keen to continue this for the foreseeable future (2-3 months)". … "

2.4. Paragraph 85:

"In November 2020, the Respondent decided to tackle an issue which had developed with regard to the productivity of its night shift. … "

2.5. Paragraph 86:

"… seven individuals on the Night Shift in the unit on which Mr Ziga worked, who were working shorter hours, including Mr Ziga."

2.6. Paragraph 89:

"Mr Ziga met with Miss Bulto-Dowd and Mr Cook on 25 November 2020. In this meeting, they asked him if he would be able to return to a 12 hour shift. He became angry. He said that he was not able to work 12 hour shifts due to a medical issue and that they had no right to raise the issue with him. When Miss Bulto-Dowd asked Mr Ziga what the medical reason was, he shouted at her, saying that he would not discuss the issue. He said that he would continue to leave the shift early. Miss Bulto-Dowd did not make fun of him or humiliate him, as he has alleged. Mr Ziga left that meeting with the impression that he would have to work a 12 hour shift or face disciplinary action, as confirmed by the letter set out below."

2.7. Paragraph 90:

"On 26 November 2020, Mr Ziga received a letter from Miss Bulto-Dowd, (page 237) which reads as follows,

> "As you will be aware from our conversation, the company runs a 12-hour night shift. In order to maintain productivity, we need our employees to work the entirety of the shift, at present you have been leaving work at 3.15am. This is no longer sustainable for the business and with effect from Monday 30 November 2020 you are required to be present for the full 12-hour shift.""

2.8. Paragraph 91:

"Mr Ziga telephoned Miss Bulto-Dowd."

2.9. Paragraph 92:

"Miss Bulto-Dowd recorded contemporaneously the nature of that conversation in an email that she sent to Miss Parker on 26 November 2020, (page 234) as follows:-

> "AZ was clearly upset and very loud as he reminded me that he has an Occupational Health Report supporting his claim for reduced hours. He also reminded me that I am not a Doctor and that I had no right to send him the letter. He also informed me that he has sought legal advice from his solicitor and he plans to take Anglian to court. He accused me of bullying and harassing him so it was a lot to take in via the telephone.
>
> When I got a chance to respond I referred back to the letter and reiterated the content and that as of Monday we would be expecting him to return to normal working hours and that if he is unwell and cannot do so he should seek his GP. He got even louder at this stage as he made it blatantly clear that he only wants to see the company Doctor and he refuses to see his own GP. When I reminded him that the OH Report was from August 2019 and all recommendations had now expired, he said that this was Anglian's fault as he should have seen the Company Doctor last year. I again advised him to go back to his GP if he cannot fulfil his hours as of Monday.
>
> He told me no, he would not see his GP and he would continue to work his reduced hours then he ended the call as he did not want to discuss it any longer"."

2.10. Paragraph 93:

"On 29 November 2020, Mr Ziga submitted a grievance by email against Miss Bulto-Dowd …"

2.11. Paragraph 94:

"Mr Ziga also on 30 November 2020 wrote to Miss Parker to request that,

> "The status quo applies to my reduced hours until a decision is made about my grievances.""

2.12. Paragraph 95:

"To which Miss Parker replied:

> "You are required to work the hours requested of you by your Line Manager whilst the Grievance Procedure is carried out.""

2.13. Paragraph 101:

"An Occupational Health Report was received dated 14 December 2020, (page 254). Exerts in this report include the following:-

> He has been performing reduced 10 hour night shifts and lighter duties … and is keen to continue this for the long term if possible and business circumstances permit, as he said longer hours and heavy work adversely affect his joints, mood and sleep.
>
> In my opinion work should be therapeutic (helpful) for his health provided he doesn't overdo it.""

2.14. Paragraph 106:

"Mr Ziga was provided with an outcome to his grievance by a letter from Mr Jackson dated 26 January 2021, (page 268)."

2.15. Paragraph 108:

"Mr Jackson did not uphold Mr Ziga's grievance."

2.16. Paragraph 113:

"A further Occupational Health Report was obtained dated 15 April 2021, (page 384). …

> "In my opinion the longer hours and heavy work can adversely affect his joints, mood and sleep… He feels unable to do the 12 hour night shift as he stated (and in my opinion) it could have a detrimental impact on his chronic mental and physical health problems …""

2.17. Paragraph 114:

"On 13 May 2021, Ms Crane of the Respondent's Human Resources Department wrote to Mr Ziga in respect of that Occupational Health Report. She noted that his latest Fit Note expired on 17 May 2021 and looked forward to his return to work, which was to be on reduced hours of 10 hours per night."

2.18. Paragraph 185:

"Referring to the Kronos record at page 310, we can see that Mr Ziga worked 4 10 hour days 1 to 4 December 2020 during which, 2 additional hours were treated as unexcused absence. It is not clear why on 8 December 2020 the Respondent went back to treating those additional hours as excused absence, but they did. OH recommended the adjustment of 10 hour shifts on 14 December 2020. Mr Ziga was on holiday, furlough and sick leave, until he returned to work in May 2021. When he returned to work at that time, he was permitted to continue working 10 hour shifts only."

2.19. Paragraph 186:

"We therefore conclude that for a period of 4 days, 1 to 4 December 2020, there was a period of failure to make reasonable adjustments; the 12 hour PCP was being implemented and the disadvantage to Mr Ziga was, that whilst he continued to work 10 hours only, he understood that he would be accumulating absence points and potentially facing disciplinary action. That is particularly significant as he had depression and anxiety. It would have been reasonable for the Respondent to have continued the 10 hour shift adjustment."

2.20. Paragraph 187:

"To that extent, Mr Ziga's complaint of failure to make reasonable adjustments succeeds."

3. We were provided with no further evidence from either party.

The Issues

4. Mr Ziga argued that the discrimination caused deterioration in his mental health, evidenced by his visit to his Doctor on 18 January 2021 and his subsequent referral for counselling. He says that also caused a loss of earnings in respect of his absence from work from 18 January through to August 2021, when he was finally able to return to work (after a phased return) on 10 hours per day.

5. The Respondent's position is that there is no evidence Mr Ziga's mental health deteriorated or that if it did, the cause of that deterioration was the very narrow failure to make reasonable adjustments on 1 to 4 January 2021. Further, the Respondent says that the Tribunal's finding of a failure to make reasonable adjustments between 1 and 4 January 2021 was founded upon the Respondent's own records of which Mr Ziga was unaware until he saw the Bundle in preparation for the Liability Hearing. A failure to make reasonable adjustments could not therefore have caused him any injury to his feelings, because he was not aware of it. The Respondent says that Mr Ziga was angry about a lot of things, but not about those four days at the beginning of January 2021.

The Law

6. Where a claim has succeeded before an Employment Tribunal under the Equality Act 2010, section 124 provides that the Tribunal may order the Respondent to pay to the complainant compensation of an amount corresponding to the damages the Respondent might have been ordered to pay by a county court. Section 119(1) sets out what a County Court may order, which is to grant any remedy which could be granted in the High Court in proceedings for tort or judicial review, which includes compensation for financial loss and personal injury. Such compensation can include damages for injury to feelings, (s119 (4)). Such damages would be payable by reason of a statutory tort on the part of the Respondent, the measure of damages in respect of which is to place the Claimant, so far as is possible, in the position that she would have been in but for the discrimination, (see Ministry of Defence v Channock [1994] IRLR 509 EAT).

7. 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:

   7.1. Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.

   7.2. 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.

   7.3. Awards should bear some broad general similarity to the range of awards in personal injury cases. This should be done by reference to the whole range of such awards, rather than to any particular type of award.

   7.4. In exercising discretion in assessing a sum, Tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.

   7.5. Tribunals should bear in mind the need for public respect for the level of awards made.

8. In assessing injury to feelings, we have had regard, in broad terms, to the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases, so as to have in mind the levels of awards made in personal injury cases.

9. Further guidance was given on the range of awards by setting out three bands of compensation for injury to feelings by the Court of Appeal in the case of Vento v Chief Constable of West Yorkshire Police (2) [2003] IRLR 102. Those bands were as follows:

   9.1. The top band is for the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race.

   9.2. The middle band should be used for serious cases, which do not merit an award in the highest band.

   9.3. Awards in the lower band are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

10. The thresholds of the bands are amended to reflect inflation each year, by Practice Direction issued each year by the Presidents of the Employment Tribunals for England and Wales and for Scotland. They apply in respect of proceedings issued on or after 6 April in the year in question. For the year commencing 6 April **2020** the band thresholds are:

    - *lower band (less serious cases): £900 to £9,000*
    - *middle band: £9,000 to £27,000*
    - *upper band (the most serious cases): £27,000 to £45,000*

11. In Sadia Shakil v Samsons Ltd [2024] EAT 192 HHJ Tayler gave the following summary about the assessment of injury to feelings:

    *There are a number of general propositions about the assessment of injury to feelings that can be derived from **Vento** and the other key authorities:*

    16.1.
    *an award of injury to feelings compensates for "subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on": **Vento** par 50*

    16.2.
    *the purpose of the award is to compensate the claimant rather than to punish the respondent or deter them from particular courses of conduct; see for example: **Ministry of Defence v Cannock** [1994] I.C.R. 918*

    16.3.
    *the actual impact upon the individual must be assessed because unlawful discriminatory behaviour may affect different individuals differently, which must be assessed and analysed from the evidence: **Vento***

16.4.
overt discrimination is likely to heighten the level of injury to feelings: ***Taylor v XLN*** *[2010] I.C.R. 656*

16.5.
feelings of indignation and outrage towards a respondent should not inflate the award: ***Corus Hotels plc v Woodward and Anr*** *UKEAT/0536/05/LA*

16.6.
equally, as the award is compensatory, concern about the respondent's ability to pay is not relevant to assessing injury to feelings: ***Evans v Oaklands Nursing Home Group Ltd*** *(1999) EAT/331/99*

16.7.
the conduct of the respondent, including defending the claim in an inappropriate manner, can increase the level of injury to feelings: ***Commissioner of Police of the Metropolis v Shaw*** *[2012] I.C.R. 464*

12. Special Damages is the name given to the award that is to compensate for financial losses that flow from the discrimination.

13. As the object is to place the Claimant in the same position that he would have been in had he not been subjected to discrimination, we have to compare his income as it has been and as it would have been, but for the discrimination.

14. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 provide that interest is payable on awards of compensation in cases of discrimination. It is to be awarded regardless of whether an application is made. The rate of interest is 8% for proceedings issued after 28 July 2013. Interest should be calculated from the 'day of calculation' which in a case of injury to feelings, is the period beginning on the date of the contravention or act of discrimination complained of, through to the date of calculation.

Evidence

15. No additional evidence was produced by either party. Mr Ziga's first witness statement at paragraph 4 said,

> "The outcome was, they refuse to reduce my working hours, which triggered more serious mental health issues, and time off the work – medical records…"

16. He referred to GP records which showed he consulted his GP on 18 January 2021 and they recorded:

> "Struggling again with low mood and anxiety, as did a few years ago. Has self-referred to WBS today – previously helped ongoing work pressures – Anglian Windows – remains on reduced hours after occ and health assessment but feels pressure to work longer – long discussion around this feels not able to wrk presently – therefore agreed to med 3 for one month on Citalopram nmg – not keen to increase."

17. Mr Ziga referred to a letter at page 117 of the Medical Evidence Bundle dated 30 January 2021, which referred to a flare up in his psoriasis. He also referred to a letter of 26 January 2021 at page 119 in the Medical Evidence Bundle with his health assessment scores,

> "PHQ 9 (depression scale) 25 / 27 GAD 7 (anxiety scale) 20 / 21"

18. We were provided with a Schedule of Loss Mr Ziga produced for the original hearing.

Discussion and Conclusions

19. On 25 November 2021, Miss Bulto-Dowd and Mr Cook tried to have a sensible conversation with Mr Ziga about his hours. Mr Cook had a genuine problem with the night shift and there was a genuine need to try and reduce the number of operatives working less than the full 12 hour shift. Mr Ziga's reaction was characteristically angry. His anger is at the very suggestion that the proposal was up for discussion. He made allegations of being humiliated and made fun of which we did not find credible and did not uphold.

20. The letter of 26 November 2020 did tell him that he would be required to work his full 12 hour shift,

> "I would also take this opportunity to advise you that with effect from Monday 30 November 2020 any hours you are unable to work will be entered onto the system as un-paid leave and will accrue absence points (should points be applicable in line with the company's Policies and Procedures) and as such if your absence from the end of shift continues then formal disciplinary action may be taken."

21. Mr Ziga refused to engage with the Respondent at this point. There was no referral to Occupational Health but equally, he was adamant he would not discuss the issue.

22. In his grievance of 29 October 2020, Mr Ziga made reference to the fact that the company doctor had in the past agreed that his 12 hour shift should be reduced to 10 hours and that a re-referral was pending.

23. Miss Parker did on 30 November 2020, refuse to keep things on hold pending the outcome of the grievance. On 1 December 2020 Miss Bulto-Dowd made a referral to Occupational Health but, on 1, 2, 3 and

4 December 2020, Mr Ziga worked understanding that after 10 hours, the remaining two hours of his contractual shift would be treated as unpaid leave, accruing absence points, as notified to him in Miss Bulto-Dowd's letter of 26 November 2020.

24. Mr Ashley says Mr Ziga's feelings cannot have been hurt for the failure to make reasonable adjustments because he did not know about it until he saw the Kronos Report in the trial Bundle; but he did know about it, he had been told in the letter of 26 November 2020 that if he did not work his 12 hours, the remaining two hours of his shift would be treated as unpaid absence.

25. Mr Ziga was angry about that, (as well as about much else).

26. There were four days when in fact, there was no reasonable adjustment because the adjustment previously in place was withdrawn. In fact, the situation was reversed and the reasonable adjustment re-instated when Mr Ziga next worked on 8 December 2020 and thereafter, but he did not know that and nobody told him. Mr Ziga did not know it would be accepted that he could work 10 hours only, until Ms Crane's email of 13 May 2021.

27. The failure to make reasonable adjustments pertained for those four days only, Mr Ziga knew and he was angry.

28. Mr Ziga's claim as identified in the List of Issues has been framed in such a way that there are no other discrimination claims surrounding these events. The injury to feelings award pertains to those four days when there was a failure to make a reasonable adjustment. There is evidence in the Bundle that he was angry, including his grievance and Miss Bulto-Dowd's evidence about how he reacted on the telephone subsequent to receiving her letter of 26 November 2020.

29. Mr Ziga was as we have said, angry about other things, including that the Respondent sought to discuss the issue at all in the first place, which is not discrimination. He was unjustifiably angry at Ms Bulto-Dowd. He was angry about the time taken to deal with his grievance and the grievance outcome. In his grievance, he complained that the proposed adherence to his contractual hours was discrimination and he had a sense of injustice because of that.

30. We read with interest the EAT's decision in Eddie Stobart Limited v Miss Caitlin Graham [2025] EAT 14 to which we were referred by Mr Astley. Judge Barry Clark overturned a Tribunal award of £10,000 to a woman who complained about the way her grievance had not been taken seriously following her dismissal by reason of redundancy whilst pregnant. Noting the sparsity of evidence and the extent of the Tribunal finding that there was a "degree of upset" the Claimant had been "shocked" and "upset" because of the Respondent's "dismissive" attitude, Judge Clark's substituted assessment was an injury to feelings award of £2,000. Of course, every case turns on its individual facts.

31. Mr Ziga was angry, but he was angry about a lot of things, the failure to make reasonable adjustments was limited to these four days. Our assessment is that this comes within the lower Vento band and in the lower half of that band. Our judgment is that the appropriate award for compensation for injury to feelings is £4,000.

32. Mr Ziga was entitled to interest on the injury to feelings award at the rate of 8% from the date of the act of discrimination, which we take as 4 December 2020. The daily rate of interest is £0.88. We count four years and 243 days to today's date and we calculate the accrued interest therefore at £1,493.84.

33. In his Schedule of Loss, Mr Ziga seeks loss of earnings for the period of his sickness absence 18 January 2021 through to August 2021. There are no payslips and there is no break down of the hours that he would have worked during that period. We know that during that period he was certainly working a phased return to work. He claims £11,386.65 but presents no account of how he arrives at that figure or evidence to support it.

34. We do not have evidence that Mr Ziga's deterioration in mental health and his subsequent period of absence from work was occasioned by these four days when no reasonable adjustments were in fact in place. He had a history of mental ill health. It did deteriorate. The cause appears likely to have been the Respondent seeking to discuss his contractual hours with him and the manner in which it dealt with his grievance, as well as his unwarranted and unjustified perception of the way that he was being treated by Miss Bulto-Dowd and subsequently by Mr Jackson.

35. We therefore find that there was no financial loss consequent upon the failure to make reasonable adjustments on 1 to 4 December 2020. Mr Ziga is in the same financial position that he would have been in had those four days been treated as excused absence in line with the adjustment that had previously been in place.

Approved by:

Employment Judge M Warren

Date: 29 August 2025

Sent to the parties on:

02/09/2025

For the Tribunal Office.

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