



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE ELLIOTT
MEMBERS: MS A DONALDSON
MR G HENDERSON
BETWEEN:

Ms L Dussard

Claimant

AND

Secretary of State for Justice

Respondent

ON: 1 February 2017

Appearances:

For the Claimant: In person

For the Respondent: Ms A Carse, counsel

JUDGMENT ON REMEDIES

The unanimous Judgment of the Tribunal is that:

1. The respondent shall pay to the claimant the sum of **£9,903.67**.
2. By agreement respondent shall pay the claimant's costs under Rule 74(1) in the sum of **£1,200** in respect of her tribunal fees.

REASONS

1. This decision was delivered orally on 1 February 2017.

2. By a judgment sent to the parties on 19 October 2016 the claim for disability discrimination succeeded.
3. The remedies hearing was due to take place on 6 January 2017. It had to be postponed as on the morning of the hearing the claimant wished to introduce supplementary evidence. No witness statement had been prepared and the respondent was not on notice as to what the claimant proposed to say. We considered that the interests of justice required a postponement so that the claimant could attend to the matter of a supplemental witness statement and service this on the respondent. We made Orders on 6 January 2017 to facilitate this.
4. The claimant was in person at this hearing, her solicitors having come off record on 25 January 2017. A supplemental witness statement was produced for the claimant.

The issue

5. Other matters having been agreed, the only issue for us was the amount of the award for injury to feelings.
6. In relation to the award, it was an issue as to whether we should apply an uplift of 10% following *Simmons v Castle* (below).

Witnesses and documents

7. We heard from the claimant.
8. We had our original trial bundles and the claimant submitted a report from her GP, Dr K Rayner, dated 17 January 2016. We had an extract from Harvey on Industrial Relations and Employment Law from the respondent setting out awards for injury to feelings for disability discrimination, lower and middle band cases. The cases relied upon by the respondent were all at ET level and therefore of persuasive value but not binding upon us.

Matters agreed

9. At the last hearing on 6 January 2017 the parties informed the tribunal that financial losses had been agreed in the sum of £828.67 and that the respondent agreed to pay the claimant's tribunal fees in the sum of £1,200.
10. The respondent said that it did not pursue a costs application in relation to the postponement from 6 January 2017.

Findings of fact

11. The claimant told the tribunal in her first witness statement for the liability hearing that she has a strong work ethic and being off work made her feel useless and not wanted. She said she got more and more frustrated as each day passed and we find that this was the case. She was also annoyed that she received reduced pay. The pay issue itself has been dealt with by agreement. She felt that the fact that she was still off work was of no fault of her own. She said she could have returned in October 2015. Our finding was at paragraph 79 of our Reasons that Ms Orlebar told the claimant on 2 November 2015 that she would do the OH referral.

12. We find that the claimant was very upset at not being able to return to work once her GP said she was fit to do so. She has had counselling related to this. The claimant has children and is a single mother and she supports her family. She felt like a failure as a mother, her children were not used to seeing their mother not going to work. It made her feel worthless. She was also frustrated. She also felt drained and emotional.
13. We find that the claimant took pride in her work and got on well with colleagues and others with whom she worked and the offenders to whom she provided a service. We find that she was upset at being kept out of this work due to her disability and the respondent's failure to make reasonable adjustments.
14. The respondent had prior knowledge of her disability but they did not acknowledge this until the liability hearing.

Submissions

15. The respondent said that the period that we should consider for the award for injury to feelings was from 5 November 2015 as set out in paragraph 79 of our Reasons on liability until 8 February 2016, the date of presentation of the ET1.
16. The respondent submitted that the matter we had to consider was set out in paragraph 84 of our reasons, the failure by the respondent to make a speedy OH referral to ascertain what was needed to remove the substantial disadvantage to the claimant.
17. The respondent said that this was a case at which the award should be at the top of the lower Vento band or the bottom of the middle band and no more than £6,500. It was accepted that this was not a one off incident case.
18. It was submitted that there was no malice or deliberate unkindness on the part of the respondent and some of the responsibility lay with their provider ATOS.
19. The respondent submitted that as there were conflicting authorities at EAT level and a pending appeal to the Court of Appeal that we should not award a 10% uplift following **Simmons v Castle**.
20. The claimant submitted that she was unable to control her disability and this led to her feeling very upset and unsupported by her employer. She submitted that she was not treated fairly and has recently started a new job with the Home Office. The claimant, as a litigant in person, did not make any submission on the Vento bands, or on the amount we should award.

The law

21. Section 124 of the Equality Act 2010 provides that where a tribunal finds that there has been a contravention of a [relevant] provision the tribunal may make a declaration as to the rights of the parties; an order requiring the payment of compensation and an appropriate recommendation.
22. The bands for awards of injury to feelings are set out in **Vento v Chief**

- Constable of West Yorkshire Police 2003 IRLR 102** as updated by the EAT in **Da’Bell v NSPCC 2010 IRLR 19**. The lower band is £500 - £6,000; the middle band is £6,000 to £18,000 and the upper band is £18,000 to £30,000.
23. The EAT in **Beckford v London Borough of Southwark 2016 IRLR 178, EAT** and more recently in **Olayemi v Athena Medical Centre EAT/0140/15** held that there should be a 10% uplift following the decision of the Court of Appeal in **Simmons v Castle 2012 EWCA Civ 1288, CA**. The Court of Appeal said that with effect from 1 April 2013 the proper level of general damages should be increased by 10%. There is a conflicting EAT authority on the point in the case of **De Souza v Vinci Construction UK Ltd EAT 0328/14** which is understood to be on appeal to the Court of Appeal.
24. Interest on discrimination awards is provided for by the **Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996**. Under these Regulations, for injury to feelings, interest is for the period beginning on the date of the act of discrimination and ending on the day the amount of interest is calculated. Following the **Employment Tribunals (Interest on Awards in Discrimination Cases)(Amendment) Regulations 2013** the rate of interest is 8%.

Conclusions

25. We consider the claim as at the presentation of the ET1 which is 8 February 2016. It is therefore a three-month period for our consideration from 2 November 2015.
26. Our attention was drawn by the respondent to three ET level cases which the respondent helpfully updated for us to take account of inflation from the date upon which those cases were decided. They were all cases in the middle band which were factually more serious than the case before us – *O’Neill v Department for Social Development – Belfast case no 1922/11*; *Clark v East London Bus & Coach Co Ltd – East London case no. 3203483/10* and *Johnson v MacLellan International Ltd – London Central case no. 2202980/2005*.
27. *O’Neill* and *Clark* in today’s figures had awards of injury to feelings at £7,694.24 and £8,203.32 respectively. *MacLellan* in today’s figures was £13,408.63. *MacLellan* involved a much longer period of discrimination.
28. We find that this case falls towards the bottom of the middle band. This was not a one off incident as it affected the claimant over a period of time as set out in our findings above. The period we are concerned with is from 2 November 2015 to the date of presentation of the ET1 on 8 February 2016 – a period of just over 3 months.
29. We award the claimant the sum of £7,500. We find against the respondent and find that this should be uplifted by 10% under **Simmons v Castle**. We base this on the authorities of **Beckford** and **Olayemi**. We are aware that there is a pending appeal to the Court of Appeal in **De Souza** but in the absence of any ruling we find that the uplift should be applied. This

- produces an award of £8,250.
30. The calculation period for interest is from 2 November 2015 to 1 February 2017 a period of one year and three months.
 31. One year's interest is £660. Three months is £165. It is effectively a further 10% making a total award of interest of £825.
 32. The total award for injury to feelings including interest and uplift is **£9,075**.
 33. Financial loss is agreed at **£828.67**.
 34. The respondent agrees to pay the claimant's fees in the sum of **£1,200**.

Employment Judge Elliott

Date: 1 February 2017