

JJE



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Morris

**Respondent:** JB Fix Ltd

**Heard at:** East London Hearing Centre

**On:** 10 April 2018

**Before:** Employment Judge Jones

## Representation

Claimant: in person

Respondent: no attendance and no written representations

# REMEDY JUDGMENT

The judgment of the Tribunal is that:-

1. The complaint of discrimination on the grounds of disability succeeds.
2. The Claimant was dismissed Respondent on the grounds of his disability.
3. The Respondent is to pay the Claimant the following compensation:
  - (i) £3,000 for injury to feelings
  - (ii) £3,000 for loss of wages
  - (iii) Total interest in the sum of £360
4. The Respondent is to pay the Claimant the total sum of £6,360.00.

# REASONS

1. The Claimant issued his ET1 claim form on the 7 November 2017. The claim and ET3 response forms were served on the Respondent by the Tribunal on 15 November 2017. The Respondent was informed that it had until 13 December 2017 to send its response to the Tribunal. The Respondent was also notified by letter dated 15 November of a preliminary hearing on 12 February 2018.
2. The Respondent wrote to the Tribunal on 5 December 2017 indicating that it had not had the original paperwork and the case and asking for it to be sent again. The Tribunal notes that the postcode of the address the Respondent asked the papers to be sent to at Unit 32a, was RM18 8RH. That was the same postcode the papers were originally sent to on 15 November 2017 although the address had been Unit 9.
3. The Tribunal sent the case papers to the Respondent on 12 December 2017. The Respondent was informed that it had until 27 December 2017 to complete the response and return it to the Tribunal. Nothing was heard from the Respondent thereafter.
4. A default judgement was granted to the Claimant in this matter on 24 January 2018. The parties were informed that the hearing listed on 12 February would now be converted to a remedy hearing.
5. The Tribunal received no response from the Respondent. A separate note as a remedy hearing was sent to the Respondent at the same postcode on 25 January 2018.
6. On 12<sup>th</sup> February, Employment Judge O'Brien decided that as the notice of hearing had been sent to Unit 9 rather than Unit 32a (the rest of the address was the same for both Units) and as the Respondent was not present, there was a possibility that the Respondent had not had notice of the hearing. The Judge adjourned the hearing to today, 10 February 2018. All the documents and notices were served again on the Respondent at Unit 32a.
7. The Tribunal received a letter on 21 February 2018 which stated the following '*this company has been liquidated and is not at this address. They are no longer trading*'. Another note stated that the company's liquidators are Carter Clark. The Tribunal has not had any correspondence from Carter Clark. All the Tribunal correspondence and documents were returned with that letter. A search on the register of companies shows that the Respondent is active and is still trading. The Tribunal finds that the Respondent has not been liquidated and has had service of these proceedings.
8. The Tribunal, having been satisfied that the Respondent is still trading and that it has been served with the claim, the default judgement, the notice of today's hearing and all the tribunal correspondence; determined that it was in the interests of justice to proceed with today's hearing. The Respondent has chosen not to participate in these proceedings.
9. The Tribunal finds the following facts from the Claimant's sworn evidence and from the documents on the file.

## Relevant facts

10 The Claimant was employed by the Respondent between 1 August 2017 and 29 September 2017. The Claimant was employed as a cleaner. The Claimant worked independently cleaning blocks of flats for the Respondent. The Claimant informed the Respondent during his interview that he had Asperger's syndrome. The Claimant was interviewed by Joan, the Respondent's proprietor/CEO. The Respondent was therefore aware that he was a disabled person at the time of his employment.

11. The Claimant had no complaints about his work from the Respondent's clients or from the Respondent. He had a total of three supervision visits from his supervisor Heather, during his employment.

12. Two days before his dismissal, the Claimant took the van home. The van was parked outside his home overnight. During the night/early hours of the morning a car that was being driven recklessly by someone unknown to the Claimant came around the corner and hit his neighbour's car and badly damaged it and also hit the Claimant's work van. The Claimant was unaware of the damage to his work van until the following morning when he was getting ready to go to work. As soon as he became aware, he telephoned the Respondent and notified them. This was approximately 8 AM that day.

13. At 10 AM that day, the Claimant's supervisor, Heather met him at the site where he was working. She looked at the van and swore at him. She called him a '*useless, fucking bastard*'. The Claimant informed her that the damage had not been his fault. She called him a '*useless cunt*' and said that he would not be hearing the last of it and drove off. The Claimant carried on working that day.

14. On Friday that week, as the Claimant was due to go on holiday the following week, he was expecting to take the van to the Respondent's offices so that it could be left there while he was away. The Respondent telephoned the Claimant to make a new arrangement. He was asked to be home at 1pm. The Claimant did so and got home at approximately 1 PM. Heather and the Respondent's CEO whom the Claimant knew only as Joan, attended his home. Joan stated to the Claimant that there was no way that she could employ him and that she could not '*retrain someone with the IQ of a flea*'. She called him a '*retard and a stupid, thick, bastard*'. The Claimant informed her that she could not speak to him like that and she replied that it was her van, her company Claimant and drove off in the van and that she could speak to him as she wanted.

15. The Claimant telephoned the offices sometime that afternoon to enquire when he was going to be paid. The Claimant spoke to Heather who said to him '*fuck off you moron*'. There was no further communication from the Respondent.

16. The Claimant was eventually paid the wages which was due to him.

17. The Claimant was hurt by the way that he was repeatedly spoken to by the Respondent and that he lost his job due to the Respondent's decision to terminate his contract in the way that it did. There were had been no difficulties with his work. The Claimant had to seek assistance from his GP and considered that he had a mild breakdown due to the psychological effect of the way the Respondent treated him at the end of his employment and because of how it ended.

18. The Respondent gave the Claimant bad references to two prospective employers. The Respondent stated that the Claimant was mentally unfit and that he could not do such basic tasks as sweeping, dusting and polishing. The Respondent also told the Department for Work and Pensions that the Claimant had been dismissed for gross misconduct. As a direct result, the Claimant was unable to claim unemployment benefit for 3 months. The Claimant has himself and his family to support. The Claimant has secured alternative employment.

## **Law**

19. Section 13 of the Equality Act 2010 states that a person discriminates against another if, because of the protected characteristic, he treats that other less favourably than he treats or would treat others. Disability is a protected characteristic. The Claimant as a person with Asperger's syndrome is a disabled person for the purposes of the Equality Act 2010.

20. Section 124 of the Equality Act states that in a successful complaint of discrimination, the Tribunal can make the following award:

- i) To give a declaration on the rights of the complainant and the Respondent regarding matters to which the complaint relates;
- ii) an order for compensation to the claim complainant which can include payments under the headings of injury to feelings, aggravated damages for pain, suffering and loss of amenity (personal injury) and interest;
- iii) Make an appropriate recommendation – of steps that the employer must take within a specified period to obviate or reduce the effect on the complainant or any other person of any matter to which the proceedings relate

21. The Court of Appeal has given guidance on the assessment of compensation for injury to feelings in the well-known case of *Vento v Chief Constable of West Yorkshire Police* (No.2) [2003] IRLR 102. In that case they set the bands within which they held that most tribunal should be able to place their awards. Those bands have been amended following the guidance given by the EAT in the case of *Da'Bell v NSPCC* [2010] IRLR 19. It was said that the level of awards needed to be increased to reflect inflation. The bands therefore are £500-£6,000 for one of acts of discrimination or otherwise, for between £5,000 and £18,000 for the middle band involving less serious cases and for the most serious kind of discrimination, awarded for injury to feelings should normally lie between £20,000 and £30,000 as the upper band.

22. Awards for injury to feelings are purely compensatory but, discriminators must take their victims as they find them. This means that once liability is established, compensation should not be reduced because for example, the victim was particularly sensitive. The issue is whether the discrimination conduct caused the injury and not whether the injury was necessarily a foreseeable result of that conduct. (*Essa v Laing* [2004] IRLR 313).

23. In making an award for injury to feelings, much will depend on the particular facts of the case and whether what occurred form part of a campaign of harassment over a long period, what actual loss is attributable to discrimination suffered, the position and seniority of the actual perpetrators of the discrimination and the severity of the act/s that have been found to have occurred as well as the evidence of the hurt that was caused.

24. The Tribunal can also award compensation for loss of wages or any other losses the Claimant has suffered that is attributable to the Respondent's actions.

25. The Tribunal also has the power to award interest in awards made in discrimination cases. The Tribunal refers to the *Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996*. The Tribunal can consider the issue of awarding interest whether or not a party has asked us to do so.

26. The interest is calculated as simple interest which accrues daily. For past pecuniary losses, interest is awarded from the halfway point between the date of the discrimination act and the date of calculation. For non-pecuniary losses interest is calculated across the entire period from the act complained after the date of calculation. The rate of interest set by *Regulation 3* is 8%.

### **Judgment**

27. It is this Tribunal's judgment that there were never any complaints about the Claimant's performance of the duties of his job.

28. The Respondent was always aware that the Claimant was a person with Asperger's syndrome and therefore a disabled person for the purposes of the Equality Act 2010.

29. It is this Tribunal's judgement that the Claimant was verbally abused by the Respondent's CEO Joan and by his supervisor, Heather on three occasions. When Heather attended his place of work and saw the damage to the van, she verbally abused him. The Respondent had not conducted any investigation into how the van became damaged and instead took to abusing the Claimant related to his disability and which caused him hurt feelings and embarrassment. Joan and Heather attended at the Claimant's home to collect the van and he was subjected again to verbal abuse from Joan. She refused to stop doing so, when he reminded her it was not appropriate to speak to him in this way. Lastly, the Claimant was verbally abused again by Heather when he telephoned the office to ask about his wages.

30. The Respondent use highly offensive language towards the Claimant. The language used was discriminatory and abusive in the extreme. The Claimant was directly insulted on the grounds of his disability. It is this Tribunal's judgement that the Claimant was offended by the language used towards him and his feelings were hurt. The Claimant sought help from his GP to deal with the psychological effects of the way he was directly insulted by the Respondent on so many occasions and the way in which his employment was terminated. The Tribunal also takes into account that the perpetrators were the Respondent's CEO and the Claimant's supervisor and therefore senior employees within the company.

31. In addition, the Claimant's employment was terminated through no fault of his own. There is no evidence that the Claimant had performed his duties in any way which warranted his dismissal.

32. In accordance with the judgement dated 24 January 2018 the Tribunal declares that the Claimant's complaint of disability discrimination succeeds. It is Tribunal's judgement that the Claimant was subject to direct prolonged verbal abuse from his employer on the grounds of his disability and that he was also dismissed on the grounds of his disability on 29 September 2017.

## Remedy

33. Verbal abuse of the Claimant in relation to his disability is an extremely serious matter. The Claimant was verbally abused on more three occasions by the Respondent's senior employees who refused to stop doing so even when the Claimant asked them to.

34. The Tribunal notes that the verbal abuse was the Respondent's unreasonable reaction to the damage to the Respondent's van and occurred two or three days at the end of the Claimant's employment. The Respondent made no investigation into how the van came to be damaged.

35. It is therefore the Tribunal's judgement that the Claimant compensation should be within the first band of *Vento*. As the Claimant was only employed for a short period of time, he is not suffered any loss of statutory rights. However, he did lose his job.

36. It is this Tribunal's judgement that the Claimant should be awarded £3000 for the three instances of verbal abuse as injury to feelings.

37. The Claimant lost 3 months wages as a result of the Respondent's actions in dismissing him for an unlawful reason, because of the false references that were given to 2 prospective employers and the false information given to the Department for Work & Pensions which caused the Claimant to lose benefits for the same period. The Claimant lost his employment and was hampered in his attempts to find alternative employment through no fault of his own, but through the Respondent's actions on the grounds that he is a disabled person.

38. The Claimant earned £1,000 net per month. The Respondent is therefore ordered to pay him 3 months loss of wages.  $3 \times £1000 = £3000$ .

39. It is appropriate to award interest in this case. The interest awarded on the injury to feelings is  $8\% \times £3000 = £240.00$ . The interest due on the loss of earnings is calculated from the midway point, which means that interest is calculated on 1.5 months wages.  $£1500 \times 8\% = £120.00$ .

40. The Respondent is ordered to pay the Claimant a total award of £3,240 as compensation for injury to feelings plus £3,120 as compensation for loss of wages. The total amount due to the Claimant is £6,360.00.

Employment Judge J Jones

16 April 2018