



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr I Munir  
**Respondent:** Shaw & Lisle Catering Ltd  
**Heard at:** Leeds      **On:** 15 June 2017  
**Before:** Employment Judge Davies  
**Representation**  
Claimant: In person  
Respondent: No attendance

## JUDGMENT

1. Pursuant to Rule 21 of the Employment Tribunal Rules of Procedure 2013 the Claimant's claims of discrimination on the grounds of race and religion or belief succeed.
2. The Respondent shall pay the Claimant **£6,062.50** in respect of lost wages prior to termination of his employment.
3. The Respondent shall pay the Claimant **£6,500** in respect of lost wages since termination of his employment and in future.
4. The Respondent shall pay the Claimant **£18,000** in respect of injury to feelings, which includes compensation for personal injury.
5. No award of aggravated or exemplary damages is made.
6. The Respondent shall pay the Claimant interest calculated in accordance with the Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations amounting to **£1,440** on the injury to feelings award and a further **£233.99<sup>1</sup>** on the lost wages to the hearing date.

## REASONS

### Introduction

1. The Claimant brought complaints of discrimination on the grounds of race and religion or belief. No response was entered by the Respondent, which is in voluntary liquidation. The Respondent did not attend today's hearing. I was satisfied that judgment under Rule 21 should be entered. The purpose of the hearing was therefore to determine the remedy payable to the Claimant. He is

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<sup>1</sup> **NB** As explained below, this figure is different from the figure I announced orally, which I had miscalculated.

seeking compensation for lost earnings, personal injury, injury to feelings and aggravated and exemplary damages. I have heard evidence from him, and seen a small number of documents, including a letter from his doctor.

### **Facts**

2. On the basis of the material before me I make the following findings. The Claimant was subjected to a course of discriminatory treatment over a period of two years, as set out in his claim form and clarified by him at a preliminary hearing on 3 May 2017 and recorded in my case management order of that date.
3. The Claimant went on sick leave on 9 November 2016. While he was still on sick leave the company went into voluntary liquidation and his employment was terminated, along with that of the other 90 to 100 employees, on 18 January 2017. The Claimant received appropriate payments from the redundancy payments office.
4. From January 2016 onwards the Claimant was off sick once or twice a month for one or two days on each occasion because of the discriminatory treatment he was facing. He was not paid at all for such absences. He was on long term sick leave from 9 November 2016 and received sick pay at the rate of £180.50 per fortnight. He said that his take home pay per fortnight was normally around £1,000 net. He did not bring wage slips but that figure was broadly consistent with a P60 he provided for the preceding tax year.
5. When the Claimant went off sick he was suffering from depression and anxiety. I have seen a letter from his GP dated 28 April 2017. The GP says that the Claimant has been suffering from depression and anxiety since September 2016. The Claimant told the doctor at the time that he was having problems at work with bullying and harassment and the doctor said that this had led to him suffering from low mood. He has been on antidepressant medication since then. It has been changed twice, most recently in April to Citalopram. I have seen the Claimant's sick notes. He has been signed off sick since November 2016, with the exception of one period when altered hours were recommended. He is currently signed off until the end of August 2017 with stress and anxiety. The Claimant told me that the recent change in medication has helped somewhat and that he has been referred for counselling. The doctor has not given any indication in his letter as to when the Claimant will make a recovery. The Claimant tells me that the doctor told him to see what happens with the medication and the counselling.
6. It is clear that the Claimant has been unwell and remains so. He described to me the real impact on him of the discriminatory treatment he faced. He used to be someone who went out socialising all the time but he has not been out socialising at all since last January. He does not cook or look after himself in the way that he used to and friends have been helping to look after him. He suffers from sleeplessness. He tried to look for work at the time when the doctor recommended altered hours but he was anxious about experiencing similar treatment in another workplace and ended up being signed off sick again. It is of course the case that he lost his job for an unrelated reason in January 2017 and he agreed that the loss of his job was now a contributing factor in his continuing mental ill health but he said that the discrimination he faced was still a significant part of it.

### **The law**

7. An award of compensation in a discrimination case is designed to put the individual so far as possible in the position he or she would have been in but for the

discrimination. Awards for injury to feelings are compensatory, not punitive. The aim is to compensate the Claimant fully for the proven, unlawful discrimination for which the Respondent is liable. The crucial consideration is the effect of the unlawful discrimination on the Claimant. The Tribunal will have regard to the well-established bands of compensation for injury to feelings: see *Vento v Chief Constable of West Yorkshire Police (No 2)* [2003] IRLR 102, as upgraded in the case of *Da'Bell v NSPCC* [2010] IRLR 19. Although the case law is not yet settled, the prevailing view appears to be that the Tribunal must also take into account the more recent decision of the Court of Appeal in *Simmons v Castle* [2012] EWCA CIV 1039, which indicates that those bands should be updated by a further 10%.

8. The Tribunal also has the power to award compensation for personal injury, both physical and psychiatric, in addition to any award for injury to feelings. The award is based on the statutory tort of discrimination and the Respondent is liable for injury caused directly by the discrimination. If the injury is caused by multiple factors, the Respondent is only liable if its contribution has been material, and to the extent of its contribution: see e.g. *Thaine v LSE* [2010] EAT 0144. The Tribunal must take care not to double count, e.g. where there is psychiatric injury and injury to feelings.
9. The Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803 apply. They set out the basis on which interest in discrimination cases is calculated. There is a different approach for interest on an award of injury to feelings and an award to compensate for financial loss.
10. Awards of aggravated damages can be made where the Respondent has behaved in a "high-handed, malicious, insulting or oppressive manner", but it is important to remember that they are to compensate for additional injury to feelings caused by the aggravating features. They are not to punish the Respondent. Awards of exemplary damages, on the other hand, are aimed at punishing the wrongdoer. They are only available in specific circumstances: where there has been oppressive, arbitrary or unconstitutional conduct by servants of Government; where a Respondent's conduct is designed to be self-profiting; and where specifically authorised by statute.

### **Application in the Claimant's case**

11. I deal with the sums claimed by the Claimant in turn. Starting with his loss of wages to the date of termination of his employment I find on the evidence before me that the Claimant's sick absence was caused by the discriminatory treatment at work. The wages he lost as a result are a compensatable loss. He could not give me a detailed account of his absence between January and November 2016. Doing the best I can on the basis of one or two absences per month of one or two days each I find that he was absent for a total of 28 days in that period. He was not paid at all for those 28 days. Based on a net fortnightly wage of £1000, that amounts to a loss of £2,000. Between 9 November 2016 and 18 January 2017 is a period of 10 weeks. He is entitled to compensation for the difference between the wages he would have earned, £5,000, and the sick pay he in fact received at a rate of £187.50 per fortnight. The difference is £4,062.50. The total lost wages until the termination of his employment is therefore £6,062.50.
12. The next item is lost wages since the Claimant's dismissal. In this case the situation is a bit complicated because the Claimant's dismissal was not related to his discriminatory treatment. From the date of his dismissal there was a period when he did not earn any wages, but that was not because of his ill health arising

from discrimination, it was because of the sudden termination of his employment by reason of redundancy. I note that he received a redundancy payment and appropriate payments from the redundancy payments office. I have allowed a period of six weeks during which he would not have been earning money in employment in any event. That takes me to the end of February. At that stage, the Claimant was too ill to look for work and the illness that prevented him from looking for work was caused in part by the discriminatory treatment he had faced. The medical evidence does not deal with the impact of the Claimant's dismissal, and I only have the evidence from the Claimant about the causes of his ill health. Doing the best I can, I find that 50% of his illness at this stage resulted from his discriminatory treatment the previous year and 50% from the loss of his job.

13. There is no clear evidence from the doctor about when the Claimant is likely fully to recover. He has been signed off until the end of August but he is on new medication and has been referred for counselling. There is no evidence before me of any previous lengthy episode of depressive illness and since January he has no longer been subjected to the discriminatory treatment from which he suffered previously. All those factors point to him making a good recovery in a reasonably short timescale and I have approached this on the basis that he will be well enough to seek work by the end of August 2017, when his current sick note expires. Any compensation for future loss of wages comes to an end then, because he will then be in the position that he would have been in when he lost his job if he had not been unwell as a result of discrimination. From the end of February to the end of August is a period of six months. Of that six month period, fifteen weeks cover the period from the end of February to today's hearing date, the remainder relates to future loss. The total loss of wages for six months based on £1000 per fortnight is £13,000. However, because I have found that by this stage there were two equal causes of his illness, the Claimant can only recover 50% of that loss as being the loss caused by the discriminatory treatment. That is where the figure of £6,500 comes from. Of that, 15/26 relates to losses up to the hearing date, i.e. £3750.
14. Next I deal with injury to feelings and personal injury. The legal cases make clear that Tribunals must avoid "double recovery" in these kind of claims. What that means is that there may be an overlap between injury to feelings and personal injury in the form of a depressive illness. One way to approach it is to award one sum of compensation for injury to feelings, but to make sure that that figure includes compensation for the psychiatric injury suffered by the Claimant. I have adopted that approach. I have referred to the well-established guidelines in *Vento* and to the uprating of those figures. In his schedule of loss the Claimant is seeking an award in the middle band of *Vento* between £8,500 and £11,500. As I have indicated the medical evidence in this case is fairly scant but I have referred above to the Claimant's own account of the impact of these events on him. I have also taken into account the Judicial College guidelines on damages for psychiatric injury. I find that the injury suffered by the Claimant would fall within the category of moderate psychiatric injury applying those guidelines. The sums for that category range from £4,900 to £15,950. The Claimant is asking for an award between £7,500 and £11,000. I note that, although the discriminatory treatment over the course of two years was originally the sole cause of that injury, since January of this year the Claimant's dismissal has been a contributing factor.
15. Taking all those factors into account, and aiming to compensate the Claimant for both the injury to feelings and the psychiatric injury caused by the discriminatory treatment, I find that this case falls either at the top of the middle band or the

bottom of the top band of *Vento* as updated. The basis on which this case proceeds is the description of the discriminatory treatment provided by the Claimant to which I have already referred. That was a fairly lengthy period during which the Claimant was subjected to seriously abusive language relating to his race and religion. It had a serious impact on him from January last year and led to him being off work with depression from November. That depressive illness has continued, in part because of the discrimination, and will continue until August 2017. Those are factors that apply to the question of personal injury as well as injury to feelings. Taking into account all of those matters and the need to avoid compensating the Claimant twice for the same injury I find that the appropriate total figure for injury to feelings and personal injury is £18,000.

16. Interest has been calculated in accordance with the Regulations. For injury to feelings, interest has to be calculated from the date of discrimination. For financial compensation it has to be calculated from the mid-point between the discrimination and the calculation date. It is difficult to identify precise dates where there is a course of conduct over a period and especially in a case like this where there are simply general descriptions of the behaviour during that period. The most appropriate approach in my view as far as injury to feelings is concerned is to take as the date from which interest runs June 2016. Some of the discriminatory treatment occurred before that and some after that, so that the award of interest will, to some extent, balance out. I have therefore allowed 12 months of interest at the statutory rate of 8%. That is where the figure of £1,440 comes from.
17. For financial losses, the majority of the Claimant's loss arises since 9 November 2016 and I have therefore taken the mid-point from then to today's date. That is 31 weeks in total, giving a mid-point of 15 ½ weeks. (**NB** This is slightly different from the figure I gave at the oral hearing, which I miscalculated). That applies to the financial loss to today's date, i.e. £6062.50 plus £3750 = £9812.50. Interest for 15.5 weeks at a rate of 8% on that sum gives rise to a figure of £233.99.
18. The last two matters are aggravated and exemplary damages. Aggravated damages are compensation for injured feelings. They are awarded where a person's injured feelings are aggravated by high handed treatment on the part of the employer. In his evidence to me the Claimant did not identify any additional injury to his feelings that is not covered in the sum of £18,000 I have already awarded. That sum aims to compensate him in full for his injured feelings and personal injury. Exemplary damages are different. They are designed to punish the wrongdoer. However, they are very unusual and the law lays down clear categories when they can be awarded. None of those categories applies in this case.

**Employment Judge Davies**

**Date: 21 June 2017**