



EMPLOYMENT TRIBUNALS

Claimants: 1. Mr D Kocur
2. Ms C Roberts

Respondents: 1. Angard Staffing Solutions Limited
2. Royal Mail Group Limited

HELD AT: Leeds **ON:** 3 January 2018

BEFORE: Employment Judge D N Jones
Mr R Grasby
Mr G Corbett

REPRESENTATION:

Claimants: Mr D Kocur, first claimant
Respondents: Mr McArdle, legal executive

JUDGMENT ON REMEDY

The unanimous judgment of the Tribunal is that:

1. The first respondent shall pay compensation to each claimant of £8,400 and interest thereon of £827, being 8% from 10 October 2016 to 3 January 2018 in respect of injury to their feelings, arising from the breach of regulation 17 of the Agency Worker Regulations 2010.

2. The Tribunal determines that, in addition to those provided, the written particulars of employment between the first respondent and the claimants ought to read as follows.

2.1 Paragraph 4.1 should be substituted and amended to state:

“4.1 You will only be entitled to be paid under this contract in respect of any period during which you are working on an engagement. The hourly rate of pay for each engagement will be specified in writing as part of the engagement confirmation.”

2.2 In paragraph 7.1 the 28 day period shall be substituted with 30.5 days.

2.3 Paragraph 7.3 will be substituted, in its entirety, as follows:

“2.5 days of the 30.5 days will be paid in an element of your hourly rate. The balance of 28 days will be calculated by the application of a percentage of past earnings of 12.07% in that holiday year which is converted to an hourly rate which will be paid when you take holiday.”

2.4 Paragraph 24 shall be substituted as follows:

“The collective agreements which directly affect your terms and conditions of employment are available from documents which will be supplied to you on request from the personnel unit.”

REASONS

1. The Tribunal reconvened to consider the remaining two issues in this case. In respect of written particulars, which should have been contained in the contracts of employment, these require no further elaboration. The determination which we have set out is explained in our earlier reasons.

2. In respect of injury to feelings, both claimants have submitted witness statements to explain the impact that the detrimental treatment had upon them insofar as it related to being denied opportunities for work as a consequence of their involvement in the earlier litigation.

3. In summary, the first claimant became depressed, argumentative and angry as a consequence of his belief that he had been given few opportunities to work for the second respondent because of the earlier litigation he had brought. During the relevant period with which we are concerned, from 24 July 2016 to 10 October 2016, he had a difficult financial situation attributable to the reduction in work and found there were more frequent arguments between himself and his partner, the second claimant. His position is summarised in his statement which was not disputed. After the first hearing he and his partner were prepared to forget the past and hope that a new chapter would be opened up with more hours of work available. It quickly became apparent that that was not the case, leading him to bringing another claim. He suffered constant worry and pressure, was very often on the edge, with negative emotions of anger and fear and in a combative, aggressive mood, the victim of which, he says, was his partner, Ms Roberts, with whom he had heated arguments resulting in shouting matches and regrettable use of abusive language.

4. Ms Roberts also describes the history as it affected her. She had sent some emails chasing up why there had not been work. She complains of having been given untruthful explanations for why they were not being given shifts during the material period, namely that there was little demand for night shifts on the part of the second respondent. She too describes how she had suffered emotional stress as a consequence. She felt shocked by the deception and loss of trust; had regular

symptoms of anxiety; was tense and afraid of what might happen next, such as in respect of future work opportunities or her relationship.

5. We have had regard to the Presidential Guidance relating to injury to feelings in discrimination cases, and although this is not a discrimination case as such we are satisfied that those set out the appropriate parameters for awards under the Agency Workers Regulations 2010. Both parties agreed.

6. Mr McArdle argued that the case fell within the lowest bracket which is now between £800 and £8,400 for less serious cases. Ms Roberts suggested the appropriate band was the middle one of £8,400 to £25,200.

7. This case fell at the bottom of the middle bracket, in respect of each claimant. It was not in the lowest bracket because it was not a one-off event or circumstance of short but less serious instances. In this case the period concerned was 12 weeks, a significant period, during which both claimants were understandably affected by the victimisation for their involvement in agency worker litigation. We had considered whether there was any significant difference between the effect of the unlawful conduct on each claimant to warrant different awards, although neither party had suggested such an approach. We concluded the impact was generally similar and an award of £8,400 for each claimant was appropriate. These events occurred a year before the Presidential Guidance came into effect, so is above the floor of the middle bracket, having regard to a modest inflationary increase in that period. We apply interest which is at the rate of 8% from the date of the unlawful conduct to the date of this judgment.

Employment Judge D N Jones

Date: 8 January 2018