EAT gives guidance about how to quantify injury to feelings awards

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Eddie Stobbart Limited v Graham [2025] EAT 14

Paragraph references are to paragraphs of the EAT's judgment unless otherwise indicated

Brief facts

The Claimant started employment with the Respondent as a planner in July 2021; she was based at its depot in Newhouse (Scotland). The Claimant notified the Respondent that she was pregnant on 21 October 2021. In March 2022 the Respondent decided to cease its planning function in Scotland. Accordingly, there was a redundancy situation and a consultation was carried out.

The Claimant asserted her right to be offered suitable alternative employment in accordance with Regulation 10 Maternity and Parental Leave etc Regulations 1999 (MAPLE) but the Respondent concluded that there was no 'suitable' role for her.

The Claimant commenced her maternity leave on 12 April 2022, while the redundancy process was ongoing. While on maternity leave the Claimant attended a competitive interview for a new 'transport shift manager' role but she was unsuccessful. The Claimant submitted a grievance about the situation by email on 26 April 2022.

The Claimant had a consultation meeting on 28 April 2022 with Mr Delaney and Ms Webster. During the consultation meeting the Claimant referred to having submitted a grievance. Ms Webster suggested that the Claimant re-send the grievance. Later that same day, the Respondent sent the Claimant notice of termination of her employment on the ground of redundancy. (The Claimant's employment ended on 26 May 2022).

The Claimant re-sent her grievance on 3 May 2022.

The ET found that the Claimant's emails of 26 April and 3 May 2022 were blocked by the Respondent's firewall system such that they were not actually seen by the Respondent.

The Claimant had a discussion with Ms Saunders, the Respondent's Head of HR, on 16 May 2022 about the calculation of her maternity pay; in the course of this discussion the Claimant mentioned the issue of her unanswered grievance. Ms Saunders said she would look into the matter, but she made no mention of it when writing to the Claimant about the calculation of her maternity pay on 20 May 2022.

The claims

The Claimant presented her claim to the ET on 19 July 2022. The primary complaint was automatic unfair dismissal under section 99 Employment Rights Act 1996 ('ERA') and Regulation 20 MAPLE. Other claims were made under section 47C ERA and Regulation 19 MAPLE (detriment), section 18 Equality Act 2010 ('EqA') and section 27 EqA.

Two of the detriment claims concerned the Respondent's failure to take adequate steps to deal with her grievance.

ET judgment

The majority of the Claimant's claims were dismissed. But the ET did uphold the detriment claim in so far as it concerned the Respondent's failure to take adequate steps to deal with the Claimant's grievance.

While the ET accepted that the Claimant's grievance had been blocked by the Respondent's firewall, the Claimant had informed both Ms Webster and Ms Saunders that she had lodged a grievance and they did not ask for details when they spoke with the Claimant or otherwise follow up with her thereafter. The ET therefore found that the Claimant had suffered a detriment. And it concluded that the Claimant's maternity leave materially influenced the approach taken by the Respondent to the grievance.

The ET awarded the Claimant £10,000 in respect of injury to feelings, a sum which fell at the lower end of the middle *Vento* band. It reasoned as follows:

The Tribunal accepts the evidence of the claimant that she was upset by the manner in which her case was dealt with by the respondent and in particular what appeared to her to be the failure of

the respondent to take seriously her position that she had a right to be offered the TSM role as a suitable vacancy. She raised this issue on a number of occasions and took advice from ACAS. She took time to submit a written grievance on three [sic] separate occasions. She was at the same time commencing her maternity leave and moving house. It is understandable that she would experience a degree of upset at the failure, as she saw it, of the respondent to seriously consider her case. It is an important right that employees have to have due consideration given by their employer to any grievance raised.

Appeal grounds

No part of the liability judgment was appealed.

There were two grounds of appeal against the injury to feelings award: first, that the award of £10,000 was so excessive as to be perverse and, second, that the ET failed to provide adequate reasons for its decision.

During the appeal, it was agreed that the only evidence the Claimant gave concerning the degree of upset she felt in respect of her unanswered grievance was in response to a question from her solicitor about whether she was surprised not to have received any communication after submitting her grievance. In response to that question the Claimant said she was '*shocked & upset. People dismissive of what I had to say & my rights*'.

EAT judgment

The appeal was allowed. After reviewing a number of authorities on the subject of injury to feelings, the EAT reasoned as follows.

- When quantifying the appropriate amount to award for injury to feelings, the ET must focus on the effect of the discriminatory act upon the particular claimant; the ET must compensate for injury suffered not the manner of discrimination. However, the *Vento* bands implicitly acknowledge that it is hard to do this without reference to how 'serious' the discrimination was (paragraph 37)
- In certain circumstances and if used with caution, the manner of discrimination can provide a benchmark for assessing the severity of injury (paragraph 37)
- there can be no award of compensation if there is no evidence of injury to feelings (paragraph 39)

- it can however be born in mind that a claimant will usually suffer some injury to feelings as a result of discrimination (paragraph 40)
- the manner of discrimination can provide a basis for inferring the level of upset caused; so long as the ET does not lose sight of the fact that it is compensating the claimant for the injury suffered, rather than the manner of discrimination, the latter can be a useful guide to inferring the former when evidence is otherwise sparse (paragraph 41)
- the ET must take care not to allow feelings of indignation to inflate the award (paragraphs 41 to 42)
- because the focus is on the injury done to the particular claimant, the same discriminatory behaviour may result in different levels of compensation for injured feelings for two different individuals (paragraph 43)
- the frequency and duration of a claimant’s exposure to discriminatory conduct are not the only measures that can support an inference of injury (paragraph 45)
- ‘overt’ discrimination may be more likely to cause distress and humiliation because the victim has understood the motivation at the time to be discriminatory (paragraph 46)
- the existence of ridicule or exposure is also relevant: discrimination played out in front of others may well cause greater harm (paragraph 47)
- a feature of workplace discrimination is that it can reflect or expose a power asymmetry; disciplinary threats that create worry or result in exclusion may provide a reasoned basis for inferring more serious injury (paragraph 48)
- arguably, pregnancy discrimination involves as an added level of stress, as experiencing discrimination while pregnant detracts from the joy associated with the birth of a child (paragraph 49)
- it is always a matter for the ET to decide what inferences can be drawn (paragraph 50)
- the burden is on the claimant to show that their feelings have been injured and to what extent (paragraph 51)
- although a checklist approach should be avoided, the following may be helpful considerations (paragraph 52)
    - the claimant’s description of their injury
    - duration of consequences
    - effect on past, current and future work
    - effect on personal life or quality of life

Applying the above considerations, the EAT held that the ET's award of £10,000 was manifestly excessive and perverse. While there was scant evidence of injury before the ET and it was open to the ET, with appropriate caution, to look at the manner of the discrimination and detrimental treatment, the only proper conclusion was that the failure to deal with the claimant's grievance was limited in scope and impact. The manner of discrimination could only provide a basis for drawing an inference of minimal injury. NB: that approach '*would always yield where there was clear evidence from a claimant as to the extent of their injury, but this was not such a case'* (paragraph 56).

In light of the above, the case only merited an award in the lower *Vento* band. It was perverse to place it in the middle band (paragraph 58).

The EAT also held that the ET failed to give adequate reasons for its decision to award £10,000 (paragraphs 59 to 60).

The EAT held that the appropriate sum for injury to feelings was £2,000 plus interest (paragraph 63).

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