



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss F Bellini

v London Borough of Hillingdon

Heard at: Watford

On: 27 and 29 September 2016
6 and 15 December 2016 (In chambers)

Before: Employment Judge Bedeau

Members: Mr I Bone
Mr M Bhatti MBE

Appearances

For the Claimant: Mr A Smith, Counsel
For the Respondent: Mr N Porter, Counsel

RESERVED JUDGMENT ON REMEDY

1. The claimant should be re-engaged as a Technical Support Officer or a Trainee Internal Auditor.
2. The respondent is ordered to pay the claimant the sum of £45,192.97 as compensation for loss income as a result of her discriminatory treatment.
3. The respondent is ordered to pay the claimant the sum of £18,987.24 for injury to feelings.
4. The respondent is ordered to pay the claimant's expenses in mitigating her losses in the sum of £841.50.
5. For the avoidance of any doubt the total sum to be paid to the claimant is £65,021.71.

REASONS

1. On 16 August 2016, the tribunal promulgated its judgment on liability to the parties. It held that the claimant had been discriminated against arising from disability; that there had been a failure to make reasonable adjustments and that the claimant had been unfairly dismissed. The case was listed for a remedy hearing on 27 to 29 September 2016.

The evidence

2. The tribunal heard from the claimant. Mr Ben Crowe, the claimant's partner's witness statement was admitted in evidence.
3. On behalf of the respondent was evidence given in the form of witness statements, the contents of which were admitted by the claimant. Miss Nancy Leroux, Deputy Direct, gives evidence in relation to the Financial Management Training Scheme. Mr Ken Chisholm, Corporate Pensions Manager, give evidence in relation to the respondent's pension scheme. The evidence given by Mr Mike Talbot, Human Resources and Organisational Development Service Manager, is in relation to the respondent's Pay Protection schemes, in particular, the Redeployment Pay Protection provisions. These witnesses were not called to give evidence.
4. In addition to the witness statements and the oral evidence given by the claimant, the parties adduced two bundles of documents for the purposes of the remedy hearing comprising, in total, of over 1,100 pages.

The issues

5. Re-engagement
 - 5.1 Should the tribunal make an order for re-engagement pursuant to ss.113 and 115 of the Employment Rights Act 1996 ("ERA"), having regard to the factors identified in s.116(1) ERA?
 - 5.2 If so, what should be the terms on which re-engagement is to take place, including those matters specified in s.115(2) ERA? If order then back pay is on claimant's former salary.
6. Basic award
 - 6.1 If the tribunal does not make an order for re-engagement, the parties agree that the claimant is entitled to a basic award for unfair dismissal in the sum of £5,462.50.

7. Compensation for loss of earnings during the claimant's employment
 - 7.1 Had the respondent complied with its duty to make reasonable adjustments from 12 November 2014 to 7 August 2015 (as specified by the tribunal in paragraphs 39 and 40 of its liability judgment):
 - 7.1.1 What is the likelihood or prospect that the claimant would have been redeployed to another role within the respondent during this period?
 - 7.1.2 What would the claimant have earned in such a role and from what point in time?
8. Compensation for loss of earnings between the claimant's dismissal and the remedy hearing
 - 8.1 What is the claimant's loss of earnings for the period 8 August 2015 to the date on which the tribunal makes its remedy determination? (The respondent accepts that the claimant has taken reasonable steps to date to mitigate her losses)
 - 8.2 In particular, are the claimant's losses to be calculated by reference to:
 - 8.2.1 The salary in her former role;
 - 8.2.2 The salary in the Financial Management Trainee role; or
 - 8.2.3 Some other salary (having regard to, inter alia, the tribunal's findings in respect of questions 4.1 and 4.2 above)?
9. Compensation for future loss of earnings
 - 9.1 What ongoing loss of earnings will the claimant suffer, and for what period of time?
10. Compensation for pension loss
 - 10.1 In light of the tribunal's conclusions regarding: (a) the position that the claimant would have been in, but for the respondent's unlawful conduct; (b) the claimant's residual employment prospects/earning capacity; and (c) the substantial disparity between public and private sector pension schemes, what would be an appropriate award of compensation in respect of pension loss?

11. Compensation for expenses incurred in connection with the claimant's mitigation efforts
 - 11.1 Is the claimant entitled to be reimbursed in respect of the expenses listed at paragraphs 46-48 of her witness statement (all or some of them)?
12. Compensation for loss of statutory rights
 - 12.1 Should the claimant be awarded the sum of £500, £300, or some other sum?
13. Compensation for injury to feelings
 - 13.1 What is an appropriate award for injury to feelings, having regard to: (a) the claimant's particular circumstances; (b) the Vento guidelines; and (c) any other relevant guidance?
14. Tax/grossing up
 - 14.1 Which elements of the claimant's compensation award are subject to tax and therefore to be grossed up?
 - 14.2 What is the appropriate 'grossed up' figure, once the applicable tax rates and allowances have been taken into account?
15. Interest
 - 15.1 Should the tribunal exercise its discretion (bestowed by Regulation 2(1) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996) to award interest in this case?
 - 15.2 If so, what is the appropriate interest payment?

Findings of fact

16. The tribunal having heard the evidence and having considered the documentary evidence, made the following material findings of fact:
 - 16.1 The claimant during the course of the hearing, signed an undertaking stating the following:

“On condition that the London Borough of Hillingdon (the respondent) complies with the terms of the re-engagement order made by the tribunal, the claimant agrees and undertakes that:

 1. She will not issue a civil claim against the respondent (or any of its employees, agents or officers) for personal or for psychiatric injury in respect of any acts or omissions said to have occurred during her previous period of employment with the respondent, which came to an end on 7 August 2015.

2. She will not present an employment tribunal claim, whether for victimisation or otherwise, in respect of any applications for employment that she has made to the respondent.
 3. She will not renew, resubmit or present any internal grievance in respect of any acts or omission said to have occurred during her previous period of employment with the respondent which came to an end on 7 August 2015.”
- 16.2 From 12 September 2014 to 24 September 2016, the claimant made 73 job applications. From the date of her dismissal on 7 August 2015 to 15 April 2016, she applied for 45 posts, many of which had been for work with the respondent. After April 2016, she continued to apply for various positions but had been unsuccessful. They were, essentially, for lower graded posts covering a wide spectrum of roles and responsibilities. There is no dispute that she had mitigated her losses.
- 16.3 She continues to suffer from reactive depression but did not produce an updated medical report on her condition with a prognosis. However, her clearly expressed wish is to return to work.
- 16.4 It was clear that the claimant could no longer work under Mr Waller who has recently returned to work following a period of sickness absence.
- 16.5 The claimant was cross-examined in relation to her disposition towards a number of the respondent’s employees. With regard to Mr Richards, her concern was that he had apparently withheld information from her during the Capability Hearing and in that regard she used the word “liar”. She had asked Mr Richards during the Capability Hearing whether Mr Waller had said or given any documents for her to respond to. Mr Richards replied that he did not but she discovered that he had given his management case statement. She told the tribunal that notwithstanding her concerns about Mr Richards’ behaviour, she would be in a position to work with him.
- 16.6 The claimant denied that she had criticised Mr Dicker.
- 16.7 She was cross-examined on her witness statement at the liability hearing. In relation to paragraph 40, in respect of the conduct of Ms Reena Sikhand, Human Resources Adviser, we find that in that paragraph the claimant was not challenging Ms Sikhand’s integrity. She, however, said to the tribunal in her oral evidence that she was not holding anyone responsible or accusing them of behaviour in a malicious way. Her dispute was in relation to the assertion that she had withdrawn an earlier grievance.

- 16.8 In relation to paragraph 55, the claimant said in evidence in respect of the part played by Mr Price that she was not commenting on Mr Price and that in her view he had not acted maliciously. Her concern was the process and it was failing. She did not have any issues with him.
- 16.9 Paragraph 82 was put to her in which she named Mr Price whom she alleged did not consider her witness statement and grievance. In response she said that in her view it was a statement of fact.
- 16.10 In paragraph 87 she repeated the allegation and said in evidence that she was not blaming any individuals. It was a case of them not following the correct procedure.
- 16.11 As regards paragraph 93, she said that it was a fact that Mr Nagra failed to invite her to a meeting on Monday 27 October 2014. She wanted to return to work but was not engaged in a personal vendetta.
- 16.12 In relation to paragraph 99, she said that she wrote to the Chief Executive, the Head of Human Resources and the Leader of the Council stating that she strongly felt that the respondent had not shown any care or even acknowledgement of her severe mental health condition and disability. She also raised further concerns on 5 January 2015. She told the tribunal that at that stage it was a fact that she was having a mental breakdown as no one appeared to be helping her. She was advised by ACAS to raise the matter at the highest level and that was what she did. She said that it was a fact that she was critical of the approach taken by the Chief Executive as her concerns were not considered but passed on. She also said that the Head of Human Resources, Miss Moore, was involved in the process. The claimant repeated that she felt that the process followed by the respondent's officers was deficient but not them.
- 16.13 In relation to paragraph 102, she also stated that Miss Lydia Newman, Senior Human Resources Adviser, was not following a fair hearing at the grievance appeal stage. The claimant alleged that Miss Newman was "bearing witness for Mr Nagra" as she, the claimant, was presenting her case before Mr Perry Scott.
- 16.14 In relation to paragraph 103, the claimant stated that Mr Scott rejected her appeal and that she strongly disputed the decision not to uphold her earlier grievance.
- 16.15 She again repeated that her concerns were that the named individuals were not following procedure and alleged that it was a fact that the individuals caused or contributed to her mental illness.
- 16.16 These aspects of her evidence were put to her to show that the relationship of trust and confidence she had in the respondent had broken down making it not practicable for her to return to work. This

she disputed, maintaining that all she ever wanted was to return to work.

16.17 In answer to a question by the tribunal as to what would be the top five positions she considered to be suitable for the purposes of re-engagement, she said that they would be:

16.17.1 Principal Business Systems Analyst;

16.17.2 Senior Buyer (three vacant roles);

16.17.3 Trainee Internal Auditor (two vacant roles);

16.17.4 Democratic Services Officer; and

16.17.5 Executive Assistant to Corporate Director.

16.18 As regards to the Principal Business Systems Analyst role, PLC Grade, this is same grade the claimant was at in her substantive post. According to the respondent this position was pending approval by the appropriate body or person although there was a job description. In evidence, it was put to the claimant that she would be working closely with Miss Helen Vincent. She accepted Miss Vincent had featured quite heavily in her grievance and had stated that Miss Vincent had treated her badly because she had power over her.

16.19 In the job description it states, in respect of the role purpose, the following:

“A skilled analyst using specialist knowledge and ability to deal with complex situations, take ownership and strategic develop one or more complex software applications and ensure the smooth running of major software applications, and delivery of part of the Single Development Plan.”

16.20 The post-holder would also have supervisory responsibility for service staff.

16.21 The tribunal is of the view that this is a senior position requiring specialist knowledge and although the claimant may have some of the skills they are not up-to-date to satisfy the requirements in the job description. Of more importance, is the claimant’s relationship with Miss Vincent. Her criticisms of Miss Vincent would, in our view, make it difficult for both to work closely together, notwithstanding the claimant’s wish to put the past behind her (B2 828 to 832)

16.22 In relation to the Senior Buyer role, the tribunal were not referred to a job description for this post. We are, therefore, unable to determine whether or not the claimant would be suitable for this role. In addition, it would require, according to the claimant, a Chartered Institute of Purchasing and Supply qualification. Although she has

recently registered on such a course she does not hold the qualification. In the tribunal's view this post is not suitable for her.

16.23 In relation to the post of Trainee Internal Auditor, Scale 3 to POA, she applied in November 2015 and was interviewed on 24 November 2015 but was rejected on 6 December 2015. In the job description at the time it stated the following:

“The successful candidate will be responsible for undertaking risk-based reviews across the entire range of Council Services and be actively involved in it as a Team Member in developing the quality and range of services offered by Internal Audit.

The position offers a structured career progression with promotion dependent on your successful contribution in the role. This includes completion with the Chartered Institute of Internal Auditors. (CMIIA) professional qualification, which will involve undertaking significant study in your own time.

We are seeking an outstanding individual who has the potential to become a qualified Chartered Internal Auditor within four years. Previous internal audit experience or qualifications are not essential as full-on job training along with study support for the CMIIA qualification will be provided.”

16.24 In the more recent job description, under role purpose, it states:

“To evaluate, improve and provide advice to management on the effectiveness of risk management, control and governance processes. Through planning, conducting and reporting on risk based internal audit reviews to a high quality standard and within agreed timescales as allocated in the Annual Audit Plan.”

16.25 The successful applicant would be required to undertake CIA and CMIIA qualifications. There is a career progression from Trainee Internal Auditor to Internal Auditor, Senior Internal Auditor and Principal Internal Auditor.

16.26 In relation to the Democratic Services Officer position, in the job description, under role purpose, it states:

- “To play a vital role in the effective and efficient operation of the council’s democratic processes including the provision of assistance and support to elected Members, servicing meetings, research, production and commissioning of reports.
- To assist, and when necessary deputise for, the Democratic Services Managers.
- To liaise with the Senior Officers and Members and with partner/external organisations to ensure clear and accountable decision making within the Borough in line with the provisions of the Council Constitution.
- To operate within a highly political environment, subject to clear probity and accountability rules and procedures.

- To ensure the Council operates within a strict legal and budgetary framework and its Members receive accurate and timely policy and administrative advice to allow them to do so.
- To ensure that Members' aspirations for the effective operation of the Overview and Scrutiny functions are met and that there is close coordination and cooperation with the Executive of the Council.
- To champion and promote the role of Overview and Scrutiny within the Council and, with the Council's external partners in order to seek full and active engagement and participation in the Overview and Scrutiny process.
- Other duties as may be required from time-to-time contributing to the wider remit of the Democratic Services functions”.

(B3157 to 161)

16.27 In the person specification for the role, it states, under experience, that it is essential the successful person should have “One or more years’ experience in a Democratic Services or similar governance or board related role.”

16.28 We find that the claimant did not have and still do not have one or more years’ experience in a Democratic Services or similar governance or board related role. She had previously applied for the position and had been rejected. (B3162 to 163)

16.29 Finally, as regards the Executive Assistant to Corporate Director post, Scale POA, the claimant told the tribunal that she had applied for the position and was waiting a response. The role purpose states the following:

“To provide comprehensive and high quality executive programme and project support for Corporate Director level to ensure that an effective and responsive cross Directorate approach is delivered to residents.

To have an overview of the business of the Directorate and to identify and support opportunities for business and value for money improvements.

To provide direct high level day-to-day support to the Corporate Director through facilitating responses, generating reports and briefing notes, managing deadlines, monitoring and delivering projects.”

16.30 In the person specification it states that it is an essential requirement that the successful candidate should have a management qualification such as ILM3 or equivalent. (B147 to B155)

16.31 The claimant said in evidence that she does not possess an ILM3 qualification or other management qualification but has management experience at POC level and would be able to take ILM3 qualifications as this is internal.

16.32 We are satisfied having regard to the evidence before us that the claimant does not meet the person specification and does not have the relevant qualifications.

16.33 The claimant told the tribunal during the course of the liability hearing that she applied for the post of Technical Support Officer and was anticipating a response within a week. There were 15 such positions at Scale 5. In correspondence sent to the tribunal by her legal representatives dated 15 November 2016, they informed the tribunal that on 13 October 2016, the respondent wrote to the claimant to offer her the role of Technical Support Officer, Scale 5, Scale Point 22 on a salary of £22,284 a year. In the job description, under role purpose, it states:

“Delivery of complex, technical and core administrative support to teams, meeting performance targets and embedding a culture of “Putting our residents first” where continuous service improvement was maintained. There is no direct supervisory responsibility. The successful candidate has to demonstrate understating of the Council’s Customer Care Standards to ensure that the Standards are met in order to deliver the Council’s vision of “putting our residents first”.

16.34 In relation to Operational Services Delivery, the successful candidate would be responsible for delivering complex, routine and emergency tasks against the technical administrative standards to ensure consistency in maintaining service delivery. Other aspects of the role include service, planning and development, financial and resource management, and continuous improvement. In relation to additional responsibilities, to complete other reasonable tasks in order to fulfil the role purpose as instructed by management.

16.35 This position is administrative and within Resident Services. The person would report to the Technical Support Supervisor/Technical Support Co-ordinator. There are no direct or indirect reports.

16.36 Mr Smith, counsel on behalf of the claimant, said to the tribunal that if the claimant is reengaged she was prepared to compromise that is to be paid at the salary for the role and not the rate as in her substantive role.

16.37 In relation to the Trainee Internal Auditor post, the claimant applied for it November 2015 and was rejected. In the feedback, Internal Audit wrote to her on 25 November 2015, the following:

“Thank you for attending the Trainee Internal Auditor assessment day at the London Borough of Hillingdon. Over the last week, we have assessed over 35 candidates and unfortunately, on this occasion you have not been shortlisted for the final interview stage. This was a very difficult decision to have to make, but the Assessment Panel’s judgement was that there were a few candidates who were particularly strong on the key areas we were assessing.

I appreciate this will come as a disappointment to you but it is a decision predominately based on the particular strengths displayed by other candidates rather than any perceived weakness in your skills and abilities. We are grateful for your participation at the assessment day and would like to thank you for your positive input and contribution. Please email us if you would like any further feedback....”

(528 core bundle)

- 16.38 In an email from the respondent’s Human Resources Team dated 26 November 2015, sent to the claimant in relation to the Trainee Internal Auditor post, they wrote:

“Many thanks for your application for the post of Trainee Internal Auditor. After careful consideration I am sorry to advise you that we will not be progressing your application. Due to the amount of interest we are unable to provide feedback on applications. We would like to retain your details for approximately 12 months, in case any suitable positions arise during that time. If you would prefer us not to, please contact our Human Resources department. If you have not done so already, we recommend that you take advantage of our email job alert service so that you can receive the latest vacancies as they arise. You can register at our website once you have carried out a search.

(529 core bundle)

- 16.39 On 5 December 2014, the position of Principal Business Systems Analyst became available. It was a POC grade, the same grade as the claimant in her substantive role on a salary of over £44,000 per annum. We were satisfied that this was a role which the claimant could perform as it was the result in the separation of her position in 2010. The claimant had mentioned it during her Capability Hearing but believed that no one was recruited to it.

- 16.40 On 9 September 2016, she submitted an application to become a volunteer with the Local Studies and Archives Team of the respondent’s Library Service based at Uxbridge Library and was successful following an interview on 14 September 2016. At the time of the remedies hearing she had not been given a start date.

- 16.41 The claimant told the tribunal and we find that her discriminatory treatment affected her life in many ways because she was unable to switch off, was unable to sleep, suffered from nightmares, flashbacks and replays. Her sleep is non-restorative and un-refreshing. She would go to sleep tired and would wake up tired. She oscillates between conciliation and anger. She said that she had put on hold her desire to start a family in order to get to the senior position she held with the respondent. She sacrificed much of her personal life since 2003 to develop a professional life and reputation while working for the respondent. She now fears that this have all been wasted. She and her partner no longer have the financial means to start a family and time is passing by. She feels that she has lost the

opportunity to raise a family in a stable and secure environment said that she has been suffering with four main stigmas:

- 16.41.1 having been dismissed as a consequence of suffering from a mental health disability;
- 16.41.2 loss of her reputation;
- 16.41.3 a lengthy period out of work, which she has to explain to prospective employers; and
- 16.41.4 that she may be viewed as a trouble maker as she had taken her employer to an employment tribunal.

16.42 She has stated to look at training courses. She is now a member of CIPS and has engaged in a course of study. She is also a member of the Society for Proof Readers and Editors and has signed up for the Basic Proof Reading and Grammar at Work courses provided by the Publishing Training Centre at a cost to her of £425.

Submissions

17 The tribunal have taken into account the written and oral submissions by Mr Smith, counsel on behalf of the claimant and by Mr Porter, counsel on behalf of the respondent. We do not propose to repeat their detailed submissions herein having regard to Rule 62(5) Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, as amended. We have also taken into account the authorities they have referred us to.

The law

18 Sections 112-116 Employment Rights Act 1996, are the tribunal's powers in relation to remedy where an unfair dismissal claim is well-founded. It can order reinstatement, section 114; re-engagement, section 115 and compensation, sections 118-126.

19 Under section 116(1), the tribunal is required first to consider whether to make an order for reinstatement. Section 116(2) provides,

“If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.”

20 The remainder of that section states:

“(3) In so doing the tribunal shall take into account –

- (a) any wish expressed by the complainant as to the nature of the order to be made,
- (b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.
 - (4) Except in a case where the tribunal takes into account contributory fault under subsection 3(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
 - (5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.
 - (6) Subsection (5) does not apply where the employer shows –
 - (a) that it was not practicable for him to arrange for the dismissed employee’s work to be done without engaging a permanent replacement, or
 - (b) that –
 - (i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and
 - (ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee’s work to be done except by a permanent replacement.”
- 21 On the issue of practicability, tribunal at the initial stage of contemplating making an order for either reinstatement or re-engagement, can make such an order even if it has some reservations as to whether it is practicable to do so, Timex Corpn v Thompson [1981] IRLR 522, a judgment of the Employment Appeal Tribunal as the assessment is provisional at that stage. The employer does not have to show that reinstatement or re-engagement was impossible. It is a matter of what is practicable in the circumstances of the employer’s business at the relevant time, Port of London Authority v Payne [1994] IRLR 9, Court of Appeal.
- 22 In the case of Oasis Community Learning v Wolff [2013] UKEAT/0364/12, the EAT held the fact that an employee has made serious allegations against colleagues or managers in one department or workplace will not, as such impact on the relationship which the employee will have with colleagues and managers in a different department or workplace.
- 23 In considering practicability in the context of a disabled person, the tribunal must take into account the fact that if the employee had not been dismissed, he or she may have been entitled to be offered different work by reason of the duty to make reasonable adjustments, Great Ormond Street Hospital for Children NHS Trust v Patel [2007] UKEAT/0085/07.
- 24 In the case of Lincolnshire County Council v Lupton [2016] IRLR 576, the EAT held that the terms of a re-engagement order must be specified with a

degree of detail and precision. There is also no statutory presumption that an employer is required to displace or bump an existing employee.

- 25 Practicable means more than merely possible but “capable of being carried into effect with success”, Coleman and Another v Magnet Joinery Ltd [1975] ICR 46.
- 26 In relation to injury to feelings, section 119(4) Equality Act 2010 states, “An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis.)”
- 27 We have also considered the case of Nothman v London Borough of Barnet (No. 2) [1980] IRLR 65. In that case the claimant believed that that there had been a long-standing conspiracy against her. Lord Justice Omerod, in giving the leading judgment, held, “It is only right to say that anyone who believes that they are a victim of conspiracy, and particularly by their employers, is not likely to be a satisfactory employee in any circumstances if reinstated or re-engaged.”, page 66, paragraph 4.
- 28 We have taken into account the general principles in the award for injury to feelings as set out in the race discrimination case of Prison Service and Others v Johnson [1997] ICR 275, a judgment of the EAT. We have also taken into account the three bands of injury to feelings award in the case of Vento v Chief Constable of West Yorkshire Police (No.2) [2003] ICR 318, a judgment of the Court of Appeal updated to take into account the effect of inflation since 2003 in the case of Da’Bell v NSPCC [2020] IRLR 19. The EAT held in that case that should be £600-£6,000; the middle band, £6,000-£18,000; and the top band, £18,000-£30,000, applying a 20% increase to each of the Vento bands.
- 29 Following the cases of Simons v Castle [2013] I All ER 334 and Beckford v London Borough of Southwark [2016] IRLR 178, the 10% uplift applies to injury to feelings awards.
- 30 An Employment Tribunal may order a respondent to pay compensation to a claimant under section 124(2)(b) Equality Act 2010.

Conclusion

Re-engagement

28. It is the respondent’s case that based on the claimant’s allegations against a number of its employees some of whom at very senior levels, that trust and confidence remains an issue affecting the practicability of re-engagement. The claimant had indicated prior to her undertaking, that she may pursue a personal injury claim against the respondent. These matters taken into account would make re-engagement of the claimant not a practicable option even at this stage in the tribunal’s assessment. Accordingly, the tribunal should not order that the claimant be re-engaged.

29. We have come to the conclusion that it would not be practicable for the claimant to continue to work in Library Services. She had made serious allegations against Mr Waller and Mr Richards as we have found in our liability judgment, making it difficult for to work with them as her first and second line managers.
30. We have also found that the claimant's relationship with Miss Vincent was not friendly and cooperative making it difficult for them to work together as a team.
31. We have taken into account the judgment of the Employment Appeal Tribunal in the case of Oasis Community Learning v Wolff, that an employee having made serious allegations against colleagues and managers in one department or workplace is unlikely to have the same impact on the relationship with colleagues and managers in a different department or workplace.
32. If trust and confidence is a serious issue for the respondent, it is difficult to understand why it offered the claimant voluntary work at its Uxbridge Library. Further, it interviewed the claimant for a number of positions in the knowledge that were she to be successful she would be offered the post. In October of this year she was offered the post of Technical Support Officer following a successful interview.
33. No evidence had been adduced by the respondent that the claimant caused or contributed to her dismissal.
34. Unlike the Nothman case, the claimant in this case was offered work and she did not allege that the respondent had engaged in a conspiracy against her.
35. We have considered the five positions the claimant said that she would be interested in and save for Trainee Internal Auditor, we have come to the conclusion that the other posts are not suitable. The claimant argued that she is capable of doing a wide range of tasks and should have been considered for a large number of positions. She was interviewed for a number of posts and was rejected. This was on the basis that she did not satisfy the requirements based on the required qualifications, knowledge and experience. Realistically, she was unable to compete with those who were already engaged in work in those areas.
36. Given the relatively specialist nature of the claimant's employment history in Library Services; her ongoing health issues; as well as length of her sickness absence from the workplace since 2014, we are of the view that it would be unrealistic to employ her at the level at which she was engaged prior to her dismissal. We have come to the conclusion that the only sensible and realistic option would be for her to be engaged in a more junior generalist role such as a Technical Support Officer or to embark on what would be a new career path with training and progression, such as the post of Trainee Internal Auditor. She said in evidence that she would be

prepared to start in a more junior role and be given the opportunity of advancement.

37. Although we are not required to identify a particular role, in the context of this case a post has been offered to the claimant of Technical Support Officer and she has expressed interest in specific positions, such as that of a Trainee Internal Auditor.
38. Having taken into account the above matters, we order the claimant be re-engaged either in the role of Technical Support Officer or should it be available, the role of Trainee Internal Auditor.
39. Having regard to s.115(2) ERA 1996 and with regard to the role of Technical Support Officer, we specify the following terms:
 - 36.1 That the claimant's employer is the respondent, 115(2)(a)
 - 36.2 The nature of the employment is as set out in the job description and person specification, 115(2)(b)
 - 36.3 The claimant's remuneration for that post shall be £22,284 on Scale 5 commensurate benefits (115(2)(c to e)
 - 36.4 The date by which the claimant should be re-engaged shall be on Monday 20 March 2017.
40. If the post of Trainee Internal Auditor is available, the following terms will apply:
 - 37.1 The respondent shall be the claimant's employer;
 - 37.2 The nature of the employment is as set out in the job description and person specification for the post.
 - 37.3 The claimant's starting salary is similar to the salary for the Technical Support Officer post Scale 5 with commensurate benefits.
 - 37.4 The claimant should commence employment in the role from 6 February 2017.

Injury to feelings award

41. As regards the award of injury to feelings, we have taken into account the matters as found and as set out in paragraph 16.41 above. The claimant was born on 16 May 1973 and is 43 years of age. She had put off having children to promote her career and would have stayed with the respondent. We have come to the conclusion that she has suffered from her discriminatory treatment and it continues to have an impact on her life over two years later. We have decided to award her the sum of £15,000 with an uplift of 10%, namely £1,500. In addition, she is entitled to interest at 8%.

Loss of income

42. In relation to loss of income, we held in paragraphs 39-40 in our liability judgment that had the claimant been placed as a redeployee after Dr East-Miles, report dated 12 November 2014, and attempts were made to find her a suitable role, it was highly likely that one would have been found for her. The question for us as a tribunal is what would have or likely to have been that role? It became a difficult exercise to perform given the passage of time since November 2014 but had the respondent considered it duty to make reasonable adjustments as the claimant was disabled, it was highly likely that the post of Principal Business Systems Analyst would have been offered to her if she was not required to work closely with Miss Vincent. If it was unlikely to have been offered, we are satisfied that what she would have been looking for, initially, was a comparable post on more or less the same level of salary and benefits. Either way her losses would have been comparable to her losses as in her substantive post. It is in our view reasonable to assume that redeploying her would have taken about 4 weeks, that is by 8 December 2104.
43. Our approach here has been overtaken by events as we were informed by the claimant's representatives in an email dated 23 December 2016 that the claimant's agreed losses from 12 November 2014 to her effective date of termination on 7 August 2015, is £6,357.52 and we have accepted that figure and she would be compensated accordingly.
44. In relation to her losses from the date of dismissal to the remedy hearing, there is a case to be made that the claimant should be compensated on the basis of her being suitable for the Financial Management Trainee post plus £4,000 salary protection. However, we have been told that the respondent agreed that the financial losses, post the effective date of termination, are to be calculated by reference to her contractual salary and benefits in respect of her substantive post. This we have agreed to do. Her agreed gross weekly pay was £860.88, her net being £594.46. If we are in error in relation to the agreement, then we are prepared for this matter to be reconsidered and for her losses to be assessed in relation to the FMT post and in this regard we will accept the figures as set out in the respondent's counter-schedule.
45. From the 7 August 2015 to 29 September 2016 is 60 weeks, at £594.46 it is £35,667.60. Interest of 8% will be applied from the mid-point.
40. The claimant incurred expenses in connection with her mitigation efforts in the sum of £841.50. The tribunal, therefore, orders that that sum should be paid by the respondent to her.
41. The compensation schedule is set out below.

COMPENSATION SCHEDULE

On the basis that the respondent had discriminated against the claimant on grounds of her disability:

1. Loss of earnings from:

(i) From 12/11/14 to 7/08/15	£ 6,357.52	
(ii) From 8/08/15 to 29/09/16	£ 35,667.60	
(iii) Interest of 8% from mid-point		
(iv) From 12/11/14 to 29/09/16 is 98 weeks		
(v) The mid-point is 49 weeks		
	$£35,667.60 + £6,357.52$	= £42,025.12
	$8\% \times £42,025.12$	£3,362.01 per year
	$52 \text{ weeks} \div £3,362.01$	£64.65 per week
	Interest for 49 weeks x £64.65	= £ 3,167.85

2. Injury to feelings:

(i) Award of £15,000		
(ii) Plus 10% uplift - £1,500		= £16,500.00
(iii) Interest at 8% on £16,500		
(iv) 98 weeks x £25.38 interest per week		= £ 2,487.24

3. Expenses

(i) Expenses incurred in mitigation of her losses		= £ 841.50
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Grand Total Award **= £65,021.71**

Employment Judge Bedeau

Date: 10 February 2017

Sent to the parties on:

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For the Tribunal Office