

QB-2017-000928

QB-2017-000932

QB-2019-001562

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

[2021] EWHC 1140 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Before:

MASTER DAVISON

Between :

LASLO BALOGH AND OTHERS

Claimants

- and -

HICK LANE BEDDING LTD

Defendant

Mr James Robottom (instructed by **Anti Trafficking and Labour Exploitation Unit**) for the Claimants

No appearance for the Defendant

Hearing date: 9 March 2021

Approved Judgment

MASTER DAVISON:

Introduction

1. This is my judgment on the assessment of damages in these three cases, which were ordered to be case managed and tried together. They are all egregious examples of modern slavery.

2. The melancholy story has been told in two previous court decisions. The first is *R v Mohammed Rafiq* [2016] EWCA Crim 1368, an Attorney General's reference and a cross-appeal relating to the sentence given to Mr Rafiq, for his part in the events which I will come to describe. The second is my own decision in *Komives v Hick Lane Bedding and Am Trust Europe* [2020] EWHC 3288 (QB). That decision concerned the validity of Am Trust's repudiation of a policy of employer's liability insurance covering the defendant's liability to the two claimants in that case.

3. These claimants, as with the claimants in *Komives*, are Hungarian nationals. They were trafficked into this country in 2012 and 2013, having been recruited by a man called Janos Orsos, known as Kacsá, (pronounced "Kotcha"), or by persons connected or associated with him. In each of case, the claimant was put to work in the defendant's factory premises in West Yorkshire. Mr Rafiq was the managing director and the majority shareholder of the defendant, which traded under the name "Kozeesleep" and which manufactured bed frames and mattresses.

4. The offence of which Mr Rafiq was convicted was conspiring with Orsos and another person, Ferenc Illes, to arrange or facilitate travel within the UK for exploitation, contrary to section 1(1) of the Criminal Law Act 1977.

5. These civil claims are framed against the defendant in terms of the duties which the defendant owed to the claimants as employer, principally: that they failed to pay them their wages, that they failed to provide them with a safe place and system of work, and that they intimidated, harassed and exploited them.

6. I have been careful to assess the damages strictly on the basis of these employer's liability duties. This is because the defendant's insurers in the relevant periods are insolvent and it is the claimant's intention to seek compensation through the Financial Services Compensation Scheme, which will be limited to such claims as the employer's liability insurers would have been liable to meet.

7. The claimants' treatment at the hands of the defendant is described in the judgment of the Court of Appeal in the Rafiq case, from which I now quote. I start at paragraph 7 of the judgment.

"Orsos had approached Mr Rafiq, offering to supply cheap labour. The company would pay Orsos £3 per hour for each Hungarian worker supplied. This case relates to five Hungarian victims, although evidence was adduced by way of background in relation to three other individuals. All of those men were under the direction of Orsos.

The five victims were Hungarian nationals who had been deceived and enticed by false representations made by Orsos, leading them to travel to this country after false representations regarding pay and conditions at work had been made to them. This offender had no part in the making of those representations. The Hungarians were unaware that the UK minimum wage at the relevant time was about £6 per hour. The evidence showed that, at the very least, the Hungarian workers were not paid that minimum wage. Some of them said that if they had been paid as little as £3 per hour, they would have considered that to be a good wage. As events transpired, they did not receive even that meagre figure.

The workers were made to work long hours, ranging between 10 and 18 hours per day, and five to seven days a week. The evidence showed that, at the relevant time, many Hungarian nationals were desperate for work in this country because of the dire economic situation in Hungary. Once in the UK, the Hungarian workers faced a very different reality from that promised by Orsos. They found themselves living in very overcrowded, often squalid, accommodation. They did not receive the wages that had been promised to them, which were a little less than £3 per hour. The wages they had earned were not given to them, but were collected and retained by Orsos and/or Illes, who, in turn, would hand on minimal amounts to the worker. For most of the time they worked, the Hungarians would receive about £10 per week, with each household in which they lived being given an additional £20 to £30 per day per household for food.

There was evidence that, over a two-year period, Orsos had transferred almost £60,000 overseas. The Crown's case was that this was just a percentage of the monies he obtained. Matters came to an end in around November 2013 with the arrests of Orsos and Illes. At that point, the police began to investigate the businesses that had employed the trafficked Hungarian nationals. It appears that, by 2011, this offender's business was in serious financial trouble. Although it had good contracts with well-known reputable retailers, its profit margin was extremely low. This financial situation appears to have been the motivation for this offender's involvement.

All payments to Orsos, both in respect of his commission and the wages of the workers, were paid in cash with no invoices issued. These transactions were wholly off the books of Kozesleep, so that, in addition, no tax or national insurance was paid. There had been, from time to time, ethical audits conducted by the retail customers of Kozesleep, but they failed to detect these abuses, in the absence of paperwork. The initial approach had been made to this offender by Orsos and this offender had accepted the arrangement proposed: he contacted Orsos when he required extra staff. There was evidence from more than one victim that, when complaint was made about not receiving wages, these complaints were brushed aside".

8. The paragraphs from the judgment of the Court of Appeal that I have quoted provide a general description of the experience that each of the claimants endured, but, of course, each had his individual account and each was affected in his own way. I will confine my description to the essentials.

Laslo Balogh

9. I will start with Mr Laslo Balogh. Mr Balogh is 42. His period of employment with the defendant was 14 days, from 18 November 2013 to 2 December 2013. He was housed in squalid and overcrowded conditions and, after two days, he was put to work in the loading area of the factory and, later, on the machines inserting springs into the mattresses. He was given no training or safety instructions or equipment. He worked very long hours. He was paid £10 per week plus two packets of tobacco. He, in common with the other Hungarian workers, formed part of a kind of “underclass”, the members of which were treated with a total lack of respect and consideration amounting to cruelty. But he was, at least initially, too scared and intimidated to do other than comply. In a telling passage of his evidence, he said this:

“I was also in a state of fear. You would have to live in it to really understand how it felt. I was so angry and upset, but scared about what could happen to me. We would hear stories about workers ‘disappearing’ or that others had been burnt to death in a car. I was scared something would happen and I would not make it back to Hungary alive. I heard a lot of talk at the factory about Josef, Linda and their relative, Kacsá (Janos Orsos). Generally, everyone was scared about what would happen if the boss reported to Josef or Kacsá that we were complaining about the way we were treated or that we were not being paid properly.”

10. He eventually left his accommodation and, after a period of sleeping rough, found help via a local church and a charity, who put him in touch with the police.

Tibor Benedek

11. Mr Benedek is 55. His period of employment was 67 days, from 20 July 2013 to 25 September 2013. He had three children of school age in Hungary to support. The accommodation he was provided with was shared with 13 other people, all or most of whom were being similarly exploited. His room at the accommodation was shared with four others. Like Mr Balogh, he was put to work in the loading bay and treated with the same contempt for even the most basic standards to be expected of an employment relationship. That Mr Benedek put up with it for longer than Mr Balogh or Mr Novodomszki is probably a reflection of his more onerous family responsibilities.

12. This is what he said in his witness statement as to his state of mind:

“The situation was unbearable. There was an atmosphere of fear and mistrust. It was the same in the house and at the factory. We were terrorised when we were in the house and at the factory. At the factory, even if I felt like I couldn’t move and couldn’t face having to haul another mattress onto the lorry, I knew I had to do it anyway. I knew that if I refused and it got back to the bosses, I would be reported to Kacsá. At times, I felt so helpless that there was just no respite from living under a feeling of threat and fear. I could see the fear in other people’s faces. When one of the others said that they had found someone who would help us to leave, I was worried, but I thought that my situation could not get much worse.”

13. He escaped with the assistance of the same charity which had helped Mr Balogh.

Norbert Novodomszki

14. Mr Novodomszki is aged 46. His period of employment was for around three weeks, between December 2012 and January 2013. He is unable to be precise about the dates. Unlike Mr Balogh and Mr Benedek, he was recruited to work for the defendant having first been trafficked into the United Kingdom to work at a warehouse in Sheffield, where he was mistreated. He was introduced to Orsos on the promise of better employment. But he was accommodated similarly to the others and subjected to the same degrading work and working conditions. I quote from paragraph 25 of his statement:

“I thought that this new role would mean that I would be paid properly, but this was not the case. It was worse than the last job I had had. This time I only received £10 per week. We would receive money at the end of the week, either from Kacska or one of his associates. I was really angry when I realised I was only getting £10 per week, but I did not know what to do. There was a real sense of danger around Kacska at the bed factory. I was warned that if Kacska became angry with me then he would take steps to punish me and I heard stories about people being beaten or sacked and thrown onto the streets all the time.”

15. He escaped at a time when Orsos was travelling to Hungary. He endured a period of homelessness before he was picked up and assisted by a charity.

The assessment of damages

16. Judgment in default has been entered in favour of each claimant and they are entitled to have damages assessed in accordance with those judgments.

17. I will deal, first, with their claims for general damages. Each claimant is entitled to general damages under the following heads:

i) Because they were subjected to the intentional torts of intimidation and harassment, which deprived them of their personal autonomy in circumstances closely akin to false imprisonment, they are entitled to an award of damages reflecting those circumstances.

ii) They are entitled to awards for pain, suffering and loss of amenity, consequent on their psychiatric injuries.

iii) They are entitled to an award for what I might call “sub-clinical” distress, anxiety and injury to feelings. That falls to be assessed by reference to the well-known *Vento* guidelines. The guidelines stipulate three bands. Suitably updated for inflation, the bands are as follows.

Interposing the up-to-date figures, I quote from paragraph 65 of the judgment of the Court of Appeal, which is reported at [2003] ICR 318:

- “(i) The top band should normally be between £27,000 and £45,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £45,000.
- (ii) The middle band of between £9,000 and £27,000 should be used for serious cases which do not merit an award in the highest band.
- (iii) Awards of between £900 and £9,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence”.

iv) The claimants are, lastly, entitled to an award of exemplary damages, reflecting the fact that the defendant cynically exploited them in order to make a profit, thus falling into the second category of exemplary damages set out by Lord Devlin in *Rookes v Barnard* [1964] AC 1129.

18. For the avoidance of doubt, I do not regard an award of aggravated damages as appropriate because such an award could only be made in order to compensate the claimants for the affront to their feelings and their dignity caused by the defendant’s highhanded and oppressive conduct. But that injury is already reflected in the award made under the *Vento* guidelines and to award anything further would, therefore, involve double counting.

19. A separate question is whether general damages should consist of distinct awards for each of the heads I have identified, or a single rolled-up (or “global”) award. Treacy J, in the case of *AT v Dulghieru* [2009] EWHC 225 (QB), rolled up awards (i) and (ii), but, following some observations made by Janet Smith LJ in *Choudhary v Martins* [2008] 1 WLR 617, he made a separate award for injury to feelings. In the circumstances of these cases, I have concluded that to make separate awards would involve very substantial overlap and, therefore, double recovery. For each claimant, this was a single, lived experience, albeit that it has impacted upon them in a variety of ways. I propose to identify, for each claimant, the relevant bracket for each head of loss and then make a single award, leaving out only exemplary damages, which I will assess separately.

20. In addition to general damages, the claimants are entitled to claim financial losses, comprised of: (i) the wages they earned and were entitled to receive but did not receive at Kozeesleep; (ii) past loss of earnings caused by psychiatric injury; (iii) future loss of earnings attributable to psychiatric injury; and (iv) the costs of medical treatment.

21. I turn, then, to the awards that I propose to make for each claimant.

Laslo Balogh – award

22. I have read a report from Dr Alan Jones, dated 15 March 2017, and an updating report from Dr Mala Singh, dated 7 September 2020.

23. When Mr Balogh saw Dr Jones, he was suffering from complex PTSD, caused by his experiences at the hands of the defendant. An alternative diagnosis was adjustment disorder with depression and anxiety. This was in the “severe” range of DSM-IV, though his presenting symptoms were in the “moderate” range. He stood in need of at least 12 sessions of CBT. The prognosis then was for improvement over an 18-month to two-year period, and a period of two to three years to recover his working capacity.

24. When he saw Dr Singh, he was suffering from PTSD within the diagnostic criteria of DSM-V, and he had also developed paranoid schizophrenia. The worsening of his condition meant he required more intensive treatment from a clinical psychologist over a period of two years. He had had two hospital admissions, was taking antidepressant medicines, and was under the care of the community mental health team. Dr Singh does not give a specific prognosis, but it appears from the report of Dr Jones that the most optimistic prognosis would be a return to a reasonably normal level of functioning within about two and a half years.

25. With specific reference to damages for injury to feelings, I have already quoted from Mr Balogh’s witness statement, but the following passages from his police interview are emblematic of the experience that he and his fellow claimants went through:

“You see, to be honest with you, I would have preferred to be - you see, I would have preferred if they have done something to me physically because if something is physical, it heals, and it goes quicker, but because this torture, you know, the way we were treated, it was psychological and emotional. That stays with you forever.”

A little later, he said this:

“I also must say that this whole situation, emotionally and psychologically, must have affected me because, and this was, to me, the last straw, because after a while I didn’t dare to stand up for my rights. I just pulled myself back. I didn’t dare to protest anymore. You see, we were starving and I am very ashamed for what I’ve done, but I had no choice. I went to Asda and I was stealing food.”

26. Mr Balogh was able to work in sheltered employment for a short period, doing gardening work through the Jericho Centre, a social enterprise. He earned around £5,988 in all. Otherwise, he has not worked. He appears entitled to his loss of earnings to date and for two and a half years into the future.

27. Mr Balogh falls into the “moderately severe” bracket of the Guidelines for post-traumatic stress disorder and/or a general psychological damage. Those brackets are respectively £21,730 to £56,180 and £17,900 to £51,460. His symptoms are not sufficiently disabling and the prognosis is not

sufficiently bleak to place him into the “severe” bracket, which is the next bracket up. But he does have two separate conditions and, therefore, he falls above the midpoint of the “moderately severe” bracket.

28. Additionally, he suffered the loss of his personal autonomy and the impact on his liberty and freedom of action, which were the result of the intentional torts. This was akin to a period of false imprisonment. The duration, in Mr Balogh’s case, was 14 days. The most influential case in this area is *Lunt v Liverpool City Justices* (unreported) (1991), where a man of good reputation was unjustifiably imprisoned for a period of 42 days and received £25,000, the present value of which would be about double that figure.

29. For injury to feelings, Mr Balogh would fall into the middle *Vento* guideline. The duration of the tortious behaviour was not such as to place him into the top band, which is reserved for a “lengthy campaign of discriminatory harassment”.

30. An appropriate global award, reflecting these three heads, is, in my judgement, £60,000.

31. The conduct of the defendant merits an award of exemplary damages of £5,000 per claimant. This must be added to the total, making a grand total of general damages, in Mr Balogh’s, case, of £65,000. (I mention that I would have made a higher award for exemplary damages, but the relevant conduct for which the defendant is vicariously liable has already been met with a prison sentence and the company is insolvent. It seems to me to be relevant to take both those things into account.)

32. Mr Balogh’s financial losses, and those of the other claimants, have been calculated on the basis of the median pay for elementary process plant occupations, which is £23,830 gross, or £19,846 net. The claimants’ lost earnings at the time they were actually working at Kozeesleep has been calculated on the basis of the prevailing national minimum wage. I think that both those approaches are fair. In Mr Balogh’s case that produces awards as follows. For his lost earnings, whilst he was at Kozeesleep, I award £1,679; for his past loss of earnings, I award £136,243; and for his future loss of earnings, which will extend two and a half years into the future, I award £51,798.

33. In addition, I award him the costs of the medical treatment that he stands in need of. That cost is £8,400.

Tibor Benedek – award

34. I have read reports, in his case, from Dr Jones dated 22 December 2016, and Dr Singh, dated 23 September 2020. The diagnosis and prognosis for Mr Benedek was much the same as for Mr Balogh. Mr Benedek was suffering from PTSD in the severe range, with an alternative diagnosis of adjustment disorder with depression and anxiety. He was under the care of his GP and was on antidepressant medication. He stood in need of a course of 12 sessions of cognitive behavioural

therapy, or similar, and the prognosis then was for a substantial resolution of symptoms within 18 months.

35. Unlike Mr Balogh, Mr Benedek had carried out further work in a commercial environment, both in the UK, for 21 months, and in Hungary, for 9 months, when he had briefly returned there. Due, no doubt, to funding difficulties, Mr Benedek did not undertake the CBT that had been recommended by Dr Jones. He also had a poor response to antidepressants and, by the time he saw Dr Singh, he was no better. His PTSD was still seriously disabling, he was unable to seek work and he was still troubled by intrusive thoughts. He required CBT over a period of a year, and he required the ongoing supervision and assessment of the community mental health services.

36. A prognosis was not given by Dr Singh, but I infer that it remains broadly the same as that given by Dr Jones, namely a return to a reasonable level of functioning and employability within a period of about 18 months. I place him in the same bracket of the guidelines as Mr Balogh, but at a lower point in that range due to Mr Benedek's lower impairment to his working capacity and slightly better prognosis, and due, also, to the fact that he does not have the co-morbidity of a psychotic condition.

37. In Mr Benedek's case, the conditions of modern slavery endured for two months. I regard the analogy with false imprisonment to extend to and embrace the principle that the impact of the passage of time should be placed on a tapering or reducing scale: see the case of *MK (Algeria) v Secretary of State for the Home Department* [2010] EWCA Civ 980.

38. For his injury to feelings, Mr Benedek would fall towards the top of the middle band of *Vento*.

39. An appropriate global award of general damages in Mr Benedek's case, reflecting the much longer period of modern slavery, but taking into account the fact that the main impact of that would be felt in the early part of the relevant period, would be £65,000. In addition, Mr Benedek is entitled to an award of exemplary damages in the sum of £5,000. The grand total of general damages, in his case, is £70,000.

40. The approach to Mr Benedek's loss of earnings has been to give credit for his periods of employment since his ordeal at the same rate as that claimed. This is because he has been unable to produce wages records for these periods. I am satisfied that the partial loss of earnings he has suffered is attributable to the psychiatric injuries and that he will suffer a further 18 months or so of lost earnings.

41. Turning, then, to the quantification of those losses. For his lost earnings whilst at Kozeesleep, I award £9,160; for his past loss of earnings, and taking into account the earnings which I have mentioned, both in this country and in Hungary, I award £107,208; and for 18 months future loss of earnings, taking into account the present discount rate, I award the sum of £29,881.

42. For his treatment costs, I award £1,980.

Norbert Novodomszki – award

43. I have read reports from Dr Chiadu Obuayo, dated 30 November 2017, and Dr Singh, dated 24 September 2020. Mr Novodomszki has been diagnosed as suffering from a mixed anxiety and depressive disorder, attributable to his experiences of modern slavery. Dr Obuayo's view was that the prognosis was good, especially if he underwent a brief course of cognitive behavioural therapy.

44. When he saw Dr Singh, which was nearly three years later, he was continuing to suffer from mixed anxiety and depression, and at that time he met the criteria for a diagnosis of mild post-traumatic stress disorder. His condition had become chronic, but with treatment Dr Singh expected an improvement over a period of two years. She suggested a phased return to work.

45. Although Mr Novodomszki's psychiatric injury is not as bad as those of his fellow claimants, because of the persistence of his symptoms and the relatively cautious prognosis he does not fall into the "less severe" bracket of either the PTSD or the general psychiatric damage sections of the Guidelines. He is, in my view, in the "moderate" category, for which the brackets are respectively £7,680 to £21,730, and £5,500 to £17,900. His period of modern slavery was around 21 days, meriting an award somewhere between that to Mr Balogh and that to Mr Benedek. Finally, he, too, falls into the middle *Vento* bracket.

46. An appropriate global award in his case would be £50,000, to which I add £5,000 for exemplary damages, making a grand total of general damages of £55,000.

47. For his lost earnings at Kozeesleep, I award the sum of £2,324. For his past loss of earnings, I award the sum of £142,231. As for future loss of earnings, I have carefully considered Dr Singh's report, especially the wording of paragraph 14.60. Her suggestion is of a phased return to work over a period of six months, increasing, thereafter, to full-time working. That does not support a future loss of earnings claim of two and a half years, which is what is set out in the schedule of loss and in Mr Robotom's very helpful table at page 2 of his skeleton argument. Taken in conjunction with the general prognosis, I will award future loss of earnings extending to 12 months and that comes to £19,846.

48. Finally, in his case, I award the costs of medical treatment, which are £3,325.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.