EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113571/2021

Final Hearing held in Glasgow on 24 and 25 May 2022

Employment Judge M Robison
Tribunal Member J Ward
Tribunal Member J Gallacher

Ms N A Righetti	**Claimant** **Represented by** **Mr C Maclean -** **Solicitor**
BDW Trading Limited	**Respondent** **Represented by** **Mr K Gibson -** **Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claim of victimisation under section 27 of the Equality Act 2010 is well-founded. The respondent shall pay to the claimant the sum of £16,265.10 in compensation.

REASONS

1. The claimant lodged a claim in the Employment Tribunal on 2 December 2021 claiming victimisation under the provisions of the Equality Act 2010. That claim related to the provision of a negative reference by the respondent following a previous employment tribunal claim which had been settled. The respondent resisted the claim.

2. The Tribunal heard evidence at this final hearing from the claimant and from Ms Elisha Johnson, former recruitment consultant. For the respondent, the Tribunal heard from Mrs Jillian Murray, personal assistant to the managing director and from Mr Stuart Dodson, development director for West Scotland.

3. The Tribunal was referred to a joint file of productions, referred to by page number.

Findings in fact

4. The Tribunal finds the following relevant facts admitted or proved.

5. The claimant is a former employee of the respondent. The claimant worked for the respondent from around January 2017 until her resignation on or around March 2020.

6. The claimant was originally employed by the respondent in the role of planning manager and was promoted to the role of land manager on 1 November 2018.

7. The claimant reported to Stuart Dodson, development director, who was her line manager in both roles.

8. By claim number 4113766/2019 presented to the Tribunal on 28 November 2019, the claimant brought claims under the Equality Act 2010 of harassment related to sex under section 26(1), harassment of a sexual nature under section 26(2), victimisation under section 27 and personal injury arising from discrimination.

9. That claim arose inter alia following a grievance which the claimant lodged against Stuart Dodson and Caroline Collins, HR director, regarding the way that her complaints had been dealt with. Mr Dodson was aware of the terms of the grievance and aware that the claimant had lodged a grievance against him.

10. Following an agreed COT3, that claim was withdrawn on or around 7 September 2020.

11. The terms of that COT 3 (pages 46 – 51) included a financial settlement. It also included the following clauses:

“10. The claimant will not make any disparaging or derogatory comments or statements whether in writing or otherwise concerning the respondent, a Group company or any of its or their employees, workers, agents or officers.

11. The respondent shall not authorise its officers or employees to make any adverse or derogatory comment about the claimant or do anything that shall, or may, bring the claimant into disrepute.

12. The respondent will provide a reference for the claimant at the request of a prospective employer in the terms set out in Appendix 2".

12. The reference at Appendix 2 is headed "private and confidential" and written "to whom it may concern" and states as follows:

"Further to your request for a reference relating to the above named, it is the policy of Barratts Developments PLC to respond to requests for information in a standard format, and I am pleased to provide the following information.

- Date employment commenced: 9th January 2017
- Date employment ceased: 24th March 2020
- Job title, on leaving or current: Land Manager
- Key job duties and level of responsibility: to assist the Development Director and Land Department in securing an adequate land bank to meet the needs and targets of the business
- Jobs that the employee held within the organisation prior to the job held at the date of termination and for how long she performed these jobs: Ms Righetti was employed as the Planning Manager from 9th January 2017 to 31st October 2018
- Reason for termination of employment: resignation

This reference is given in good faith and in confidence and that the author of the reference does not accept responsibility for any errors or omissions in the information given, or any loss or damage incurred from reliance on it".

13. Prior to the termination of her employment, from around September 2019, the claimant was absent on sick leave with stress, anxiety and depression. She was signed off work by her GP until around Summer 2020. The claimant did

not therefore initially feel well enough to search for alternative employment following the termination of her employment.

14. Subsequently, following an approach from a number of recruitment agencies, she engaged the services of Spencer Ogden. One of their recruitment consultants, Elisha Johnson, had noted her profile on linkedin and contacted her in mid to late August 2021 with a view to matching her with a role for one of their clients, Banks Group Limited (hereafter Banks), because she considered her to be a perfect fit. That role was the role of senior development planner.

15. The claimant was invited for a first interview which took place on-line over one and a half hours.

16. Ms Johnson's contact at Banks, Olivia Turnbull, advised that they were keen to go to the next stage of the interview process.

17. That second interview took place in person on 24 August 2021. The interview took place over three hours. At the end of the interview the claimant was offered the job. There was a discussion regarding the main terms and conditions, including salary (which was stated to be £60,000 gross per annum) and company benefits. The claimant agreed to accept the job in principle although she was surprised to have been offered it at the interview and she wanted to discuss it further with Ms Johnson.

18. Following a discussion with Ms Johnson, who encouraged the claimant to seek a higher salary which matched the salary she had been earning with the respondent, Ms Johnson spoke with Ms Turnbull to advise that her client was seeking a salary of £65,000 and a company car.

19. After several days, Ms Turnbull advised that they were not prepared to increase the offer. The claimant advised Ms Johnson that she would accept £60,000 per annum.

20. On Friday 27 August 2021, Ms Johnson formally advised Ms Turnbull that the offer was accepted. Ms Turnbull said that she was delighted that the claimant

had accepted and that she would get the contract to them the following Monday, and she said that she would put it in writing.

21. In or around this time, an Andy Liddell of Banks Group Limited contacted Mr Dodson to ask for information about the claimant. He asked why she had left the respondent.

22. On 31 August 2021, Ms Turnbull contacted Ms Johnson to advise that the offer of employment was withdrawn. While Ms Turnbull was hesitant regarding the reason, Ms Johnson pressed her because she was reluctant to advise the claimant without proper reasoning. Ms Turnbull advised her that they had obtained two "soft references" and they had reflected badly on the claimant and her behaviour.

23. Ms Johnson noted the terms of the call as follows: (page 38)

"Philip has decided to withdraw his offer which has been accepted for three reasons:

1) he is not happy that she asked for more money and feels that it made him uncomfortable;

2) she needs some training as she has been out of the business for a year;

3) an internal reference has said they don't wish to discuss Natalie in more depth but she has previously reacted badly to something in the workplace and the way she reacted is apparently [not] how Banks want their staff to behave and she would be an 'expensive mistake'".

24. On 1 September 2021, Ms Johnson spoke again to Ms Turnbull by telephone with her manager also on the call. She requested written confirmation that references had been taken. She was advised that the reason the offer was withdrawn was because references were taken, but she was advised what reasons she was to put to the claimant.

25. By e-mail dated 2 September 2021 (page 43), Ms Turnbulll advised Ms Johnston as follows: "Further to our conversation yesterday, I can confirm that Banks Group rescind the verbal offer of employment to Natalie Righetti. The

Hiring Manager/Head of Function felt increasingly uncomfortable over the time taken for Natalie to consider our offer. The offer was made very clear at interview so they felt disappointed that the candidate asked for a second and more improved offer. This ultimately lead them to have doubts over her commitment to the Company".

26. On 29 September 2021, Nick Hobdey, Group HR Director for the Banks Group Limited telephoned Ms Turnbull, who noted the terms of the call on their system in the usual way. He advised her that she had no proof that they had said that references were taken. She advised that she did because all telephone calls were recorded. He advised that she did not have permission to record his calls and hung up on her.

27. The call was recorded as "Nick called me and essential (sic) said no references were taken on Natalie and was just rude and dismissive I have told him Natalie's lawyers will be in touch".

28. By letter dated 18 March 2022, and in respect of an order of the Tribunal to produce documents, Mr Hobdey advised *"please accept this letter in response to the request from Calum Maclean, Miller Samuel Hill and Brown LLP for us to provide copies of any reference or notes of a verbal reference held by Olivia Turnbull or myself. Unfortunately I am unable to provide you with any of the requested information, on the basis that no references were secured for Ms N A Righetti. Therefore there are no letters or notes that I can provide you".*

Submissions of the claimant

29. After summarising the relevant facts, Mr Maclean set out the relevant law, by reference to sections 27 and 108 of the Equality Act 2010 and by reference to the cases of *Chief Constable of West Yorkshire Police v Khan* 2001 UKHL 48, *Igen v Wong* 2005 EWCA Civ 142, *Pathan v South London Islamic Centre*, 2014 UKEAT 0312/13, and *Relaxion v Rhys-Harper* 2003 UKHL 33. He relied too on the factual circumstances of another decision of the ET, *Onwuchekwa v Chelmsford Borough Council* ET Case No. 3200490/08.

30. In particular he argued that it was sufficient that the protected act had a significant influence on the actions of the respondent, whose motive was that

they harboured a resentment against her so that they sought to jeopardise her future career. He argued that even if there were other reasons, such as performance reasons, which he submitted had not been proved, there was sufficient connection in this case.

31. He submitted that the conversation which Mr Dodson had with Mr Liddell and the note by the recruitment consultants including the reference to an 'expensive mistake', which is a reference to the ET settlement, ties the detriment to the respondent. The reasons recorded for withdrawing the offer were not plausible on the evidence heard, in particular that it was common for a recruitment consultant to ask for a higher salary; that there was no reference to the need for training after four and a half hours of interview when the job was offered; that no concerns had been raised that she had been out of the sector for some time. Further, the claimant's evidence was that she had left all other employment on good terms; there were no other incidents in her professional life; and given the settlement did result in expense to the respondent, the information could only have come from the "soft reference".

32. Mrs Murray advised that all references should go to her and he submitted that Mr Dodson's evidence that he did not consider what he was being asked to be a reference was clearly wrong.

Submissions of the respondent

33. Mr Gibson first summarised the facts which he considered had been proved.

34. He then made comments on the reliability and credibility of the witnesses. He argued that the claimant gave evidence in a way which cast her in the best light possible rather than giving reliable evidence. In particular she failed to mention in her evidence that she also asked for a car, which Ms Johnson had confirmed and this shows that the claimant was happy to be less than straightforward and reliable.

35. He submitted that any dispute ought to favour the respondent whose witnesses gave evidence in a straightforward and direct way. He argued that this applied especially to Mr Dodson who was in a difficult position of trying to prove a negative. He submitted that the Tribunal should accept that he had no good

reason to speak badly of the claimant given that he was not heavily involved in the grievance or the settlement. He submitted that Mrs Murray's evidence was clear and reliable and largely unchallenged.

36. In regard to the law and its application to the facts, he made reference to the relevant provisions of section 27 of the Equality Act. He accepted that there was a protected act. He argued that the focus then was on first whether the claimant had suffered a detriment and he relied on the recent guidance of the EAT in the case of *Warburton v Chief Constable of Northhamptonshire Police* 2022 EAT 2. He submitted that no detriment had been proved here because no reference or negative information was given. The conversation of Mr Dodson was a "neutral" act. At its highest the claimant had an unjustified sense of grievance about what Mr Dodson told to Mr Liddell.

37. In regard to the second limb, whether any detriment was "because of" the protected act, he again relied on the guidance in *Warburton* and in particular the reference there to the fact that the protected act should have a "significant influence" on the outcome. He submitted that in this case the claimant has failed to prove the previous claim had a "significant influence" on how Mr Dodson behaved.

38. He then turned to consider the burden of proof referencing the test at section 136 of the Equality Act 2010, and relying in particular on *Efobi v Royal Mail Group Ltd* 2021 UKSC 33. He referenced in particular paragraph 38, that it is important not to make too much of the role of the burden of proof provisions which require careful attention when there is room for doubt, but not if the tribunal is in a position to make positive findings on the evidence one way or another.

39. Even if the Tribunal finds that there has been a detriment, he submitted that the burden of proof does not need to come into play because the Tribunal in this case is in a position to make positive findings in favour of the respondent.

40. If the Tribunal is not with him on that, and considers that the burden of proof has shifted, then he argued that the respondent had proved that whatever Mr

Dodson said to Mr Liddell it was in no way connected with, or motivated by, or because of, the protected act.

41. With regard to remedy, his primary position was that there was no evidence about the impact of the detriment on the claimant so that there should be no award. There was some evidence in relation to how she had been treated by Banks, and there was some evidence in regard to when she started with her employer and if there was to be an award for injury to feelings at all it should be less than what is claimed. Mr Gibson lodged the latest Presidential Guidance on awards for injury to feelings and submitted that any award should be at the lower end of the lower Vento band.

Relevant law

42. Section of the Equality Act 2010, headed up victimisation, states that "A person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act". Protected acts include "Bringing proceedings under this Act" and "doing any other thing for the purposes of or in connection with this Act".

43. Section 136 of the Equality Act is headed burden of proof. At s.136(2) it is stated that "if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that a contravention occurred". Section 136(3) states that subsection (2) "does not apply if A shows that A did not contravene the provision".

Observations on the witnesses

44. We found the claimant to be credible and reliable, and she gave her evidence in a clear and straightforward way. We should say that we thought it insignificant that the claimant had forgotten the detail about asking for a car, and did not detract from our conclusion that she was otherwise a reliable and honest witness.

45. Ms Johnson gave her evidence in a straightforward and spontaneous manner and she impressed us with her knowledge of her job and her role within it. She

had nothing to gain from not telling the truth in this Tribunal and indeed we noted that she is no longer in the recruitment business and is now employed with estate agents. We accepted her evidence as entirely credible and reliable and indeed found it to be compelling.

46. With regard to the respondent's witnesses, we accepted the evidence of Mrs Murray to be credible and reliable. She is however clearly a loyal employee and perhaps for that reason we thought that she was rather tentative with her answers. That related particularly to her unwillingness to confirm that she was aware that a verbal reference had been sought.

47. We did not accept the evidence of Mr Dodson as credible. That was not least because his evidence was inconsistent not only with the claimant but with that of Mrs Murray. This related in particular to his implausible insistence that he had nothing to do with the claimant's grievance after he had passed it over to HR. We noted that Mrs Murray had without hesitation confirmed that Mr Dodson was the subject of a grievance lodged by the claimant about the way that he had handled her complaint. We also thought it entirely implausible that Mr Dodson as a senior employee who was the subject of the grievance was not aware of its progress or indeed that he had no further involvement in it. We also found it to be implausible that as a senior employee involved, he did not know about the settlement terms.

48. On the question of whether the respondent had been asked for a verbal (rather than a written) reference, Mrs Murray said that she believed that Mr Dodson said to her that he had been approached for a verbal reference. This also contradicts Mr Dodson's evidence that he did not consider the request for information to be a "reference".

49. For these reasons, we preferred the evidence of the claimant and Ms Johnson to that of the respondents.

Deliberations and decision

50. The sole issue for determination by the Tribunal is whether the claimant was victimised following the settlement of an Employment Tribunal claim with her

former employers, the respondent, resulting in a job offer being withdrawn by a third party, Banks.

51. The relevant provision of the Equality Act 2010 is section 27. There was no dispute about the relevant law in this case, or the principles to be applied from relevant case law. We now turn to consider the relevant tests.

Did the claimant do a protected act?

52. This provision requires the claimant to have done a protected act, such as bringing proceedings under the Act.

53. There was no dispute that the claimant had previously brought proceedings under the Act against the respondent, and that element of the test was conceded.

Did the claimant suffer detriment?

54. The focus on this case then is whether the respondent subjected the claimant to a detriment and if so whether that was because she had done that protected act.

55. The giving of a bad reference in itself is self-evidently a detriment, and clearly the giving of a negative reference in circumstances where a claim has been settled on terms which include an obligation not to make any adverse or derogatory comments about the claimant, is a detriment, not least because in this case we have found that this led to the claimant not getting employment.

56. We heard evidence, particularly from Ms Johnson, that led us to conclude that the correct reason that the job offer had been withdrawn was because the company who had offered the claimant the job, and which she had verbally accepted, had obtained what were referred to as “soft references” and that these were negative.

57. We took account in particular of Ms Johnson’s evidence that the company had admitted to her that they had taken what were referred to as “soft references”. We noted Ms Johnson’s evidence that she typed notes relating to calls either as the call was taken, or immediately following the call.

58. We took account too of her evidence that she was told by Banks that the reason was because of the references but not to tell the claimant that. We noted her evidence about Banks' subsequent attempt to deny that they had said that references had been taken and their concern about the fact that she had proof because all calls were recorded.

59. This allowed us to conclude however only that the claimant had got the job because the Banks Group had got negative feedback about her. Clearly, that negative feedback was not *necessarily* from the respondent.

60. Indeed, Mr Gibson submitted that the claimant had not proved that she had suffered a detriment at the hands of the respondent. That submission was dependent on our having accepted the respondent's evidence. It is clear from the findings in fact that we did not accept the evidence of Mr Dodson that he had not given the claimant a negative reference, indeed his evidence was that he did not give a reference at all, and we did not accept that.

61. A particular focus of this case then was on whether it was this respondent who had subjected the claimant to that detriment.

62. We were of the view that this was a case where the shifting burden of proof was in play. As Mr Gibson recognised, the provisions of section 136 apply to the victimisation provisions as well as to the other types of discrimination. We did not however accept his submissions that this was a case where we should make too much of the burden of proof because the respondent had proved positive facts to support their position.

63. Again as Mr Gibson recognised, that provision requires a two stage analysis.

64. First we must consider whether the claimant has proved facts from which the tribunal could conclude in the absence of an adequate explanation, that the claimant was subjected to a detriment because of the protected act.

65. Only if we conclude that such facts are proved do we move to the second stage, to consider whether the respondent has proved that there was no discrimination (victimisation) whatsoever in this case.

Has the claimant made out a prima facie case?

66. We thus first considered whether the claimant had proved facts which would allow us to infer victimisation. Although we do not take account of the respondent's explanation at this stage, that is not to say, as Mr Gibson noted, that we cannot take account of all the evidence which we heard.

67. In the circumstances of this case, we rely on the following facts which we have found established to conclude that the burden of proof has shifted:

    1. The claimant was offered the job at the conclusion of a second long interview;

    2. Banks Group staff expressed very positive comments about her to Ms Johnson;

    3. The job offer was withdrawn after the claimant had accepted it;

    4. Ms Johnson encouraged the claimant to ask for more money and that anyone working in recruitment consultancy "would not be doing their job properly" if they did not ask for a higher salary (which does not accord with one of the reasons given for the withdrawal was that Banks staff were "unhappy that she asked for more money and feels that it made him uncomfortable");

    5. Banks did not raise the issue of the need for training with the claimant or with Ms Johnston (which does not accord with giving as a reason for withdrawal that she needed more training or with the claimant's evidence that nothing of the sort was raised or with Ms Johnson's evidence that in such circumstances the claimant would not have been invited for interview and/or the interview attended would not be so lengthy and/or that Banks were so positive about her initially);

    6. An "internal reference" was given;

    7. The only time the claimant had "previously reacted badly to something in the workplace" was during her employment with the respondent;

8. The claimant had settled the claim against the respondent for a financial sum;

9. Banks gave a further rationale about the time taken for the claimant to consider their offer. Yet the offer was made on 24 August and accepted on 27 August;

10. Mr Dodson had received a call from an Andy Liddell of the Banks Group around the relevant time;

11. Mr Dodson was asked for a reference during that call;

12. Mr Dodson knew about the grievance;

13. Mr Dodson knew about the settlement;

14. Mr Dodson was the subject of a further grievance by the claimant relating to the handling by him of her initial complaint;

15. We did not hear evidence from the respondent's HR director who was said to have carried out the investigation into whether there was a request for a reference.

Was it this respondent who subjected the claimant to that detriment?

68. We concluded therefore that the claimant had proved sufficient facts from which we could draw the inference that the job offer had been withdrawn by Banks specifically following the conversation with Mr Dodson.

69. We came to the conclusion therefore that the respondent had failed to prove that the claimant was not subjected to a detriment because of the protected act, that is that the treatment was nothing whatsoever to do with the victimisation.

70. The respondent's case essentially was that since there was no formal request for any written reference, and no written references supplied, then it could not be said that they had subjected the claimant to detriment. Beyond that of course they do not accept that what Mr Dodson was asked about could amount to a reference at all because of the way that he says that it was framed.

71. While we accepted Mr Gibson's submission that it was difficult for Mr Dodson to prove a negative, in circumstances such as this case, where we have concluded that the burden of proof has shifted, it is for the respondent to prove that the treatment received by the claimant had nothing whatsoever to do with discrimination, here victimisation, so that is precisely what is expected.

72. It is important to note that Mr Dodson admits that he did have a conversation with Mr Liddell but we did not accept Mr Dodson's evidence about the content of that discussion.

73. As noted above, we accepted the claimant's evidence that she had not previously "reacted badly" to something in the workplace apart from the incident with the respondent, and concluded that only the respondent would have known about that (given the terms of the COT3 but also because it would not have been in their interests to have discussed that more widely given the size of the sector).

74. We noted in particular the reference to an "expensive mistake". Again this is information which only the respondent would be likely or ought to have known and it accords with the fact that the claimant had entered into an agreement with them which had resulted in a financial settlement.

75. We therefore infer from primary facts found that it was Mr Dodson who supplied Mr Liddell with the information which they relied on to justify withdrawing the job offer.

Was the reason that the claimant was subjected to the detriment by this respondent because of the protected act?

76. We turned to consider whether the reason for the detriment was "because of" the protected act.

77. We had no hesitation in concluding, based on the facts found, that the reason for giving the claimant a negative reference was because she had previously made and settled a claim against the respondent under the Equality Act.

78. Mr Dobson claimed that he did not know about the grievance after he had referred it to HR. He denied that any aspect of the grievance related to him

when not only the claimant but also the respondent's other witness confirmed that it did. He also denied that he knew about the settlement which given that he is a senior manager and that the claim related to him, we found implausible. At the very least he would have known about it because he was the claimant's line manager.

79. We found his evidence about the content of the discussion with Mr Liddell to be implausible. We found that he was simply playing with semantics when he tried to suggest that what he was asked for was not, or did not equate to, a reference. We took account of the evidence of Mrs Murray that he had told her that he had been asked for a verbal reference.

80. We noted too that we did not hear evidence from Caroline Collins who was the HR director who had carried out the investigation into whether there had been any requests for references.

81. We noted Mr Dodson's evidence was that he was asked during the telephone conversation why the claimant left. He said that he could not comment on that. That of course is not accurate because all he needed do was to refer him to the written reference which included the reason for leaving. Even if he did not know about it, he knew that the respondent's policy was only to give "standard" references, and that standard references included the start date and the end date and the reason for leaving and little else. If it was not his job to give references, he should have referred him to Mrs Murray, whom he said he would normally refer such a request, and who said that she would normally expect to receive them.

82. We thus found that he was at the very least selective in his evidence about what he said during that conversation. Further, we found his e-mail to Ms Collins of 2 February 2022 to be cryptic and unforthcoming. As we did not hear evidence from Ms Collins there could be no elaboration about what she thought it meant.

83. We found it entirely implausible that a senior manager who was himself the subject of a grievance would not know anything about it and likewise given his involvement in the grievance. And not least given the fact that he was the

claimant's line manager, we found it entirely implausible that he would not have known about the settlement or even that he would never have seen the documentation until he saw it in the bundle for the hearing.

84. We noted too that the respondent relied on its policies but these were not lodged. We noted that all responsibility was laid at the door of HR and yet we did not hear from the head of HR who could have given evidence in support of their position.

85. We concluded that this evidence was designed to seek to show that there was no reason for him to bear ill will against the claimant because she had raised a claim against the respondent. We accepted Mr Maclean's submission that Mr Dodson had a motive or justification for providing a negative reference, which amounts to a detriment, and that the reason he did that was, at least, significantly influenced by the fact that she settled a claim against the respondent.

86. For all these reasons, we concluded that, the burden of proof having shifted, the respondent had failed to prove that the claimant was not subjected to a detriment because of the protected act. We find therefore that the claimant's claim under the Equality Act succeeds.

Remedy

87. We came therefore to consider remedy.

88. The claimant had lodged a schedule of loss. We heard evidence that the claimant would have earned £60,000 per annum had she got the job with Banks. We heard that she did not obtain new employment until January 2022.

89. Further and in any event, Mr Gibson confirmed that he took no issue with those figures, nor the period for loss of earnings.

90. We therefore find that the respondent is due to pay to the claimant the sum of £11,265.10 in respect of loss of earnings.

91. When it came to non-financial loss, the claimant sought £10,000 for injury to feelings. Mr Gibson argued that there was little or no evidence to support any

loss for injury to feelings. It should be said that this was a matter of concern to us.

92. We considered it to be within judicial knowledge that to have had a job snatched from under you in circumstances such as these would have a significant adverse impact on a job seeker.

93. We considered victimisation to be a particularly serious form of discrimination, and we considered it all the more egregious in circumstances where the claimant would have every right to assume that an agreement reached following judicial mediation and under the auspices of ACAS resulting in a COT3 settlement would be observed.

94. However, in this circumstances of this case we heard evidence from the claimant about the terms of the settlement which had been reached. We heard evidence from her that she had suffered ill health following the termination of her employment.

95. We noted that in the ET1 at para 23 that she averred that "as a result of the respondent's actions the claimant has had a relapse in relation to her mental health difficulties and has been prescribed medication and had to re-engage in counselling". No medical evidence however was lodged and indeed no direct oral evidence from the claimant regarding her relapse. We did hear evidence however that the claimant did not secure alternative employment until January 2022, so that clearly she was fit to return to work by then.

96. We were aware however of long standing decisions of the higher courts which indicate that where an individual suffers discrimination, it is self-evident that their feelings will be "hurt" (*Murray v Powertech Scotland Ltd* 1992 IRLR 257). We also bore in mind the decision of the Court of Appeal in the case of *Assoukou v Select Services Partners Ltd and others* [2006] EWCA Civ 1442. In that case, there was a reference to the claimant's reaction to being discriminated against in his originating application that he felt "angry and frustrated", but otherwise there was no evidence to support that. The Court of Appeal overturned the decision of the ET to make no award, but concluded

that there should be a modest award only because that was all that could be justified by the “sparce material”.

97. In the interests of transparency, although the Employment Judge mentioned a recent decision on this matter, she later ascertained that she had been thinking of a decision of another ET which was due to be heard the next day by the EAT.

98. In all the circumstances, we came to the view that the evidence heard could only support an award at the lower end of the Vento scale, and given the Presidential Guidance pertaining at the time, the mid range of that lower band is £5,000 and we award that sum.

99. We conclude therefore that the claim is well-founded and that the claimant is entitled to compensation totalling £16,265.10

Employment Judge: **M Robison**
Date of Judgment: **16 June 2022**
Entered in register: **17 June 2022**
and copied to parties