



THE EMPLOYMENT TRIBUNAL

SITTING AT: SOUTHAMPTON

BEFORE: EMPLOYMENT JUDGE EMERTON (sitting alone)

BETWEEN:

Dr R Werner
Claimant

AND

University of Southampton
Respondent

ON: 5 June 2019

APPEARANCES:

For the Claimant: In person
For the Respondent: Not represented [*Response not presented*]

JUDGMENT

Liability

1. The following claims are well founded, pursuant to rule 21 of the Employment Tribunal Rules of Procedure 2013: wrongful dismissal, unfair dismissal, failure to pay holiday pay, direct religion or belief discrimination, direct race discrimination, indirect religion or belief discrimination, indirect race discrimination, harassment related to religion or belief, harassment related to race and victimisation.
2. The Recoupment Regulations do not apply.

Remedy

3. The claimant would be entitled to compensation for **wrongful dismissal** (notice pay) of £12,552.60. The respondent unreasonably failed to comply with the applicable ACAS Code of Practice. The tribunal considers it just

and equitable to increase compensation by 25%. The respondent is therefore ordered to pay the claimant the sum of **£15,690.75**.

4. The claimant is entitled to a **basic award for unfair dismissal of £9,652.00**
5. The claimant would be entitled to compensation for a **compensatory award for unfair dismissal** of £500.00, representing loss of statutory rights. The respondent unreasonably failed to comply with the applicable ACAS Code of Practice. The tribunal considers it just and equitable to increase the compensatory award by 25%. The respondent is therefore ordered to pay the claimant the sum of **£625.00**.
6. No further sums are due in respect of the compensatory award, because these have been ordered as compensation for discrimination.
7. The claimant would be entitled to compensation for **failure to pay holiday pay outstanding at termination** (in relation to the current leave year) of £7,945.50. The respondent unreasonably failed to comply with the applicable ACAS Code of Practice. The tribunal considers it just and equitable to increase compensation by 25%. The respondent is therefore ordered to pay the claimant the sum of **£9,931.88**.
8. The claimant would be entitled to **discrimination compensation for injury to feelings** of £31,000. The respondent unreasonably failed to comply with the applicable ACAS Code of Practice. The tribunal considers it just and equitable to increase compensation by 25%. The respondent is therefore ordered to pay the claimant the sum of **£38,750.00**.
9. **Interest** is payable on the above sum (based on discrimination running from 18 March 2010) of **£28,587.95**.
10. The claimant would be entitled to **discrimination compensation for personal injury** of £27,450.00. The respondent unreasonably failed to comply with the applicable ACAS Code of Practice. The tribunal considers it just and equitable to increase compensation by 25%. The respondent is therefore ordered to pay the claimant the sum of **£34,312.50**.
11. **Interest** is payable on the above sum (based on discrimination running from 18 March 2010, but calculated from the mid-point) of **£12,657.08**.
12. The claimant would be entitled to **discrimination compensation for losses to date** of £489,937.08, made up as follows:
 - a. Unpaid holiday pay (previous years) £128,717.10
 - b. Loss of salary £34,202.88
 - c. Pension loss £11,905.08
 - d. Increased travel cost £4,003.56
 - e. Unpaid expenses £4,190.14

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|---|--------------|
| f. Job-hunting expenses | £1,193.76 |
| g. Lack of promotion opportunity | £225,428.00 |
| h. Loss of sabbaticals | £138,915.00 |
| <i>(less income and pension contributions from 24 September 2018)</i> | |
| | - £58,618.44 |

13. The respondent unreasonably failed to comply with the applicable ACAS Code of Practice. The tribunal considers it just and equitable to increase compensation by 25%. The respondent is therefore ordered to pay the claimant the sum of **£612,421.35** in respect of losses to date arising from discrimination.

14. **Interest** is payable on the above sum (based on discrimination running from 18 March 2010 but calculated from the mid-point) of **£225,907.97**.

15. The claimant would be entitled to **discrimination compensation** for **future losses**, relating to the next 14 years, of £1,148,076.72, made up as follows:

| | |
|--|-----------------|
| a. Future loss of earnings | £761,524.68 |
| b. Loss of external earning opportunities | £1,294,013.98 |
| c. Future pension loss | £196,975.80 |
| d. Future increased travel cost | £80,962.98 |
| <i>(less income and pension contributions in new employment)</i> | |
| | - £1,185,400.72 |

16. The respondent unreasonably failed to comply with the applicable ACAS Code of Practice. The tribunal considers it just and equitable to increase compensation by 25%. The respondent is therefore ordered to pay the claimant the sum of **£1,435,095.90** in respect of future losses arising from discrimination.

Grossing up:

17. The total non-taxable element of compensation, relating to injury to feelings and personal injury, with the associated interest awards, amounts to £114,307.53. This therefore does not require grossing up for tax purposes.

18. The balance of compensation payable is £2,309,324.85. The majority of this arises from the termination of employment, and the first £30,000 of this is tax-free.

19. The remaining £2,279,324.85 is to be grossed-up for tax purposes, based upon a marginal tax rate of 45%, and the respondent is therefore ordered to pay to the claimant an additional **£1,025,696.18**.

20. The total compensation payable, after grossing up, is therefore **£3,449,328.54**.

Recommendation:

21. By reference to its powers under section 124(2)(c) of the Equality Act 2010, the tribunal recommends that the respondent gives the claimant access to all emails sent to or received by his Southampton University email address

Employment Judge Emerton
Date: 5 June 2019

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990