

IN THE EMPLOYMENT TRIBUNAL

Case N° 42 of 2017

LAWRENCE STAGNETTO

Claimant

–and–

GIBRALTAR HEALTH AUTHORITY

Respondent

Andrew Cardona for the Complainant
Mark Isola QC for the Respondent

AWARD

Background

In a judgment dated the 23rd day of August 2019, I held that the complaint of bullying presented by the Claimant under section 8 of the Employment (Bullying at Work) Act (hereinafter referred to as “the Bullying Act) was well founded. At page 67 of said judgment I stated that the conduct that amounted to bullying was:-

“that Dr Cassaglia (i) pushed Mr Stagnetto on both shoulders (ii) spoke to Mr Stagnetto in a raised and raising voice whilst gesticulating with his hands (iii) wrongfully accused Mr Stagnetto using inappropriate language on more than one occasion of preventing the release of the Modulab information and (iv) was angry and frustrated at the time. This all occurred in one continuing incident spanning a few minutes in time”

and that as a result of such conduct “Mr Stagnetto was indeed alarmed and, especially, distressed by the incident”.

Having found that the complaint of bullying was well founded I am required by section 9 of the Bullying Act to consider which of the orders prescribed by that section I consider it is just and equitable to award.

The Bullying Act

Section 9 of the Bullying Act provides as follows:-

“9 (1) Where the Tribunal finds that a complaint presented to it under section 8 is well-founded, the Tribunal shall make such of the following as it considers just and equitable:-

- (a) *an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;*
 - (b) *an order requiring the respondent to pay the complainant compensation of an amount corresponding to any damages (including damages for injury to feelings) he could have been ordered (by the Supreme Court) to pay to the complainant in a claim in tort for breach of statutory duty; and*
 - (c) *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 matter to which the proceedings relate on the complainant or on any other person.*
- (2) *When determining the amount of an award of compensation for injury to feelings under section 1(b) the Tribunal shall take into account the seriousness, frequency and persistence of the employers breach.*
- (3) *If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Tribunal under subsection (1)(c), then, if it thinks it just and equitable to do so:-*
- (a) *the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under subsection (1)(b); or*
 - (b) *if an order made under subsection (1)(b) was not made, the Tribunal may make such an order.*
- (4) *Where an amount of compensation falls to be awarded under subsection (1)(b), the Tribunal:-*
- (a) *may include in the award interest subject to, and in accordance with, the provisions of section 11 (interest on compensation); and*
 - (b) *shall consider whether to do so, without the need for any application by the complainant”.*

The Case for Each Party

Mr Cardona, on behalf of the Claimant, has confirmed that his client is seeking:-

- (a) a declaration to the effect that the Claimant was bullied;
- (b) an award for compensation limited to injury to feelings;
- (c) that this tribunal make the following recommendations, namely:-
 - (i) an apology from the GHA and/or Dr Cassaglia within 14 days;
 - (ii) a review of existing dignity at work policies within 56 days;

- (iii) a programme of formal dignity at work training for management staff within 56 days;
 - (iv) completion of Dr Cassaglia's disciplinary procedure within 56 days;
 - (v) the extension of the zero tolerance policy to employee on employee violence, including automatic interdiction when a complaint of violence is made within 28 days; and
 - (vi) a review of the GHA's disciplinary procedures with a view to ensuring the disciplinary processes are completed within a reasonable period of time, whether they are carried out directly or indirectly by the GHA within 56 days.
- (d) interest at 2% on any award made for the period as from the 20th September 2017.

With regard to compensation, it is Mr Cardona's submission that when deciding on the amount to award the tribunal should take into account not only the physical act of bullying suffered by the Claimant but also the Respondent's:-

- failure to suspend Dr Cassaglia.
- failure to complete Dr Cassaglia's disciplinary in 26 months (and counting).
- failure to offer any support and the lack of information provided to the Claimant regarding Dr Cassaglia's disciplinary.
- failure to inform the Claimant whether or not measures had been taken to stop Dr Cassaglia from contacting him.
- failure to permit the Claimant and a trade union official to be present at Dr Cassaglia's aborted disciplinary hearing.
- failure to take reasonable steps to implement and promote the Bullying at Work Policy.

It is Mr Cardona's submission that not only were the Claimant's injury to feelings prolonged but also that they were further exacerbated by the Respondent's failure after the 20th September 2017, to actively deal with the allegation of bullying in a meaningful way. Thus, If the tribunal did indeed take account of all said matters then, Mr Cardona submits, this tribunal should make an award within the higher end of the middle band of the guidelines in the Vento case (see below). Mr Cardona suggests an award in the region of £20,000 and submits that the award of around such a figure would show to the public respect for the policy underlying the anti-bullying legislation. It is pertinent to point out that Mr Cardona has confirmed that his client is not seeking an award for aggravated damages.

With regard to the matter of recommendations, Mr Cardona, whilst putting forward the above-mentioned proposed recommendations, does concede that some of them may not be workable, whether this be as a result of the restricted

time frame proposed or because of the very nature of the practicalities behind the particular proposal.

Mr Isola, on behalf of the Respondent, does not contest the making of a declaration of bullying in the light of the judgement dated the 23rd August 2019, and therefore reserved the majority of his extensive submissions to the issue of compensation. Mr Isola submits that in accordance with the provisions of section 9(2) of the Bullying Act this tribunal, when determining the amount of compensation to be awarded, has to take into account:-

- (a) the seriousness of the conduct - Mr Isola submits that the purpose behind Dr Cassaglia's push of the Claimant was to have a quiet word with him and not to cause alarm/distress and that this fact (as found by the tribunal) needed to be taken into account. Similarly, Mr Isola submits, the tribunal should take into account the underlying current that appeared to exist between Dr Cassaglia and the Histology department and/or its members. Mr Isola also submits that the incident in question did not cause the Claimant humiliation and that the Claimant was not intimidated by the incident, both being matters which are pertinent to the issue to be determined. Mr Isola also points out that after the incident in question the Claimant was not dismissed and that there have been no further reported incidents between Dr Cassaglia and the Claimant; and
- (b) frequency and persistence of the breach - Mr Isola points out that the conduct complained of was a single one off isolated incident with no ingredients of persistence or conduct of a continuing or repetitive nature spanning a few minutes only and submits that all of this has to be taken into account.

Furthermore, Mr Isola submits, Dr Cassaglia's behaviour immediately after the conduct complained of (ie on leaving the histology department and in his interaction with Ms Davis), the fact that there have been no further encounters between the Claimant and Dr Cassaglia, that during the afternoon of the 20th September 2017 Dr Cassaglia's behaviour with Mr Mahbubani and Ms Davis was appropriate at all times and that the Respondent moved quickly to commence disciplinary proceedings against Dr Cassaglia are all pertinent matters to be taken into account for the purposes of determining the amount to be awarded.

Mr Isola ends his submissions on compensation by stating that this case falls within the lower band of the guidelines in the Vento case and ought not to exceed the sum of £1,500.

With regard to the recommendations proposed by the Claimant, Mr Isola has made extensive submissions in reply. The submissions are far too lengthy to set out here but essentially Mr Isola's submissions are to the effect that they are not just and equitable, that there are on going disciplinary proceedings against Dr Cassaglia and that the time limits imposed are not practical or feasible.

That then, is the essence of each party's case as I have understood it.

Guidelines on Compensation

Counsel for both parties are agreed that when considering the issue of compensation for injury to feelings the Court of Appeal case of *Vento v Chief Constable of West Yorkshire Police (N° 2)* (2002 EWCA CIV 187) (2003 IRLR 1021) (hereinafter referred to as “the Vento case”) is the leading authority.

In the Vento case Lord Justice Mummery stated as follows:-

*“It is self evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. As Dickson J said in *Andrews v. Grand & Toy Alberta Limited* (1978) 83 DLR (3d) 452 at 475-476, (cited by this Court in *Heil v. Rankin* [2001] QB 272 at 292, paragraph (16) there is no medium of exchange or market for non-pecuniary losses and their monetary evaluation:-*

“..... is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution”.

Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury”.

and later on:-

*“In *HM Prison Service -v- Johnson, Smith J* reviewed the authorities on compensation for non-pecuniary loss and made a valuable summary of the general principles gathered from them. We would gratefully adopt that summary. Employment Tribunals should have it in mind when carrying out this challenging exercise. In her judgement on behalf of the Appeal Tribunal Smith J said at p. 283B:-*

(i) 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. (ii) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could, to use the phrase of Sir Thomas Bingham MR, be seen as the way to “untaxed riches”. (iii) Awards should bear some broad general similarity to the range of awards in

personal injury cases. We do not think that this should be done by reference of any particular type of personal injury award, rather to the whole range of such awards. (iv) In exercising that discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings. (v) Finally, tribunals should bear in mind Sir Thomas Bingham's reference for the need for public respect for the level of awards made".

The Court of Appeal then proceeded to give the following guidance on the matter:-

"Employment Tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury:

- (i) 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. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000;*
- (ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band; and*
- (iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.*

There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case.

The decision whether or not to award aggravated damages and, if so, in what amount must depend on the particular circumstances of the discrimination and on the way in which the complaint of discrimination has been handled".

The sums referred to in each of the three bands set by the Vento case have been increased by Presidential Guidance dated the 5th September 2017 issued by the Presidents of the Employment Tribunals in England & Wales and Scotland. Pursuant to the guidance issued:-

*"The Vento bands shall be as follows:-
a lower band of £800 to £ 8,400 (less serious cases); a middle band of £8,400 to £25,200 (cases that do not merit an award in the upper band); and an upper band of £25,200 to £42,000 (the most serious cases), with the most exceptional cases capable of exceeding £42,000".*

As Mr Cardona has submitted that his client's case falls within the middle band set by the Vento case whilst Mr Isola counters by urging the Tribunal to look towards the lower band it seems to me to be useful to refer to the following passage in the Employment Appeal Tribunal case of ICTS (UK) Limited v Tchoula (2000 IRLR at 643):-

“Nevertheless, we have been referred by Mr Martin and Mr Tchoula to a number of cases both at EAT and employment tribunal level, which has allowed us to group those cases into broadly two categories (the higher and lower categories).

In the higher category we include the following: Armitage [1997] IRLR 162, in which the applicant, an auxiliary prison officer at HM Prison Brixton, was subjected to an 18-month campaign of appalling treatment on racial grounds. The tribunal said that they could scarcely begin to imagine the stress of working in such an environment and accepted that most people would have left the job rather than face such harassment. They accepted (unlike this tribunal) that the treatment he had received had affected his home life. They awarded him a total of £21,000 for injury to feelings and £7,500 aggravated damages. That total award of £28,500 was upheld by the EAT. In Williams v London Borough of Southwark (22 November 1996, London (South), employment tribunal, chairman: Mr GHK Meeran) the applicant brought four successful complaints of race discrimination and victimisation, culminating in his dismissal. There had been a campaign of harassment by his line manager over two years, making his working conditions unbearable; his grievance was not properly dealt with by management; there had been a dismal failure on the part of the respondent's managers to give effect to their equal opportunities policy. In awarding £20,000 for injury to feelings, the tribunal included an element for aggravated damages because a member of management dealing with the applicant's case had behaved in a 'high-handed, malicious, insulting or oppressive manner'. In Chan v London Borough of Hackney, 27 November 1996, an employment tribunal at London (North) (chairman: Mr P R K Menon) awarded the applicant £25,000 for injury to feelings, including £5,000 aggravated damages, in circumstances where he was subjected to months of sustained and continued pressure before his dismissal (EOR Discrimination Case Law Digest no. 31 spring 1997).

In the lower category we include these cases: IBC v Khanum. The employment tribunal awarded the applicant, who suffered a great deal of stress, suffered from depression and lost her chosen career at a critical point, aggravated by the arrogant manner in which the respondents brushed aside her complaints of discrimination, £6,000 for injury to feelings and a further £2,000 aggravated damages. On appeal the EAT commented that the award of £6,000 for injury for feelings was on the low side for a case of this gravity, but declined to interfere. We refer again to Tiyamiyu, where the Court of Appeal thought the award of £13,500 was on the generous side, but not so manifestly excessive to justify interference as the EAT had done. In Tesco Stores Limited v Wilson (EAT, 12 January 2000, unreported), on which I sat we upheld an employment tribunal award totalling £6,500, where the complaint was that the applicant, a contract worker, had been stopped by a security officer who referred to 'you lot', a reference to the applicant's race, thereafter making a report which resulted in the applicant losing his employment. Finally, another decision of an employment tribunal

at London (North) chaired by Mr P R K Menon, Singh v London Borough of Ealing (19 March 1995, case no. 29273/94, EOR Discrimination Case Law Digest no. 24 summer 1995) There, the applicant, an Asian job applicant, was rejected, despite being the outstanding candidate for a job vacancy tailor-made for him, on racial grounds. The tribunal awarded him £10,000 for the considerable injury to his feelings. He was humiliated by being rejected for the post in favour of a less well-qualified white candidate.

We accept, again from experience in the personal injury field, that no two cases are precisely the same”.

In the ICTS case the employment Tribunal upheld three allegations that Mr Tchoula had been victimised and proceeded to award him £22,000 for injury to feelings and £5,000 aggravated damages. The Employment Appeal Tribunal found that the proper band for the award was the middle one and reduced the compensation, awarding £7,500 for injury to feelings and £2,500 for aggravated damages.

In *Kemeh v Ministry of Defence* (2014 EWCA Civ 91) the case related to two separate acts of racial discrimination involving in each case a racially offensive comment suffered by the claimant. In the event, the Ministry of Defence was found liable in respect of only one of those acts of racial discrimination by means of a racially offensive comment; the claimant having been told to “*shut up you dumb black bastard*”. With regard to such act the claimant was originally awarded £12,000 for injury to feelings, ie the award was in the middle of the middle band. On appeal the amount awarded was reduced to £6,000 and therefore placed at the top of the lower band. In the course of his judgment Elias L. J stated:-

“These are not rigid rules as Mummery LJ emphasised, and they allow for flexibility. But they are designed to ensure a measure of consistency and fairness in the way in which tribunals approach their task. Tribunals must remember that the aim is to compensate for genuinely injured feelings, not to punish an employer for bad management or poor personnel practice. The amounts were stipulated having regard to the compensation typically awarded for non-pecuniary loss in other fields, such as general damages in personal injury cases”

and

“In my judgement, the EAT was right to say that the award given by the Tribunal was manifestly excessive. It is important that awards should not be too high, since that risks creating the impression that victims of discrimination are over-compensated and being given unfairly generous treatment when compared with victims of personal injury, for example”.

When determining the award to be made in this case I also bear in mind the following principles for assessing injury to feelings:-

- (1) Awards are compensatory and should be just for both parties. They should compensate the claimant fully without punishing the respondent and any feelings of indignation at the respondent’s conduct should not be allowed to inflate the award;

- (2) On the one hand, awards should not to be too low thereby diminishing respect for the aim of the legislation and, on the other hand, they should be restrained in order not to give the view that it is a way to untaxed riches;
- (3) Awards should bear some broad general similarity to the range of awards in personal injury cases;
- (4) The award should take into account the value in everyday life in Gibraltar of the sum to be awarded; and
- (5) The need for public respect for the level to be awarded.

I also bear in mind all the authorities to which counsel for each side has referred me to.

Evidence

In his witness statement the Claimant stated as follows with regard to what he experienced following the incident of the 20th September 2017:-

“16. Following the assault by Dr Cassaglia I have been experiencing the following:-

- (i) Heightened anxiety, constant worry and bouts of depression. I can say there is not one day that goes by that I don't think about this incident.*
- (ii) I have experienced panic attacks in my workplace where the incident happened.*
- (iii) Experienced a loss of confidence in myself and my abilities.*
- (iv) Experienced a loss of confidence in those managing the GHA.*
- (v) Been questioning my career choices.*
- (vi) Been more prone to bouts of lethargy/ennui which can last weeks.*
- (vii) Worried about being targeted by Dr Cassaglia and influencing others against me or blocking my career progression. Although I have not claimed victimisation during this period the Tribunal has been supplied with e-mails to and from Dr Cassaglia and a report which deals with his proposal that the entire Histology Section (where I work) be out-sourced to the UK.*
- (viii) Been experiencing physical symptoms of stress, irregular pounding heartbeat, irritable stomach, decreased appetite.*
- (ix) Been experiencing psychological symptoms of stress, fear of worst happening, nervous, inability to relax, fear of losing control and unsteadiness.*

17. *As to Dr Cassaglia, I have been avoiding any contact with him. It has not been confirmed to me that measures were taken by the GHA to stop him from contacting me directly. I have seen him down the corridors a few times which has made me very anxious. He has been in the same room as me a few times which has made me feel uncomfortable. I have only engaged with him face-to-face on one occasion since the incident, this was during the handling of a complaint made by a patient's family which involved my department. I didn't know he was going to be present in the meeting until seconds before but I still agreed to meet with him there as there were another two persons in the room. I have crossed paths with him outside work a few times too which has also made me anxious.*
18. *I have been worried that he is keeping tabs on me, that my emails are being read and that I am under surveillance by him or by management under his authority.*
19. *I am concerned he will not change his manner and will continue to employ overbearing behaviour in the GHA towards other people. The possibility of this happening to others remains. I am advised by my lawyer that the GHA have not disclosed his personnel file. In any event I would be surprised if it contains any other recorded complaints of this nature but this does not mean that they have not taken place. After this happened I have been approached by other people who have told me that they have suffered similar aggressive behaviour by Dr Cassaglia at the workplace. These people have actually praised me for reporting him because they did not have the resolve to do so. The problem is, of course, that like most other witnesses, these people are scared of coming forward.*
20. *Given that Audrey and I have had the courage to report Dr Cassaglia and, as has been accepted, the GHA have not taken reasonable steps to deal with this, it is more important to me than anything else in this case that what happened to me is finally acknowledged. It has been nearly a year and half of suffering and yet no board or court has formally accepted that this happened and that it needs dealing with. It is for this reason that I ask this Tribunal to declare that I was bullied and to make suitable recommendations to the GHA on how they should deal with Dr Cassaglia”.*

With regard to this evidence I pause to point out the following:-

- (i) when cross examining the Claimant Mr Isola, not surprisingly seeing the neutral stance adopted by the Respondent with regard to the complaint, did not to any degree question the Claimant's evidence on this point;
- (ii) the Claimant did not produce any independent medical or other evidence to support and/or prove the various statements made in the quoted part of his witness statement; and
- (iii) there is no evidence whatsoever to indicate let alone prove that either Dr Cassaglia and/or the Respondent have been keeping tabs and/or

surveillance on the Claimant and/or that they are targeting the Claimant and/or reading his e-mails.

In the course of her evidence to this tribunal Megan Davis made the following statement as to the condition she found the Claimant that same day after the incident in question:-

“The same afternoon I saw Lawrence quite emotional before I left and I thought it only correct for me to write a statement as to what had occurred which is what I did the following day”.

This is the extent of the evidence before the tribunal on this particular point.

Considerations

Mr Cardona has forcefully submitted that when deciding on the amount of the award for injured feelings this tribunal can and should take into account the Respondent's failure(s) to implement and enforce its Bullying at Work policy and therefore to have the defence provided for by section 6(5) of the Bullying Act. Mr Cardona bases his submission on the wording of section 9(2) of the Bullying Act, and in particular the words “employer's breach” which appear after the words “seriousness, frequency and persistence”. It is said that this wording is intended by the draftsman to refer one back to the failure of a respondent to comply with (and therefore have a defence) section 6(5) of the Bullying Act. As stated at page 3 of this award, Mr Cardona has listed the many failures which he submits I should take into account should I agree with his interpretation of section 9(2) of the Bullying Act. I do not accept Mr Cardona's submission on this point. It does not seem to me that section 9(2) can possibly be interpreted in the manner suggested by Mr Cardona. The phrase “seriousness frequency and persistence of the employer's breach” clearly refers and is intended to refer to the bullying suffered by the Claimant, and not as to whether the respondent for one or more reasons has failed to be able to rely on the defence offered by section 6(5) of the Bullying Act. Moreover, if Mr Cardona's argument were to be correct it would in effect mean that the tribunal would be punishing the respondent for failing to have the defence afforded by section 6(5) of the Act rather than compensating the Claimant for genuinely injured feelings, which after all is what section 9(2) is all about, and what the authorities require this tribunal to do. I therefore discard Mr Cardona's submissions on this point from my considerations.

The Claimant has stated that he is worried that he is under surveillance in some way and that tabs are being kept on him but there is no evidence in my opinion to justify or support such a belief. Similarly there is no evidence to support the Claimant's belief that he has been or is being targeted by Dr Cassaglia and/or the Respondent and/or that the Claimant's career has been in any way blocked or unfavourably influenced. I therefore discard all such matters from my considerations.

The Claimant in the statement quoted above refers to the possibility/allegation that Dr Cassaglia has expressed aggressive behaviour to other employees and/or may do so against the Claimant in the future. Such matters I also disregard from my considerations as there is no evidence to support them.

Turning then to Mr Isola's submissions. Mr Isola submits that when considering the amount of the award I should take into account such issues as the underlying current which this tribunal found existed between Dr Cassaglia and the Histology department/members, whether a protocol existed, the pressure Dr

Cassaglia was under at the time to prepare the report required by the ombudsman, the fact that the Claimant had refused mediation on more than one occasion, the fact that the Claimant had stated that his claim was not about compensation and that after the incident in question Dr Cassaglia had interacted professionally with Mrs Smith and Ms Davis. With all due respect to Mr Isola I am of the opinion that none of these matters are relevant or pertinent to the issue before me, which is to compensate for genuinely injured feelings, and therefore I discard them from my considerations.

At the time of the incident Dr Cassaglia was the most senior person within the hospital and therefore a superior officer to the Claimant. As such a senior person in authority it was Dr Cassaglia's responsibility to ensure the wellbeing of the Claimant and that he not be subjected to conduct amounting to bullying. The incident with the Claimant as found by this tribunal undoubtedly caused the Claimant alarm and considerable distress. Although Dr Cassaglia at the time did express some words of apology the tribunal accepted that the apology in its extent and content was half hearted and not as remorseful as it should have been. Dr Cassaglia has never formally accepted the conduct alleged against him and has alleged, and continues to allege, that there is a conspiracy by the Claimant and the histology department against him. The Respondent has also never accepted that the Claimant suffered the conduct found by this tribunal and has uncomfortably sat on the fence arguing that on going disciplinary proceedings against Dr Cassaglia, which even to date continue, has not enabled it to take any other course of action. The tribunal accepts that after the 20th September 2017, the Respondent did take quick action to constitute the investigative board which looked into the complaint filed by the Claimant, but it also accepts that since that investigative board gave its findings in December 2017 the actual hearing of Dr Cassaglia's disciplinary has not been substantively commenced let alone determined. What reasons there are for this are irrelevant to the considerations of this tribunal. What is relevant, however, is that for the Claimant there has not been final closure of the incident that took place on the 20th September 2017, and this together with the other matters referred to above, and also such matters as the failure of the Respondent to inform the Claimant that Dr Cassaglia had been requested to keep his distance from the histology department/Claimant, and/or the failure of the Respondent to provide the Claimant with basic information as to what was happening with his complaint has in my opinion exacerbated the injury to feelings.

I do accept that the Claimant has as a result of the incident in question suffered anxiety, worry, bouts of lethargy, self doubt and stress but without the requisite medical evidence I am unable to accept that he has undergone bouts of depression with the peripheral and actual symptoms that such a condition generates.

I do take into account that the conduct that amounted to bullying was more than just the push suffered by the Claimant (see page 1 above).

I do take into account the fact that Dr Cassaglia's conduct did not result in the dismissal or demotion of the Claimant or in any action being taken against him. I

also take into account the fact that the conduct in question was a one off incident and not a case of an employer subjecting an employee to a campaign of bullying.

Conclusion

I see no justification for a one off incident of the kind that we have in this case to be placed within the middle band category, let alone the upper end of that band as Mr Cardona submits. There are aggravating as well as mitigating features in the case but taking all in all I am of the opinion that this case is one that should be placed towards the top of the lower band. The range of the sums in the lower band extend from £800 to £8,400 and I have concluded that the appropriate sum to award in this case is £7,000. To this sum one has to add interest at 2% pa from the 20th September 2017 to the 31st January 2020, which by my calculations amounts to £327.94. The total amount of the award is therefore £7,327.94.

With regard to the matter of recommendations, section 9(1)(c) of the Bullying Act requires the tribunal to make recommendations “appearing to the tribunal to be practicable”. I agree with Mr Isola that the proposed recommendations put forward by Mr Cardona are mostly impracticable. Having said this, I do consider that one recommendation can appropriately be made.

Award

In accordance with the requirement of section 9(1) I hereby make the following award:-

1. The complaint of bullying filed by the Claimant against the Respondent is well founded. The Claimant was bullied.
2. The Respondent to pay the Claimant the sum of £7,327.94 by way of compensation for the injury to feelings suffered by the Claimant.
3. It is recommended that the Respondent review within a reasonable time and in any event by no later than the 31st October 2020 its dignity at work policies and procedures so that there is a clear and unambiguous statement of the disciplinary procedure and the measures to be followed against employees, irrespective of their position within the organisation, who are alleged to have infringed the policy.
4. Liberty to apply with respect to paragraph 3 above in the event of non-compliance.

Dated this 31st day of January 2020.


Joseph Nuñez
Chairman