

Failure to take adequate steps to deal with a pregnant employee's grievance emails was discrimination but did not warrant a £10,000 injury to feelings award.

In the recent case of *Eddie Stobart Ltd v Graham*, the EAT overturned an Employment Tribunal's award of £10,000 for injury to feelings for an act of pregnancy and maternity discrimination. The EAT found the award to be "manifestly excessive" given that the act in question was failing to adequately deal with the claimant's grievance.

What happened in this case?

The claimant worked for Eddie Stobart as a Planner and announced her pregnancy in October 2021. Shortly before she was due to commence her maternity leave, her employer began a redundancy process. The claimant was aware that she had a preferential right to be offered a suitable alternative vacancy ahead of other employees. There was an open position for a Transport Shift Manager (TSM), however, her employer did not agree that this was a suitable alternative role for her. She, therefore, had to apply for the role and take part in a competitive interview process once on maternity leave. She was unsuccessful and a redundancy consultation began.

During the redundancy consultation period, the claimant sought to raise a grievance about the redundancy process. However, her email was blocked by the employer's firewall. She brought this up at her redundancy consultation meeting and was advised to resend the email, but it was again blocked by the firewall. After her dismissal, she raised the issue of the failure to acknowledge her grievance for a second time, but there was no response from the employer.

The claimant went on to bring claims of automatic unfair dismissal, unlawful detriment, pregnancy and maternity discrimination and victimisation.

What was decided?

The Employment Tribunal's decision

The Employment Tribunal agreed with the employer that the TSM role was not suitable and rejected most of the claimant's claims. However, it held that the failure to take adequate steps to deal with the grievance was materially influenced by the claimant's maternity leave absence and amounted to unlawful detriment and discrimination. By way of remedy, the Tribunal awarded £10,000 for injury to feelings.

An injury to feelings award is a type of compensation that can be awarded in successful discrimination claims. It is intended to be compensatory to the innocent party and not to punish the party in the wrong. The leading case of *Vento v Chief Constable of West Yorkshire Police (No 2)* set guidelines known as "Vento bands", used by tribunals to apply the severity of the discrimination suffered by claimants into one of three

bands (which are now amended in line with inflation each year). An award in the top Vento band will be given in circumstances where there has been a sustained campaign of discrimination and cases in which there has been an isolated incident will fall into the bottom band. In this case, the claimant's award fell at the lower end of the middle Vento band.

The Employment Appeal Tribunal's decision

The employer appealed to the EAT on two grounds, namely, that the award was excessive, and that the Tribunal had not given sufficient reasons for awarding such an amount.

The EAT found that the only proper and reasonable conclusion was that the employer's failure to deal with the grievance was limited in its scope and impact. It upheld the appeal on both grounds and substituted an injury to feelings award of £2,000 plus interest. It noted that it would have awarded a lower amount, save for the fact that the claimant was forced to chase up her grievance when she was on maternity leave, and this would have caused her particular distress as an expectant mother.

What does this mean for employers?

The judgment laid out considerations that will be taken into account when a Tribunal decides to include an injury to feelings award. In every case of discrimination, it is likely there will be some injury to feelings, but the key takeaway is that tribunals will focus on the effect of discrimination on the particular individual.

The Vento bands will be used as a guide to place cases of discrimination into the relevant level of severity. If the discrimination is overt, it will be more likely to cause distress and humiliation. Similarly, if the discrimination was enacted in front of colleagues, then the degree of harm will be higher due to the humiliation caused. Tribunals may also look to acts such as threats of disciplinary action or exclusion in the workplace, which can show an imbalance of power and influence and increase the harm caused. The EAT also highlighted that in cases of pregnancy and maternity discrimination involving an unborn child, there will be additional stress placed on the expectant mother and thus the upset is increased.

Tribunals will scrutinise each situation on a case-by-case basis and may find that employees who appear relatively stoic about the situation may indeed be struggling to fully describe the effect that the discrimination has had on them. Conversely, some employees may be more vulnerable to upset and so be impacted more greatly by lesser discriminatory acts.

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