THE INDUSTRIAL TRIBUNALS

CASE REFS: 2965/17IT
8525/17IT

CLAIMANT: **Debbie Ann Cahoon**

RESPONDENT: **Blackmore Fuels Limited**

DECISION

By a unanimous decision the tribunal:-

(i) Dismisses the claim for disability discrimination following its withdrawal.

(ii) Makes a total award to the claimant in respect of all her claims of £18,267.20, this is broken down as follows:

(a) An award of £2,176.00 in respect of notice pay.

(b) An award of £1,115.20 in respect of holiday pay.

(c) An award of £11,976.00 in respect of a finding of unfair dismissal.

(d) An award of £3,000.00 in respect of injury to feelings arising from victimisation.

(e) Interest on the award in respect of injury to feelings of £136.10.

Constitution of Tribunal:

Employment Judge: **Employment Judge Travers**

Members: **Mr A White**
Mrs K Elliott

Appearances:

The claimant was represented by Mr C Hamill, Barrister-at-Law, instructed by Jones Cassidy Brett, Solicitors.

The respondent was represented by Mr O Friel, Barrister-at-Law, instructed by Worthingtons, Solicitors.

REASONS

Issues

1. At the hearing the claim which had been issued in respect of disability discrimination was withdrawn and consequently it is dismissed.

2. It is accepted by the respondent that procedural shortcomings mean that the claimant's dismissal was automatically unfair by reason of the respondent's failure to follow the appropriate statutory procedures. During the course of the hearing the parties agreed the quantum of the basic award which is due to the claimant. The sum agreed is £2,176.00.

3. Outstanding sums due to the claimant in respect of notice pay and holiday pay were agreed by the parties during the hearing at £2,176.00 and £1,115.20 respectively.

4. The following issues are those which were addressed during the parties' submissions as outstanding and requiring the tribunal's determination.

5. The tribunal is required to determine the quantum of any compensatory award in respect of unfair dismissal and any uplift on that award by reason of the failure to follow the appropriate statutory procedures.

6. The tribunal is also required to determine whether or not the claimant was subject to discrimination by way of victimisation. It is said that following the issuance of the claim in respect of disability discrimination that the respondent victimised the claimant by refusing to provide a reference to prospective employers.

Facts

7. The respondent is a distributor of heating oil. It has always been and remains a small family run business. In July 2016 it was purchased by three members of the McCaughan family and since that time the business has traded as Blackmore Fuels Limited. It was one of the owners, Mr Joseph 'Joey' McCaughan, who gave evidence to the tribunal on behalf of the respondent.

8. Prior to his involvement in running the respondent, Mr McCaughan had been a shop floor worker in a factory and had no experience of running a business. He now plays a prominent role in the day to day running of the respondent.

9. The claimant began working in the business in April 2009. The claimant's employment continued when the business was taken over by the McCaughans. By July 2016 the claimant was office manager and would run the company when the previous owners were away on business and holidays.

10. This case arises from the breakdown of the claimant's relationship with her employer following the July 2016 takeover. This culminated in the claimant being dismissed by an email dated 24 February 2017.

11. In his oral and written evidence, Mr McCaughan made a number of adverse observations about the claimant's conduct after the takeover:-

- He implied that the claimant's disappointment at her inability to purchase the business herself had impacted on her conduct at work;

- It was suggested that the claimant's punctuality and commitment to her work was poor;

- It was said that the claimant failed to give adequate notice of a period of illness and that this caused the office to be closed without Mr McCaughan's knowledge with consequent disruption and loss of business;

- Mr McCaughan alleged that the claimant failed without adequate excuse to attend 3 return to work meetings;

- It was said that the dismissal of the claimant was justified on the grounds of her capability.

Disappointment at failure to buy business

12. When the claimant became aware that the previous owners of the respondent were planning to sell the business, she investigated the possibility of purchasing the business in conjunction with another person. Ultimately, financial uncertainty meant that she was unable to pursue this course. When the claimant became aware that Mr McCaughan was interested in purchasing the business she asked him whether he would be prepared to purchase the business in partnership with her. He was unwilling to do so.

13. Mr McCaughan implied in his evidence that the difficulties in his working relationship with the claimant are in part due to her displeasure at not being able to become a part-owner of the respondent herself. In his witness statement at paragraph 14 he wrote: '… it became very apparent to me that Debbie had not been pleased at the outcome of the sale of the business. I had come into the office and worked alongside Debbie as much as possible, but regardless of this it appeared Debbie did not seem happy in her position'.

14. The claimant acknowledged in evidence that she was disappointed at not being able to become an owner of the respondent. There is however no evidence to support the respondent's assertion that this disappointment has any bearing on the issues which the tribunal must determine. The claimant gave her evidence in a straightforward manner and provided coherent explanations in support of any evidential assertions which she made. The tribunal formed the view that the claimant is a person who sought to perform her duties in a diligent and entirely appropriate manner, regardless of her earlier disappointment when the business was sold.

Punctuality and Commitment to Work

15. Under her contract of employment dated 20/04/09, the claimant's normal hours of work are stated to be 24 hours per week, to be worked from 9.00 am to 5.00 pm on Tuesday, Thursday and Friday with a one hour paid break for lunch. The claimant travelled by car from her home in Coleraine to the respondent's premises in or around Ballycastle. The journey is 18 miles but the nature of the road and the traffic on it meant that the travel time could be unpredictable and take longer than the mileage alone might suggest.

16. After the takeover Mr McCaughan worked alongside the claimant in the office on her working days for around the first three weeks. Around the beginning of August 2016 and thereafter the claimant found herself mostly working alone on her working days. She had to cope with running two databases, one in respect of the outstanding invoices in respect of the previous owners' billing, and one in respect of the billing arising following the takeover. An increased workflow combined with the burden of the office duties falling to the claimant alone to perform without assistance resulted in a pattern emerging whereby the claimant regularly worked late. She often found herself leaving work at 7.00 pm or 8.00 pm and on at least 4 occasions she worked until around 9.00 pm and got home at 10.00 pm.

17. In evidence Mr McCaughan suggested that by working late the claimant was taking advantage of him and that he should have asked the question as to why it was taking her longer to complete her duties. Mr McCaughan did not support his scepticism by any detailed analysis of the volume of the tasks which the claimant was required to perform. Similarly Mr McCaughan did not reflect on the fact that from August 2016 the claimant was performing the duties on her own, nor did he consider the impact on the claimant's workload of the input which the previous owners contributed to the duties which the claimant was required to discharge. Under the previous ownership of the business, during busy periods one of the co-owners would come into the office from 9.00 am to 1.00 pm and assist with telephone orders and the paperwork which had to be done first thing in the morning.

18. Two emails were written to the claimant concerning the termination of her employment, one dated 24 February 2017 and the other dated 20 March 2017. Neither email states or implies that the claimant was taking advantage of the respondent in working longer hours. It is also notable that neither letter complains about the claimant's day to day punctuality.

19. There is an absence of compelling evidence to demonstrate that before the claimant took sick leave that the respondent was expressing concern and/or warning the claimant about her punctuality or attitude to work. The tribunal is satisfied that the claimant's day to day punctuality was not a significant issue. It is also satisfied that the claimant remained committed to making a success of the business as demonstrated by the extra hours which she worked in order to get her essential work done.

Notice of Illness

20. The weight of work took its toll on the claimant. She felt run down and unable to go to work on 29 and 30 September 2016.

21. The claimant attempted to contact Mr McCaughan by telephone from around 6.30 am on 29 September but without success. At 8.03 am she texted Mr McCaughan to let him know that she was unwell and would not be in. She did not receive a response to her text. The claimant sent a further text at 22.02 pm stating that she was unsure if she would be fit to attend work the next day. In that text she also indicated that she was not happy at work and asked if she could sit down with Mr McCaughan for a chat.

22. At 22.08 pm on 29 September she sent a further text requesting an acknowledgement of her texts. Mr McCaughan texted back a few minutes later to acknowledge receipt and he wrote, 'Didn't know you weren't happy'. The claimant

responded by text at 22.21 pm on 29 September: 'Having to stay late to catch up cause I can't get wats [sic] needed done through the day is killing me. Its impossible to ans 2 phones, deal with office customers and sort customer problems on my own. Its taking its toll Joey. I'm doing the work of at least 2 people who are fully trained in 3 days. I love my job but its getting too hard to keep up'.

23. On the claimant's return to work on 4 October 2016 she had a meeting with Mr McCaughan. The lengthy meeting was unproductive. The claimant explained to Mr McCaughan the difficulties which she was experiencing with her workload. Mr McCaughan's response was uncompromising. He maintained that he did not have the time to be in the office to help the claimant in the mornings. The claimant found Mr McCaughan's attitude during the meeting to be at times confrontational. He pressed the claimant on whether or not she was going to stay or leave her employment.

24. On 11 October there was a further meeting between the claimant and Mr McCaughan. The meeting was initiated by Mr McCaughan who asked the claimant to work in the office for another three months. He said that if she was unhappy at the end of that period he would pay her redundancy and provide a reference. The claimant suggested that the issue be reviewed in eight weeks' time together with the question of a pay rise. Mr McCaughan agreed to that proposal. In the interim Mr McCaughan agreed to look into a proposal made by the claimant that a new telephone system should be purchased.

25. Unfortunately, from the claimant's perspective things did not improve over the following weeks. She continued to find the workload difficult to manage. The claimant also learned that a lorry driver employed by the respondent had been given a pay rise of 50p per hour. When she raised this with Mr McCaughan on 1 November 2016 he told the claimant that she too would receive a pay increase of 50p per hour from 24 October 2016.

26. The claimant's workload led to her feeling exhausted and stressed and on 10 November received advice from an on call doctor who thought that she was suffering from a viral flu. First the claimant and then her husband attempted without success to make contact with Mr McCaughan on his mobile phone from 6.00 am that morning to inform him that the claimant was unable to attend work. Mr McCaughan's mobile went straight through to the answering service. The claimant's husband finally succeeded in speaking to Mr McCaughan on the landline after 9.00 am once Mr McCaughan had arrived at work.

27. The claimant emailed Mr McCaughan at 21.10 pm on 10 November to inform him that she had seen the doctor that day who had advised her to have bed rest and plenty of fluids. She told him that she would not be at work the next day.

28. The claimant's employment contract states that, '[she] must notify a Director/the Office by telephone, where possible the night before your first day of absence and at the earliest possible opportunity but no later than 7am. Text messages are not acceptable as an initial notification. Contact must be made with your Manager personally by the start of your shift on your first day of absence to notify the Company of any absence'. Mr McCaughan asserts that the claimant failed to comply with this term of her contract. The tribunal disagrees and is satisfied that the claimant endeavoured to comply with the contract. She is not to be held in

breach because Mr McCaughan's telephone was defaulting to the answering machine when she called.

29. On 14 November 2016 the claimant was provided with a sick note by her GP which signed her off work for two weeks on the grounds of 'stress at work'. By a series of GP sick notes 'on the grounds of stress at work', the claimant continued to be signed off work until she was dismissed.

30. The tribunal is satisfied that the claimant gave adequate notice of her absence. It is notable that on 14 November as on 29 September, the claimant felt compelled to chase Mr McCaughan as to whether or not he had received messages from her: 'Joey did u receive my messages. As I have asked b4 if you wouldbacknowledgement [sic] that uv received and read them.'

Failure to attend 3 return to work meetings

31. The respondent asserts that there were three return to work meetings arranged which the claimant failed to attend. In the email dated 24/02/17 from Mr McCaughan's email account in which the claimant was dismissed, the respondent asserted that return to work meetings had been arranged for 29 November, 12 December, and 21 December 2016.

32. No evidence was adduced by the respondent that 'return to work' meetings were arranged on these dates. If meetings had been arranged for that purpose on these dates the tribunal accepts the submission on behalf of the claimant that there would have been a documentary trail clearly highlighting the nature and purpose of the meetings as 'return to work' meetings. There is no such documentary trail.

33. It is not without significance that when Mr McCaughan in an email to the claimant dated 7 February 2017 stated that, 'There were three meetings set up to discuss coming back to work, you did not attend any of them, for whatever the reasons may be', the claimant immediately replied: 'What meetings?...'. The claimant went on to state that ***she*** had initiated a visit to the office before Christmas but for an entirely different purpose. By 7 February Mr McCaughan appeared to understand the significance of a return to work meeting, but unfortunately he had failed to arrange any.

34. The claimant experienced unjustified delays in the payment of statutory sick pay. She made repeated contact with the respondent to pursue the payments. She should not have had to do so. This only added to the stress which she was under.

Dismissal on grounds of capability

35. In February 2017 Mr McCaughan was involved in a serious road accident. He suffered severe injuries and was in a halo brace for three months. During that time he employed a friend of his, Mr Bowyer, to work in the office while he was unable to return to work. As events transpired, Mr Bowyer stayed on after Mr McCaughan returned to work and he is now employed full-time by the respondent.

36. On 23 February 2017 the claimant learned that she had been removed from the administration page of the respondent's Facebook page and she had been replaced by Mr Bowyer. The claimant contacted Mr McCaughan's brother Ronan by text the

next day. Ronan McCaughan then asked the claimant to send him her email address.

37. On 24 February the claimant received an email from Mr Joseph McCaughan's email account. It informed her that her employment was being terminated as from 21 April 2017 and that she would be on gardening leave until that date. The email alleged that the claimant had missed three return to work meetings. It said that the claimant had indicated that having to interact with Mr Joseph McCaughan was causing her stress and that there was no practical scenario where they would not be required to interact: 'Regretfully, given the above and your conduct in this matter thus far, we have no other option than to inform you that your employment at Blackmore fuels will be terminated.'

38. As noted above, the suggestion that the claimant had failed to attend return to work meetings was without foundation. By the email of 24 February the claimant was dismissed without any fair process being followed prior to the respondent making the decision to terminate her employment.

39. A further email was written to the claimant on 20 March 2017. It made a number of assertions, including the following: 'You declined to attend three pre-arranged back to work meetings, without any notice. That, taken together with your general conduct over the course of your employment and whilst on sick leave, has given the company the impression that you had no real desire to return to work. The company feels that it has grounds for dismissal on the basis of your gross misconduct. A finding of such would of course mean your immediate dismissal without notice pay.'

40. Once again the respondent sought to rely on the false assertion that the claimant had failed to attend, 'three pre-arranged back to work meetings'. Similarly the tribunal is satisfied that the assertion that the claimant misconducted herself is without foundation. The claimant was subjected to appropriately probing cross-examination by Mr Friel. The claimant's demeanour and responses during that cross-examination satisfied the tribunal that she was a person who is diligent and simply wanted to be able to do her best at work.

41. The satisfactory nature of the claimant's evidence contrasted with what was at times an unsatisfactory lack of clarity in Mr McCaughan's evidence. As Mr Hamill pointed out in his closing submissions, Mr McCaughan was unable to provide an adequate explanation for delays in responding to the claimant, whether in respect of her taking sick leave or in respect of the payment of sick pay.

42. The tribunal notes the steep learning curve for Mr McCaughan in making the transition from being a shop-floor worker in a factory to becoming an employer running his own business. The difficulties which arose in the management of the claimant's employment may simply be rooted in ignorance of Mr McCaughan's obligations as an employer rather than a malign intent to cause the claimant harm. No doubt the serious injuries sustained by Mr McCaughan in the accident which occurred in February 2017 will have made the transition from employee to employer more difficult in the months which followed the accident.

43. The respondent's email of 20 March went on to suggest that, 'as a gesture of goodwill and in the interests of concluding the matter' that a compromise agreement could be reached between the parties. It was said that part of that compromise could be that, '[the claimant] would receive a reference'.

Efforts to find work and reference

44. The claimant's health took some time to improve in the period immediately following the termination of her employment. The claimant was seen by a consultant psychiatrist for the purpose of these proceedings and he reported on 18 January 2018.

45. The psychiatrist found that the claimant gave,'… a credible account of someone who had to face a greater workload with less support. It is credible that she would have been able to remain at work had she more support and faced workplace demands that she was able to meet'. He thought it, '… likely that she experienced the symptoms of a Depressive Adjustment Disorder for a period of in and around six months from October 2016 to April 2017'.

46. The claimant issued her claim to the tribunal on 31 May 2017. The claim included an allegation of disability discrimination which was withdrawn at this hearing.

47. Until July 2017, the claimant continued to be signed off by her doctor as unfit to work. She commenced receiving jobseekers allowance on 20 July 2017 at the rate of £73.10 per week and this continued until 21 December 2017 when she was again signed off as unfit to work by her GP.

48. The claimant applied for a total of 20 jobs between August and 12 October 2017. After November 2017 she did not apply for any more jobs prior to being signed off by her GP on 21 December 2017.

49. One of the jobs which the claimant applied for was with Payscape, a payroll business. A job interview was scheduled on a date on 22nd September 2017. Regrettably when the claimant attended for interview she was told that it could not go ahead because her previous employer had been contacted and had refused to give a reference. In an email dated 8 December 2017 addressed to the claimant, Payscape described it in this way:

> 'I can confirm that your previous employer Blackmore Fuels Ltd was contacted by telephone, to request a reference for employment before your interview date. Mr McCaughan refused to give the reference, saying … "you did not work there anymore and hadn't done before Christmas last year" when asked if he would forward on a short written reference for your job application to our head office, Mr McCaughan said again "not likely" and the line went dead. This was detailed to yourself when you arrived for your interview.'

50. In her statement of evidence the claimant said that when Payscape told her that the interview could not go ahead, '[she] could only apologise and left the meeting totally embarrassed and humiliated. I felt this had been totally unfair. I really didn't know how much more of this treatment I could honestly take'.

51. Mr McCaughan denied that he had received a request for a reference from Payscape. The tribunal is satisfied that in the light of the detail in the Payscape email that Payscape did speak to someone at the respondent's office who had actual or ostensible authority to act on the respondent's behalf.

52. On 19 September 2017 the claimant was informed that her application for a job with the Royal Mail as a delivery driver had been unsuccessful. She was told that, 'it may be that your skills are more suited to one of our other roles'. The email also informed her that she should, 'Please take note of references required, Blackmore Fuels would not comply to send or comment on fact of reference. Review CV on reference detail.'. There is no evidence to suggest that it was lack of a reference which caused the claimant to be rejected for the job. In her witness statement the claimant makes no comment about how she felt when she was rejected for the Royal Mail job.

53. On 17 November 2017 the claimant issued a claim alleging victimisation against the respondent by reason of the refusal to provide references. It is alleged that the reason for the refusal was because the claimant had issued her claim under the DDA.

Law

54. Under Articles 126 of the Employment Rights (Northern Ireland) Order 1996 ['ERO'] an employee has a right not to be dismissed unfairly. Under Article 130(2) of the ERO a reason relating to the capability of an employee for performing work of the kind which she was employed to do is a potentially fair reason to dismiss.

55. In respect of procedural fairness Article 130A of the ERO provides as follows:

> *"(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if —*
>
> *(a) one of the procedures set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003 (dismissal and disciplinary procedures) applies in relation to the dismissal,*
>
> *(b) the procedure has not been completed, and*
>
> *(c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.*
>
> *…*
>
> *(3) For the purposes of this Article, any question as to the application of a procedure set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003, completion of such a procedure or failure to comply with the requirements of such a procedure shall be determined by reference to regulations under Article 17 of that Order."*

56. It is accepted in this case that no procedure was followed which was compliant with the statutory dismissal and disciplinary procedures.

57. The Employment (Northern Ireland) Order 2003 at Article 17(3)(a) provides that where the non-completion of the statutory procedure was wholly or mainly due to the employer's failure to comply with a requirement of the procedure, then the tribunal shall increase the award to the employee by a minimum of 10%. If it is just and equitable in all the circumstances to do so, the tribunal may increase the uplift by up to 50%. The effect of Article 158A of the ERO is that any such uplift will apply

only to the compensatory element of any award. The tribunal rejects the submission of Mr Hamill that the uplift should apply to the entirety of the award.

58. Under section 55 of the Disability Discrimination Act 1995 [‘DDA’] victimisation is defined as being when a person discriminates against another if he treats the person less favourably than he would treat a person whose circumstances are the same, and he does so for the reason that the person brought proceedings against him or any other person under the DDA.

59. Where victimisation is found the tribunal may make an award for injury to feelings. The tribunal has considered the guidelines in ***Vento v Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871, [2003] IRLR 102***. Mummery LJ held as follows at paragraphs 50,51, 53 & 65:

> ***‘50***
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> *It is self-evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. As Dickson J said in Andrews v Grand & Toy Alberta Ltd (1978) 83 DLR (3d) 452 at 475–476, (cited by this court in Heil v Rankin [2000] IRLR 334 at 337, paragraph 16) there is no medium of exchange or market for non-pecuniary losses and their monetary evaluation:*
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> > *'… is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution.'*
>
> ***51***
>
> *Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury…Striking the right balance between awarding too much and too little is obviously not easy…*
>
> ***53***
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> *In HM Prison Service v Johnson, Smith J reviewed the authorities on compensation for non-pecuniary loss and made a valuable summary of the general principles gathered from them. We would gratefully adopt that summary. Employment tribunals should have it in mind when carrying out this challenging exercise. In her judgment on behalf of the Appeal Tribunal, Smith J said at p.165:*

'(i) 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.

(ii) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination 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, to use the phrase of Sir Thomas Bingham MR, be seen as the way to "untaxed riches".

(iii) Awards should bear some broad general similarity to the range of awards in personal injury cases. We do not think that this should be done by reference to any particular type of personal injury award, rather to the whole range of such awards.

(iv) In exercising their 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.

(v) Finally, tribunals should bear in mind Sir Thomas Bingham's reference to the need for public respect for the level of awards made.'

…

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Guidance

Employment tribunals and those who practise in them might find it helpful if this court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.

(i) 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. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.

(ii) The middle band of between £5,000.00 and £15,000.00 should be used for serious cases, which do not merit an award in the highest band.

(iii) Awards of between £500.00 and £5,000.00 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 £500.00 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings."

60. The tribunal has taken account of the updating of the Vento guidelines in ***Da'Bell v NSPCC (2009) UKEAT/0227/09, [2010] IRLR 19***. Da'Bell raised the lower band to £600.00 to £6,000.00 and the middle band to £6,000.00 to £18,000.00. Presidential Guidance issued in England and Wales following the decision in ***De Souza v Vinci Construction Ltd [2017] EWCA Civ 879*** suggests that in respect of 2017 claims issued after 11 September 2017 the lower band should be set at £800.00 to £8,400.00 and the middle band should be £8,400.00 to £25,200.00.

Conclusion

61. The tribunal rejects the submission made on behalf of the respondent that dismissal would have occurred even had a proper procedure been followed. There is no adequate evidential basis for such a finding. The claimant impressed as a straightforward person who did not want to leave her job, she simply wanted her workload to be manageable.

62. Unfortunately, inexperience as a manager and business owner led Mr McCaughan into failing to appreciate the extent of his obligations towards the claimant who was a long-standing employee of the business. The concerns she expressed about her workload were legitimate. Mr McCaughan's response seems to have been rooted in a lack of trust on his part. It is regrettable that he was not more open to the possibility that the claimant was correct when she complained of her increased workload. Mr McCaughan did not adequately take on board the impact on the claimant's workload of the contribution which the previous owners made to the office work.

63. It is clear that after the change of ownership that the claimant remained committed to her work, even making a suggestion and enquiries in respect of a potential new telephone system. It is unfortunate that she found herself unwell but the claimant took appropriate steps to inform the respondent when she would not be able to attend work. It was a regrettable state of affairs that Mr McCaughan's understandable unhappiness at the claimant's absences was not matched by a willingness to acknowledge promptly the claimant's messages about her absence.

64. The assertion made on behalf of the respondent that the claimant was not capable of doing her job is not supported on the evidence.

65. There was a comprehensive failure by the respondent to follow the statutory dismissal procedure. There was no disciplinary meeting and no appeal process. It was a shambles. The tribunal finds that Mr McCaughan's management inexperience was at the root of the problem.

66. The respondent concedes that the dismissal was automatically unfair. There are no grounds on which the tribunal can find that the claimant would have been dismissed even if a proper procedure had taken place.

67. During the hearing the parties reached agreement on some aspects of the claimant's schedule of loss.

    Notice pay = 8 weeks' pay at £272 per week = £2,176.00

Holiday pay = 16.4 days at daily pay rate = £1,115.20

Basic award

Age at effective date of termination: 41

Number of years' service (to 21/04/17): 8 years

8 weeks' pay at £272.00 per week = £2,176.00

68. The compensatory award is not agreed. The effective date of termination was 21 April 2017. The claimant's net weekly pay was £248.00 per week. There was an obligation on the claimant to mitigate her loss. She did so by applying for 20 jobs between August and 12 October 2017. By mid-November she had stopped applying for jobs. The claimant was signed off as unfit to work on 21 December 2017. The claim in the schedule of loss in respect of future loss of earnings was abandoned at the hearing.

69. No adequate explanation was given by the claimant as to why she made no applications for jobs after 12 October 2017. She had done well in applying for 20 jobs in the space of 2/3 months but then the activity stopped. In the circumstances the tribunal has concluded that it is just and equitable to make an award for loss of earnings covering the period from 21 April until the 17 November. This is a period of 30 weeks. At a rate of £248.00 per week this totals £7,440.00.

70. The tribunal is satisfied that it is just and equitable to impose an uplift in respect of the compensatory award in excess of 10% by reason of the failure to follow statutory procedures. As noted above, the failure was comprehensive. The tribunal is satisfied that this wholesale failure was driven by Mr McCaughan's inexperience rather than malice. Nonetheless the respondent is culpable by reason of Mr McCaughan's actions and his failure to obtain and/or act on appropriate advice in a timely fashion. The respondent is a small enterprise with around six employees. In all the circumstances of the case the tribunal finds that it is just and equitable to award a 25% uplift to the compensatory award. This equates to £1,860.00.

71. On balance the tribunal finds that the claimant has suffered victimisation by the respondent. In the email of 20 March the respondent indicated a willingness to provide a reference as part of a compromise agreement. There was apparently no fundamental objection to providing a reference to the claimant even in the light of Mr McCaughan's stated view of the claimant's behaviour up to that time. No detail was given as to the nature of the reference which would be provided.

72. By September that had changed. The respondent refused to give Payscape an employment reference for the claimant. No reference was supplied to the Royal Mail. The critical change which had occurred between March and September was that the claimant had commenced tribunal proceedings which included a claim under the DDA. The tribunal is satisfied that the making of this claim was an effective cause of the refusal to provide a reference.

73. The evidence in respect of the claimant's injury to feelings was limited. What she said on the matter in her witness statement is recited above at paragraphs 50 and 52. It was submitted on behalf of the claimant that her injury to feelings should be

compensated at the top end of the middle Vento bracket, the top end being £25,200.00. No legal authorities were offered in support of this submission.

74. The tribunal disagrees with the claimant on this point.

75. She suffered a detriment in not receiving a reference. This resulted in her suffering the disappointment of an aborted job interview and feeling embarrassed and humiliated when she attended for interview. This was a one-off occurrence but one which was undoubtedly upsetting for the claimant. It was an unpleasant experience on the day. Attending a job interview is an anxious time for any candidate, anxiety which will have been elevated for the claimant by the knowledge that she was not even to be interviewed because the respondent refused to supply a reference.

76. The claimant impressed the tribunal by her calm and steady demeanour and her moderate, straightforward way of giving evidence. Compensation for injury to feelings is for just that, injury to feelings. Its purpose is not to punish a respondent (although that is likely to be a collateral consequence in any case where such an award is made). The tribunal has kept in mind the length and nature of the comments about the issue which were made in the claimant's witness statement.

77. In all the circumstances the tribunal awards the claimant £3,000.00 for injury to feelings. This is just below the middle of the bottom band in the Vento guidance. It equates to around 12 weeks of the net weekly income the claimant received from the respondent. The tribunal has considered carefully the extent of the claimant's evidence on the issue and takes the view that this is the appropriate award. Interest of £136.10 is awarded on this sum from 22nd September 2017 until 17th April 2018 (207 days).

78. The tribunal awards £500.00 in respect of the claimant's loss of statutory rights by reason of her unfair dismissal.

79. The following figures are set out for the purposes of the recoupment notice in respect of the Jobseekers allowance received by the claimant:

    (i) The monetary award is £15,267.20.

    (ii) The prescribed element is £15,267.20.

    (iii) The relevant period for the prescribed element is 21 April 2017 to 17 November 2017.

    (iv) The monetary award does not exceed the prescribed element.

80. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990 and The Industrial Tribunals (Interest on Awards in Sex Discrimination and Disability Discrimination Cases) Regulations (Northern Ireland) 1996.

Employment Judge:

Date and place of hearing: **16 & 17 April 2018, Belfast.**

Date decision recorded in register and issued to parties: