

# THE EMPLOYMENT TRIBUNALS

## BETWEEN

### Claimant

Mr S Alam

### Respondent

Police Federation of England  
and Wales

**AND**

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT:** Newcastle upon Tyne

**ON:** 29 November 2006

**CHAIRMAN:** Mr M D Malone

**MEMBERS:** Mrs L Kennedy  
Mr A C Town

### *Appearances*

**For Claimant:** In person

**For Respondent:** Mr M Jackson, Solicitor

## JUDGMENT

The unanimous Judgment of the Tribunal is that:

- (1) The Tribunal recommends that the respondent shall by, 15 December 2006, offer to assume responsibility for the future costs of the claimant's appeal against his conviction and to liaise with Messrs Brown Beer Nixon and Mallon regarding the conduct of the appeal (but on the basis that the respondent may make any offer conditional on seeing the legal advice obtained by the said firm but not conditional on seeing any evidence).
- (2) The respondent shall pay to the claimant total compensation of £25,000 for injury to feelings, including as part of that sum aggravated damages of £7,500.
- (3) The respondent shall pay to the claimant interest of £2,614 on the said sum of £25,000.
- (4) The claimant's application for a preparation time order is refused.
- (5) The claimant's application for exemplary damages is refused.

(6) The question of compensation in respect of the claimant's financial losses (including actual or prospective loss of earnings since 3 March 2005 and including legal costs since that date in connection with his proposed appeal against his conviction) is reserved to a further Hearing to be fixed for a date in 2007 (it being the current intention that the Hearing will be listed after the claimant's appeal against his conviction has been decided).

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M D Malone                      CHAIRMAN

JUDGMENT SIGNED BY CHAIRMAN ON  
5<sup>th</sup> December 2006

JUDGMENT SENT TO THE PARTIES ON  
5<sup>th</sup> December 2006  
AND ENTERED IN THE REGISTER

FOR SECRETARY OF THE TRIBUNALS

# THE EMPLOYMENT TRIBUNALS

## BETWEEN

### Claimant

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## REASONS OF THE EMPLOYMENT TRIBUNAL

**HELD AT:** Newcastle upon Tyne

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**CHAIRMAN:** Mr M D Malone

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### *Appearances*

**For the Claimant:** In person

**For the Respondent:** Mr M Jackson, Solicitor

## REASONS

1 The claimant gave evidence and also called Dr Taylor as a witness. There was a schedule of loss from the claimant and a skeleton argument from the respondent.

2 The issues to be considered were whether the Tribunal should make one or more recommendations, compensation for financial loss, compensation for injury to feelings, claims for exemplary damages and aggravated damages and also the claimant's application for a preparation time order.

3 Most of the relevant findings of fact were made in the Reserved Judgment on Liability. In addition:

3.1 We find on the claimant's evidence that the claimant's conviction for dishonesty and subsequent discharge from the police force had a devastating effect on his career and on his life generally. His family was torn apart, his marriage broke down in 2002 and in his own words he was in a living nightmare. The Police Federation was in no way to blame for that state of affairs, which arose long before the dates on which the respondent was found to have discriminated against the claimant. But in early 2005 the claimant had cause to believe that he could start to emerge from his nightmare. Largely because of the findings of Operation Granite

and the disciplinary actions resulting from that operation, he had every reason to believe that the respondent would grant his application to support him in seeking to have his conviction overturned. That expectation was reinforced by the public standing of the respondent and its professed commitment to equal opportunities. It was a further massive blow to the claimant when his application for assistance was turned down, both in March 2005 and again in the following year. The injury to his feelings arising from those refusals was immense.

3.2 The claimant has now been able to bring his appeal to the stage of being submitted, albeit much later than would have been the case if his application for assistance had been granted by the respondent in March 2005. Indeed his appeal was submitted today. It is understood that the Crown Prosecution Service is unlikely to oppose the granting of leave for the appeal to be heard out of time and it is likely that the substantive appeal will be heard in the early part of next year.

3.3 An apology has today been received by the claimant. The Tribunal was told that it was on advice that the respondent did not submit the apology to the claimant whilst there was still a possibility that the respondent would be appealing against the judgment on liability. The time for that appeal did however expire approximately one month ago

#### The Law

4 The leading authority on the question of compensation for injury to feelings is the case of Vento v The Chief Constable of West Yorkshire Police (No2) [2003] IRLR 102 and we were referred both by the claimant and by Mr Jackson to that authority. The case is well known for having identified the three bands of compensation for injury to feelings and it is stated in the guidance in paragraph 65 of the Judgment that the “top band should normally be between £15,000 and £25,000. 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.” “Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.” It is also stated, in paragraph 68, that when awards for compensation are made for non pecuniary loss under more than one heading, regard should be had to the overall magnitude of the sum total of the awards and, in particular, “double recovery should be avoided by taking appropriate account of the overlap between the individual heads of damage”. There, is also a reference, in paragraph 53, to the guidance given by the Employment Appeal Tribunal in the earlier case of HM Prison Service v Johnson, where, in particular, the point was made that awards “for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor’s conduct should not be allowed to inflate the award.”

5 Although the focus must be on compensating the claimant, when compensation for injury to feelings is being assessed, the focus does then turn to the conduct of the respondent when considering whether there is some particular aggravating factor of the case, such as high-handed or oppressive conduct on the part of the respondent, which may justify an award of aggravated damages.

6 It is expressly provided by section 56(1)(c) of the Race Relations Act 1976, that the Tribunal may make a recommendation that “the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing

the adverse effect on the complainant of any act of discrimination to which the complaint relates.”

7 There is no clear authority on the question whether exemplary damages may be awarded in an employment case. In the leading case of Kuddus V Chief Constable of Leicester Constabulary [2001] UK HL29, the House of Lords held that the categories of cases where exemplary damages may be awarded were not necessarily closed, but there is as yet no direct authority for making such an award in an employment case. What is in any event clear beyond doubt is that an award of exemplary damages may be made only if the compensation which would otherwise be awarded is insufficient properly to punish the wrongdoer.

8 The effect of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 is that interest must be awarded on compensation at the rate of 6% and in the case of injury to feelings that award is from the date of the act of discrimination up to the date of the Hearing

9 Rule 44(3) of Schedule I to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 states the circumstances in which a preparation time order may be made by the Tribunal. The relevant circumstances are “where the paying party has in bringing the proceedings, or he or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or the conducting of the proceedings by the paying party has been misconceived.”

### Our Conclusions

10 In considering the appropriate figure for compensation for injury to feelings, we focused first of all on the injury to the claimant, without regard at this stage to any question of aggravated damages. Although the guidance in the Vento case refers specifically to serious acts of racial or sexual harassment extending over a period, we regard this case as being one which falls into an equally serious category and we find therefore that the award should be in the highest range of between £15,000 and £25,000, although within the lower part of that range. We bear in mind that, although the respondent was not responsible for the claimant’s conviction and its consequences, the adverse impact on the claimant and the effect on his feelings of the refusal of the application which he made in February 2005 was very substantial, and that injury to feelings has continued over a lengthy period, the total period from March 2005 to date being approximately 21 months. In the circumstances it seems to us that the appropriate figure, putting on one side the question of aggravated damages, is £17,500.

11 We turn now to the question whether this is an appropriate case for aggravated damages. There has been no complaint and there can be no complaint by the claimant about the way in which these proceedings have been conducted by Mr Jackson on behalf of the respondent and that therefore is not a factor so far as this particular case is concerned. There are, however, one particularly serious factor and one further factor which are in our view relevant to the issue of aggravated damages. The first is the offer which was made to the claimant, in the course of these proceedings, that if he were to submit a further application for assistance, then that would be considered by the respondent. Mr Jackson acted entirely in good faith in conveying that offer to the claimant,

but in our view the respondent itself did not act in good faith and never had any serious intention of giving proper consideration to the claimant's application. We base that view on the findings of fact which we made and which were set out in our judgment on liability. That is the main factor. The second factor to which we have had consideration is that the respondent maintained throughout these proceedings that there was a separation between the two committees and we found in our judgment on liability that that claim was a totally false and spurious one in relation to the decision made in March 2005. This was a further cynical attempt by the respondent to mislead the claimant and it is a further reason, although not the principal reason, why we feel that aggravated damages are appropriate and that the appropriate figure is £7,500. Accordingly the total award for injury to feelings is £25,000.

12 So far as interest is concerned, that is a straightforward calculation. The interest rate is 6% and the relevant period is one year and 271 days, from 3 March 2005, and the resulting figure is £2,614.

13 So far as recommendations are concerned, the wording for the proposed recommendations was proposed by the claimant and that wording was broadly accepted, subject to one amendment which we have adopted, by Mr Jackson on behalf of the respondent.

14 We do not believe that this is an appropriate case for exemplary damages. We would have some hesitation in any event, even in the most extreme case, in making an award of exemplary damages in view of the lack of clear authority giving us the right to do so. It is clearly however the law that we can only award exemplary damages if we are satisfied that the awards already made are insufficient to punish any misfeasance or misconduct on the part of the respondent. We are satisfied that the award of aggravated damages of £7,500 is adequate in that respect and that therefore there is no justification for any further award of exemplary damages.

15 The claimant has applied for a preparation time order. There can be no doubt at all that the claimant has spent a very substantial amount of time in preparing this case and the way in which the case has been both prepared and presented is a matter of great credit to him. We can, however, only make a preparation time order if the case falls within the circumstances set out in the rules. The claimant has referred to the absence during the proceedings of certain documents. We do not believe, however, that there are grounds for finding that any documents have deliberately been suppressed by the respondent and furthermore we accept Mr

Jackson's submission that the documents in question did not go to the heart of any of the issues in this case and certainly the absence of those documents did not cause the proceedings to be unduly prolonged. We also bear in mind in considering the application for the preparation time order, that the respondent was successful in relation to the complaint about alleged discrimination and victimisation in 2004. The remaining point to which we have had regard in considering this question is this. We do not believe that Mr Jackson or any solicitor, when looking at the pleadings and the witness statements at the outset of this case, would have been driven to the conclusion that the respondent had no reasonable prospect of success. Much of the material which caused us to make findings in favour of the claimant arose from the evidence which was given orally by certain witnesses on behalf of the respondent and was not contained in their witness statements and neither Mr Jackson nor anybody else could have predicted that evidence would be

given in those terms. In those circumstances neither Mr Jackson nor the respondent can be criticised for defending this case and it would not therefore be appropriate to make any preparation time order.

16 Finally, it has been agreed by both parties that it would be appropriate for the claimant's claims for compensation in respect of the deferment of his opportunity to rejoin the police force and also in respect of costs incurred since 3 March 2005 in relation to his proposed appeal against his conviction should be given further consideration after the appeal against conviction has been heard and decided. Accordingly, those matters will be reserved to a further Hearing and directions will in due course be given to the parties to notify the Tribunal when the appeal has been heard and decided so that the case can then be listed for a further Hearing at that stage.

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M D Malone                      CHAIRMAN

REASONS SIGNED BY CHAIRMAN ON  
3<sup>rd</sup> January 2007

REASONS SENT TO THE PARTIES ON  
3<sup>rd</sup> January 2007

AND ENTERED IN THE REGISTER

FOR SECRETARY OF THE TRIBUNALS