



EMPLOYMENT TRIBUNALS

Claimant: Mr D de Leon

Respondents: (1) London Underground Limited
(2) Ms Sonja Hedgecock
(3) Mr B Siequien

Heard at: East London Hearing Centre

On: 26 April 2017

Before: Employment Judge Russell
Members: Mr T Brown
Ms K Labinjo

Representation

Claimant: In person

Respondents: (1) Ms R Thomas (Counsel)
(3) Mr M Curtis (Counsel)

REMEDY JUDGMENT

It is the unanimous judgment of the Employment Tribunal that:-

1. The First Respondent shall pay to the Claimant the sum of £3,000 in respect of injury to feelings.
2. The First Respondent shall pay to the Claimant the sum of £441.21 interest (calculated at 8%pa from 24 June 2015).
3. The First Respondent shall reimburse the Claimant £400 in respect of one-third of his issue and hearing fees.

REASONS

1. This is a Remedy Hearing to determine compensation payable to the Claimant following a Judgment sent to the parties on 9 January 2017, the Claimant's claim of harassment related to race succeeded against the First and Third Respondents in respect of a swastika tattoo. Claims of harassment in respect of the rejection of the Claimant's grievance and/or the rejection of his grievance appeal were dismissed.

Today, we had regard to our Reasons in support of that liability Judgment as set out in our summary at paragraph 32 and more broadly as follows:

- 1.1 The Claimant became aware of the existence of the tattoo through comments from colleagues. He had seen the tattoo for himself and was aware that it was a Nazi symbol a couple of months prior to June 2015 (paragraphs 8 and 25).
- 1.2 The Claimant approached the Mr Siequien and questioned the tattoo because he was concerned that he was being treated unfavourably by Mr Siequien and thought that the Nazi symbol could be the reason (paragraphs 12 and 25).
- 1.3 The Claimant was prone to flamboyant language but this reflected the degree which he had become upset. His desired outcome from the grievance was that the tattoo be covered by trousers (paragraph 14).
- 1.4 The Claimant had a tendency to passionate and emotive language, but his complaint was not vindictive or for ulterior purpose (paragraph 25).
- 1.5 The tattoo was not intended to have the proscribed effect. As soon as aware of the offence caused, Mr Siequien voluntarily inked out the part of the tattoo which he understood to be the problem (paragraph 26).
- 1.6 The conduct had the prescribed effect. Although the tattoo had been present for a number of years, the Claimant had only had particular regard to it in recent weeks in the context of his concern (paragraph 28).
- 1.7 The Claimant challenged Mr Siequien on 24 June 2015 as he was offended by the tattoo on that date (paragraph 32).
- 1.8 Sometime between 24 June 2015 and 18 July 2015, the swastika part the tattoo was inked in so as to render it no longer visible. The remainder of the tattoo remained present thereafter. The tattoo continued to be offensive to the Claimant, although we accepted that he no longer works with Mr Siequien (paragraph 33).
- 1.9 The Final Remarks at paragraph 40.

2. We heard evidence from the Claimant who was cross-examined by both Counsel. Despite a requirement to exchange witness statements relevant to remedy by 20 February 2017, the Claimant did not attend today with a witness statement. He relied upon his Schedule of Loss prepared in advance of the liability hearing and an undated letter to the Respondent, sent after the liability Judgment; we admitted both as his evidence in support of remedy. The Claimant also wished to refer to some notes in evidence. Despite his failure to comply with the direction for witness statements, we permitted him to do so as we considered it proportionate and just in the circumstances, not least as he is not legally represented.

3. The Claimant confirmed at the outset of the hearing that he sought only compensation for injury to feelings, with no claim for financial loss. Neither party sought any recommendation.

Findings of Fact

4. Since the Judgment was sent to the parties, Mr Siequien has covered the tattoo by wearing trousers on all occasions when at work. Through Counsel, he assured the Tribunal of his intention of continuing to do so henceforth.

5. We accept the Claimant's evidence that he has been distressed by what he continues to consider to be improper treatment at the hands of the First Respondent. The stress suffered as a result of what he describes as improper treatment has caused some worsening of his vitiligo and problems with sleep, anxiety and panic attacks. The Claimant has not adduced medical evidence as to the extent of any effect upon his health, when they started or how they affect him in any detail. We take into account our previous findings that the Claimant had a tendency to exaggerate and to use emotive language, a tendency clearly demonstrated again in his evidence today when he sought to rely upon the rise of fascist groups and the absence of black employees on the board of major companies, in the senior judiciary, military or media as part of the cause of his distress arising from the tattoo. Whilst this appeared to us overstated, we do not doubt that the tattoo has caused him some genuine and material distress and has injured his feelings, albeit to a lesser extent than described by the Claimant. The tattoo with its offensive connotations caused him concern about his treatment by Mr Siequien in or about June 2015 when the issue arose. The Claimant continues to dwell on the tattoo, albeit no longer on display and no longer in the same workplace as Mr Siequien.

6. However, it was clear from the Claimant's evidence and the nature of his ongoing complaints that by far the principal cause of the Claimant's hurt and injury to feelings is his persisting belief that the First Respondent handled his grievance badly, essentially labelling him the wrongdoer rather than the victim. The Claimant is concerned that he will be damaged in promotion opportunities and that he has been wrongly subject to complaints by Mr Siequien and two other colleagues (one of whom claimed that he had been called a white supremacist by the Claimant). In his undated letter, the Claimant refers to this as mental torture and suggests that this procedure was the cause of the worsening of his vitiligo and stress. We note that the First Respondent has investigated these complaints and, whilst upholding their substance in respect of the two colleagues, has not imposed formal disciplinary action on the Claimant but offered words of advice. Moreover, the First Respondent has offered the Claimant support to participate in the BAME group within Transport for London with additional coaching or mentoring to help with the way he expresses or discusses issues.

Law

7. An award for injury to feelings is compensatory. It should be just to both parties: fully compensating the Claimant without punishing the Respondent. Awards for injury to feelings must compensate only for those unlawful acts for which the Respondent has been found liable. An award should not be so low as to diminish respect for the legislation; on the other hand, it should not be excessive. An award should bear some broad similarity to the level of awards in personal injury cases. In deciding upon a

sum, we should have regard to the value in everyday life of that money, being careful not to lose perspective.

8. We take as a starting point the guidance given in **Vento v Chief Constable of West Yorkshire Police (No.2)** [2003] IRLR 102, in which the Court of Appeal identified three bands for awards: the top being for the most serious conduct, such as a lengthy campaign of harassment; the middle band for those acts which are serious, but not within the top band; and the bottom band for those acts which are less serious, one-off or isolated. The combined effect of inflation uprating and the **Castle v Simmons** uplift has been to increase the bands so that the bottom band now goes up to £6,600, the middle band to £19,800 and the higher band up to £33,000.

Conclusions

9. Having regard to our findings of fact and the submissions of the parties, we do not accept the submission of Counsel for the Respondents that this is a case falling within the bottom band. Although the swastika tattoo was visibly present to the Claimant for a relatively short period of time, we consider that this is a particularly offensive symbol and that all of the connotations which are carried within it should not be diminished. The swift and voluntary steps taken to remove the swastika were sensible and welcome but they failed to remove the entirety of the tattoo, leaving the German Iron Eagle such that the entire cause for hurt was not removed. As such, we do not accept that the harassment found can be described as less serious, one-off or isolated. For this reason, our starting point would be an award at the lower end of the middle band.

10. However, that starting point is determined by the nature of the conduct. In determining the actual award, we take into account that real, decisive factor is the effect of the unlawful discrimination on the claimant. The severity and/or duration of the harassment may be relevant when assessing the Claimant's account of the hurt or injury suffered. Here, we have found that there are multiple causes to the hurt and injury to feelings described by the Claimant. Of these multiple causes, only one has resulted in liability against the Respondents and we must be careful not to award compensation for any of the other causes. We are satisfied that the main cause of the hurt to the Claimant's feelings is his treatment by the First Respondent in connection with his grievance and the subsequent complaints made against him. Bearing in mind the relatively limited extent of injury caused by the part of the claim which succeeded, we are satisfied that the appropriate award in this case is £3000, just over a month's net salary for the Claimant and a not insignificant sum in terms of its day to day value.

11. Having made the award for injury to feelings, Counsel properly reminded us of the power to award interest. The statutory rate accrues at 8% per annum and from the date of injury in this case, which is 24 June 2015. Interest is awarded in the sum of £441.21.

12. Unfortunately and despite our expressed hope that both the Respondents and the Claimant could move forward constructively, the Claimant's response to the award for injury to feelings give us little optimism that he is prepared properly to do so. Whilst calculating interest, the Claimant's conduct and comments towards the Respondents, and indeed the Tribunal, were inappropriate and frankly rude, to the point where he was warned that if he persisted he would be asked to leave.

13. Despite the Claimant's interruptions, we considered whether to order reimbursement of fees which have been paid by the Claimant (there has been no remission). The Claimant's stated position was that he did not care and that we could award him 2p or should give it to charity. The Tribunal pointed out that it had no discretion to award sums to charity on his behalf. Ms Thomas and Mr Curtis submitted that reimbursement of fees does not automatically follow the event and that the Tribunal should take into account the extent to which the Claimant had not been successful at the liability stage. We concluded that the Claimant's initial suggestion that he did not want his fees was said flippantly and for effect rather than seriously, as such we considered it appropriate to award him reimbursement of fees by reference to the proportion of his claims which had succeeded, in other words, one out of three. Accordingly, the Respondent shall pay to the Claimant the sum of £400 in contribution towards his issue and hearing fees.

Employment Judge Russell

26 April 2017