# How to assess quantum for Injury to Feelings

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**Shakil v Samons Limited [2024] EAT 192**

In finding that the Employment Tribunal ("ET") had erred in its assessment of injury to feelings, HHJ Tayler provides a summary of how injury to feelings awards should be approached.

The key authority when it comes to assessing injury to feelings is ***Vento v Chief Constable of West Yorkshire Police*** *[2002] EWCA Civ 1871, [2002] I.C.R. 318*. Awards for injury to feelings will usually fall within one of three bands, often referred to as the 'Vento bands':

i. **Upper** - For the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment.

ii. **Middle -** For serious cases that do not merit an award in the highest band.

iii. **Lower** - For less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

The following general principles have been established:

i. The award is to compensate for "subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on (***Vento***).

ii. Discriminatory behaviour may affect different individuals differently, so the actual impact on an individual must be assessed and analysed from the evidence (***Vento***).

iii. The purpose is to compensate the claimant not to punish the respondent ***(Ministry of Defence v Cannock*** [1994] I.C.R. 918).

iv. Because the award is compensatory, the respondent's ability to pay is not relevant (***Evans v Oaklands Nursing Home Group Ltd*** (1999) EAT/331/99).

v. Other discrimination is likely to heighten the level of injury to feelings (***Taylor v XLN*** [2010] I.C.R. 656).

vi. Feelings of indignation and outrage towards the respondent should not inflate the award (***Corus Hotels plc v Woodward and Anr*** UKEAT/0536/05/LA).

vii. The respondent's conduct such as defending the claim in an inappropriate manner can increase the level of injury to feelings (***Commissioner of Police of the Metropolis v Shaw*** [2012] I.C.R. 464).

viii. In pregnancy discrimination cases, concern for an unborn child can increase the level of injury to feelings suffered as a result of the discriminatory conduct (***Miles v Gilbank & Anr*** [2006] EWCA Civ 543, [2006] ICR 1297).

While failure to expressly consider the following will not necessarily amount to an error of law, the ET is generally required to:

i. Identify the discriminatory treatment for which an award of injury to feelings is to be made.

ii. Hear evidence from the claimant about the injury to feelings.

iii. Make findings of fact about the injury to feelings.

iv. Identify the relevant guidelines applicable to the award.

v. State the band the injury falls within.

vi. Explain why the injury falls within that band.

vii. Explain where within the band the injury to feelings award falls and why the specific award was made.

In this matter, the Claimant ("C"), was employed by the Respondent ("R") as an accountant/bookkeeper from 5 October 2020. C telephoned R on 30 March 2021 explaining she was unwell with morning sickness. The next day R reduced C's work to two days a week. The ET found this reduction was because of pregnancy-related illness and not, as R had contended, because of a reduction in work within the business. The ET further found C was dismissed on 31 September 2021 because of her pregnancy and R's contention that there was a genuine redundancy situation and/or issues with capability or conduct was rejected.

The ET made an award of £5,000 for injury to feelings. In so doing, the ET failed to identify the evidence given by C about the injury to her feelings and failed to make any findings of fact in this

regard. The ET did not refer to Vento, identify the relevant bands, state which band applied or explain how the award was placed within that band.

An award of £5,000 corresponds to the middle of the lower Vento band. The ET had found as fact that C's hours had been reduced, she had been subjected to a sham redundancy process and false assertions about her capability and conduct had been made. The Employment Appeal Tribunal ("EAT") found it was therefore 'hard to see' how the injury to feelings would not come within the middle band. Unsurprisingly, the EAT found the analysis of the ET was wholly inadequate.

Additionally, the EAT found the ET had erred in the following ways:

i. Failing to properly treat C's pregnancy as a component of her circumstances and consider if the injury to feelings was exacerbated by C's concern for her unborn child.

ii. Taking account of the small size and limited resources of the respondent.

iii. Failing to consider R's conduct of the litigation which included false assertions and threatening publicity if C pursued the claim.

Consequently, C's appeal was allowed, and the matter was remitted to a fresh ET.

## Comment

The EAT has provided a concise and useful summary of how the ET should approach an injury to feelings award.

While quantification of injury to feelings can feel like an abstract undertaking, this judgment is a reminder that the process is best approached according to established methodology and failure to do so can lead to an error of law.

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17 December 2024

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