

OLD SQUARE  
CHAMBERS





COMPENSATION UPDATE

30 JANUARY 2007

REBECCA TUCK



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## NEW LIMITS WHERE DISMISSALS FALL ON/AFTER 1 FEBRUARY 2007

WEEK'S PAY: £310

UNFAIR DISMISSAL:

Basic award: £9300

Compensatory award: £60,600



## INJURY TO FEELINGS POST VENTO:

### Hardy and Hanson Plc v Lax (no 2). EAT. Jan 2006.

£14000 injury to feelings award reduced to £10,000 on appeal in a case of refusal to give permission to work part time.

No evidence of actual damage to health and no medical report; also no aggravated damages

The ET had derived assistance from the Equal Opportunities Review Guide to Compensation in Discrimination Cases, but the EAT emphasised the need for caution if referring to this guide without providing copies of the full decisions.

Note - reasonable mitigation to delay a return to work by attending a course.



## INJURY TO FEELINGS POST VENTO:

### **Corus Hotels v Woodward and Rushton** EAT. March 2006.

Injury to feelings award of £4000 substituted for ET award of £5000 in case of failure to appoint.

Vento guidelines are authoritative and binding.

The employment tribunal was under an obligation to take into account the broad level of awards in personal injury cases as a whole, rather than specific supposed comparators in awards at that level by district judges in the county court.

ET erred in taking into account size of Respondent company in making award.



## INJURY TO FEELINGS SINCE VENTO:

### **Miles v Gilbank** [2006] ICR 1297, CA.

£25,000 awarded for injury to feelings to a hairdresser who suffered harassment in the course of her pregnancy. (Case is notable for the imposition of joint liability on manager and employer.)

Notable in setting the level of award, which was not considered by CA to be excessive:

- Repeated acts of discrimination
- Conduct deliberate, hurtful and distressing
- Involved well being of unborn child
- Accepted that the facts were not the most serious



## BONUSES:

### Commerzbank AG v Keen [2006] EWCA Civ 1536

Mr K was made redundant in June 2005. He did not receive any of the discretionary bonus (payable in March 2006) in respect of 2005. He also claimed that his 2003 bonus of €2.8m and 2004 bonus of €2.95m were too low as they were lower than recommended by his manager. K's claims were summarily dismissed as they had no reasonable prospect of success.

Further a contractual term providing that the employer was not obliged to pay a bonus where the employee was not employed on the bonus payment date could not be rendered void by the Unfair Contract Terms Act 1977.



BONUSES:

**Takacs v Barclays Services Jersey Ltd [2006] IRLR 877.**

Barclays failed in their application to strike out claims that they were under an implied duty not to exercise contractual powers to dismiss in such a way as to deny Mr T the opportunity to benefit from his contractual bonus scheme. The alternative claim on the basis of an alleged breach of trust and confidence / implied duty to cooperate in fulfilling the condition on which a bonus depended was also held to be arguable.

Notable for the relationship between express and implied terms; the extent to which express terms can be modified or overridden by implied terms.



## PENSION LOSS:

### Greenhoff v Barnsley IDS Brief 813

EAT set out five sequential (though not mandatory) steps for ETs to take:

1. identify all possible benefits that the employee could obtain under the pension scheme
2. Set out the terms of the pension scheme relevant to each possible benefit
3. Consider in respect of each benefit the advantages and disadvantages of applying the simplified or substantial loss approach (or any other approach considered appropriate by the parties / ET)
4. Explain why it has adopted a particular approach
5. Set out its conclusions and explain the amount of compensation for each head of claim.



Pension Loss:

**Knapton and others v ECC Card Clothing Ltd [2006]**

ICR 1084

- ET reduced the immediate loss element of the claimants' compensatory award to reflect receipt of early pension payments.
  - EAT held this was an error, and it mattered not whether the claim was in contract or tort, whether the pension scheme was contributory or not, occupational or private.
- ET refused to award compensation for loss of life assurance.
  - EAT held this was correct between date of ET's decision and the remedies hearing the insured event (death) had not occurred, and no claimants had bought replacement cover. Therefore no loss had been suffered.



## COMPROMISE AGREEMENTS

### **Hinton v University of East London** [2005] IRLR 552

"I would not regard it as good practice for lawyers to draft a standard form of compromise agreement which lists every form of employment right known to the law. Compromise agreements should be tailored to the individual circumstances of the instant case." Smith LJ.

Factual and legal descriptions of what is being compromised to be given. Mummery LJ.

Cf: **BCCI v Ali** [2001] IRLR 292, HL - can compromise claims of which a party is unaware, but in the absence of clear language courts will be slow to infer that a party intended to surrender a right or claim of which he was unaware and could not have been aware.



## COMPROMISE AGREEMENTS:

### CMC Group Plc v Zhang [2006] EWCA Civ 408

A settlement agreement that had sought to prohibit the Mr Z from making derogatory or unfavourable communications about the respondent, and under which any breach rendered him liable to repay the sum payable under the settlement in addition to being liable for damages, was a penalty clause and unenforceable.



Other cases of note:

**Brash Hall v Getty Images Ltd** [2006] EWCA Civ 531

Recovery of damages on the tortious principle of placing the Claimant in the position she would have been but for the discrimination (constructively dismissed whilst on maternity leave).

**Langley v Burlo** [2006] EWCA Civ 1778

When an employee was certified as unfit during her notice period her compensation for wrongful dismissal was limited to her contractual sick pay (here SSP). Compensation cannot exceed the actual loss suffered. The ratio of **Norton Tool** is limited to the principle that in assessing compensation for unfair dismissal a payment should not be subject to any deduction for sums earned in other employment during the notice period.

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