REPUBLIC OF TRINIDAD AND TOBAGO

IN THE EQUAL OPPORTUNITY TRIBUNAL

(Referred pursuant to S. 39(2) of the Equal Opportunity Act 2000 as amended by Act No. 5 of 2001)

E.O.T. No. 0003 of 2013

BETWEEN

Giselle Glaude **Complainant**

AND

Quality Security Bodyguard Services Limited **Respondent**

CORAM:

His Honour Mr. Rajmanlal Joseph - Judge/Chairman

Her Honour Ms. Leela Ramdeen - Lay Assessor

His Honour Mr. Harridath Maharaj - Lay Assessor

APPEARANCES:

Mr. Jason Nathu instructed by Ms. Barbara Lodge-Johnson appeared on behalf of the **Complainant**

Mr. A. Mohammed instructed by Ms Afreen Mohammed-Khan appeared on behalf of the **Respondent**

Date of Delivery: July 26, 2016

BACKGROUND

1. This case concerns the allegation of the Complainant that she was discriminated against by the Respondent when she was dismissed on March 26, 2012 as a security guard for failing to wear the "approved" uniform, that is, she had modified the said approved uniform by wearing a hijab shortly after becoming a Muslim on July 9, 2011.

2. It is contended by the Complainant that she was allegedly discriminated against by the Respondent on the basis of her religion (being Muslim), a requirement of which mandates that female members wear a covering of their head and bosom (commonly referred to as a Hijab).

3. However, it is the contention of the Respondent that the Complainant violated its uniform code, which said uniform was approved by the Ministry of National Security, and from which they did not wish to deviate. Consequently, the Complainant's refusal to remove her hijab was considered an act of gross misconduct and she was accordingly "charged" and placed before a Tribunal consisting of an executive officer of the Respondent and was subsequently terminated.

4. In support of their contention hereinabove the parties submitted the following witness statements:
   (a) Witness Statement of the Complainant dated June 12, 2014 and filed on June 18, 2014.
   (b) Witness Statement of Colin Lange, Operation Supervisor of the Respondent dated June 11, 2014 and filed on June 12, 2014.
   (c) Witness Statement of Lennox Copeland, Chief Security Officer of the Respondent dated May 21, 2014 and filed on May 22, 2014.
   (d) Witness Statement of Phyllis Andrews, Welfare Officer of the Respondent dated May 21, 2014 and filed May 22, 2014.
   (e) Witness Statement of Samuel Sealey, Visiting Supervisor of the Respondent dated May 22, 2014 and filed on May 22, 2014.
   (f) Witness Statement of Edwin Gittens, Human Resource Manager of the Respondent dated May 21, 2014 and filed on May 22, 2014.

5. Essentially, the Complainant's evidence via her Witness Statement was that she began her employment with the Respondent on July 27, 2007 and was assigned to work at the Eric Williams Medical Sciences Complex at Mt. Hope. Her uniform consisted of a black short sleeve jumper with epaulettes, company patch on the left sleeve, a black leather belt and black leather boots. She wore this uniform whilst on duty.

6. On July 9, 2011 the Complainant converted to Islam and became a Muslim and in October of that year began wearing the Hijab which covered her head and chest area but with her face exposed. The Complainant asserted that sometime in August 2011 she had a conversation with Mr. Colin Lange, the Respondent's Operations Supervisor, asking whether it would be permissible for her to wear the hijab whilst on duty. He responded *that "you are free to wear any garment in accordance with your religious beliefs".* And it was after this conversation that she began wearing the Hijab with her uniform.

7. The Complainant further maintained that during the period October 13, 2011 to January 2012 neither Mr. Lange, the Respondent, nor any other employee or agent of the Respondent made any complaint to her about wearing the Hijab.

8. Further, the Complainant was required to attend a meeting with Mr. Lange on February 27, 2012 and was instructed to write a letter to the Human Resource Department concerning her religion and her need to wear the Hijab. The Complainant wrote the said letter informing the Respondent of the reasons for wearing the Hijab. The Respondent responded by letter of March 5, 2012 indicating that if she continued to wear the Hijab on duty – which conflicted with its uniform code – then she would have to make other arrangements as regards her employment. Following this letter, the Complainant sought advice from her Imam, and on March 9, 2012 he wrote a letter to the Respondent indicating that the Complainant was an active and functioning member of their community and that it is a requirement that believing women cover their heads and breast.

9. Subsequent to these events, matters went downhill for the Complainant in that on March 15, 2012 she was served a "Notice of Intended Action" for Gross Misconduct, that is, her refusal to desist from wearing the Hijab whilst on duty. On March 22, 2012 the Complainant attended a disciplinary hearing. After the hearing she was informed that she was found guilty of the charge and was terminated. The formal termination letter of March 26, 2012 was received by the Complainant on even date and two (2) days after she returned all uniform items issued to her.

10. This witness was extensively cross-examined by counsel for the Respondent but the essential evidence of the Complainant was not shaken. Under cross-examination one was impressed with her reaffirmation in her faith and her insistence that she would not remove the Hijab, even though she faced imminent dismissal. Consequently, the Tribunal found that this witness was generally a credible witness.

11. Of the five (5) Witness Statements filed on behalf of the Respondent, only three (3) of those witnesses were called to be cross-examined. Ms. Phyllis Andrews was excused from being called by the Tribunal on account of the fact that counsel for the Complainant indicated to the Tribunal that he had no questions for this witness.

12. Mr. Samuel Sealey on the other hand was a no show even though the matter was adjourned to the following day to allow for his attendance; he did not turn up to be cross-examined.

13. The essence of the evidence of Lennox Copeland, Chief Security Officer of the Respondent, is that he received information that the Complainant was wearing a Hijab whilst in uniform on duty at the North Central Regional Health Authority, Mt. Hope and arrangements were made to have her brought to his office. He did not indicate how or from whom be received such information.

14. On Monday March 5, 2012 the Complainant reported to his office in canine uniform with a black Hijab on her head. He indicated that the company respected her religious belief but that it was unacceptable to management for her to wear the Hijab with her uniform. He

further indicated to the Complainant that if she could not conform to the company's dress code then she will have to make alternative arrangements for her employment. According to this witness, he attended a Tribunal hearing on Thursday 22nd March, 2012 wherein the Complainant was charged for gross misconduct, gave his evidence and at the end of the Tribunal hearing she was terminated.

15. On cross-examination by counsel for the Complainant, this witness could not logically explain if there was a difference between the phrase *"to find alternative employment arrangements"*, which was interpreted by the Complainant that she would be fired when she inquired of him whether that was so, he told her *"No"*. That apart, this witness under cross-examination did not deviate from his Witness Statement.

16. Essentially, the evidence of Mr. Edwin Gittens, Human Resource Manager of the Respondent, was that he first interacted with the Complainant in August 2007 when she was employed as a Security Officer with the Respondent and that at no time during her employment did she indicate to the Human Resource Department that she had a certain religious affiliation. This only came to the Respondent's attention in March, 2012 when she was challenged by Mr. Lange regarding the wearing of the Hijab. This witness also indicted that he was aware of the Disciplinary Tribunal hearing and the Complainant's termination.

17. What was interesting in the cross-examination of this witness was his admission that the Respondent had accommodated requests by Seventh-day Adventist Security Officers to have their Sabbath Day free of any work duties, but was not prepared in any way to make a similar accommodation to the Complainant. This apart, the witness did not deviate significantly from his Witness Statement. In addition, he could not say if the Human Resource Department received any written notification from any of its employees of a change in their religious status.

18. The evidence of Colin Lange, Operations Supervisor of the Respondent was that he knew the Complainant who was employed as a Security Officer, and up until her dismissal she was posted at the North Central Regional Health Authority, Mt. Hope as a Canine Officer.

He indicated that he was aware that she was dismissed for wearing a Hijab whilst on duty in breach of the Company's uniform policy. He also indicated that he had cause to visit the location and the Complainant who was on duty in uniform (minus Hijab) told him that she had embraced Islam and wanted to know whether it would be a problem to wear the Hijab with her uniform whilst on duty. He instructed her that he did not have the authority to allow that, and she should seek clarification from the Human Resource Department. He also stated that at no time did he have any conversation with the Complainant in the presence of the Welfare Officer, Ms. Phyllis Andrews.

19. Under cross-examination this witness appeared to suggest that there was a difference between the statement by the Complainant – "Whether it would be a problem to wear the Hijab with her uniform whilst on duty", which he interpreted as being directed at him rather than the Respondent.

20. Mr. Samuel Sealey, Visiting Supervisor with the Respondent, in his Witness Statement dated May 22, 2014 and filed on the said date, indicated in his said Statement that he was employed with the Respondent for the past six (6) years, that is from May 22, 2008 to May 22, 2014, which said period covered most of the years the Complainant was employed with the Respondent. He went on to state that he visited her on several occasions at the North Central Regional Health Authority, Mt. Hope, and she was always dressed in the Company's uniform, and at no time did he see her wearing a Hijab.

21. The above statement conflicts significantly with the uncontroverted evidence of the Complainant that during the period October 13, 2011 to January 2012 no one from the Respondent complained to her about her wearing the Hijab. And this maybe one the reasons why Mr. Sealey did not present himself on the two (2) days of trial to be cross-examined on his Witness Statement.

FINDINGS OF FACT

22. Based on the evidence presented in this matter the Tribunal on a balance of probabilities find the following facts:

a) That the Complainant was employed by the Respondent from July 27, 2007 until her dismissal by way of letter dated March 26, 2012.

b) The letter of dismissal of March 26, 2012 failed to advise the Complainant that she had a right of appeal as set out at 6.4.5, (e), page 8 of the document entitled *"Handling Discipline" wherein it is stated that "Arising out of the action taken, the defending officer had the right to appeal the decision. This appeal must be in writing and submitted within forty-eight (48) hours of the action being taken. This appeal will be directed to the Managing Director who will review the facts as well as any new evidence, which the appellant may wish to submit in his defence. The Managing Director will, after review, make a final determination on the matter".*

c) In June 2011, the Complainant converted to the Islamic faith and shortly thereafter began wearing the Hijab while on the job.

d) During the period October 13, 2011 to January 2012 no one from the Respondent complained to her about wearing the Hijab along with the "approved" uniform.

e) By letter dated March 22, 2012 the Complainant was served with a notice of Charge and Tribunal and the charge was that of gross misconduct, that is to say, the failure on the part of the Complainant to remove the Hijab while on duty wearing the approved uniform and was subsequently, dismissed.

f) That the Respondent had made accommodations with officers in their employ of the Seventh-day Adventist faith to so schedule their duties as to allow them their Sabbath day off to do their worship.

g) The Respondent failed to take any action to enquire from the Ministry of National Security whether it wold be acceptable to have Muslim female guards in their employ wear the Hijab along with the approved uniform on duty.

h) The Complainant was stationed for most of her employment with the Respondent at the North Central Regional Health Authority, Mt. Hope and there was no evidence whatsoever to indicate that the client had made any complaints about her wearing of the Hijab along with her uniform.

ISSUES

23. a) Whether the Complainant was dismissed from her position as Security Officer with the Respondent on the basis of wearing the Hijab as an outward manifestation of her faith (Islam) even though the Respondent insisted that the wearing of the Hijab was unacceptable with its approved uniform.

b) Whether the aforesaid dismissal of the Complainant was an act of discrimination on the basis of her religion.

ANALYSIS

24. The Equal Opportunity Act, Chap. 22:03 (the Act) prohibits discrimination on the basis of religion, for example section 5 of the Act states:

"For the purposes of this Act, a person ("the Discriminator") discriminates against another person ("the Aggrieved person") on the grounds of status if, by reason of –

a) the status of the aggrieved person;

...

The discriminator treats the aggrieved person, in circumstances that are the same or are not materially different, less favourably than the discriminator treats another person of a different status"

25. The term "status" in section 3 of the Act, in relation to a person, means –

a) The sex;

b) The race;

c) The ethnicity;

d) The origin, including geographic origin;

e) The religion;

f) The marital status; or

g) Any disability of that person.

26. The prohibition against discrimination on the basis of religion is reinforced in the employment relationship wherein section 9 of the Act states:

"An employer shall not discriminate against a person employed by him –

...

(c) by dismissing the person or subjecting the person to any other detriment".

27. For the purpose of this analysis the Complainant asserts that she was discriminated against on the basis of her Muslim religion (Status), that is to say she was treated less favourably than other security officers of the Seventh-day Adventist Faith employed by the Respondent. From the evidence, it emerged that the Respondent had made an accommodation with Seventh-day-Adventist employees and did not entertain any notion of an accommodation that would allow the Complainant to wear her Hijab with the approved uniform.

28. In addition, there was not one scintilla of evidence offered by the Respondent to suggest that any efforts were made to get any sort of clarification from the Ministry of National Security that the wearing of the Hijab with the approved uniform would be unacceptable.

To be sure, the Respondent did not offer to the Tribunal any evidence - oral or written – to the effect that the uniform that was said to be approved by the Ministry of National Security, was in fact so approved.

29. Moreover, it is the uncontradicted evidence of the Complainant that she wore the Hijab with her uniform undisturbed by the Respondent or its servants and/or agents during the period October, 2011 to January, 2012. Suddenly, in February, 2012 the Complainant was required by Mr. Colin Lange to write a letter to the Human Resource Department concerning her religion and her need to wear the Hijab. And by early March, 2012 the disciplinary process began, in that a "Tribunal" was called and at the end of the hearing she was terminated, without her being advised that she had a right to appeal the decision to dismiss.

30. It appeared to the Tribunal that the haste with which this disciplinary machinery was engineered and the fact that the Respondent utterly failed to advise the Complainant of her right to appeal the termination decision, is highly suggestive that the Respondent wanted to get rid of the Complainant for having adopted the Muslim faith.

31. The wearing of the Hijab by Muslim women in this jurisdiction, particularly in environments where uniforms are an acceptable norm, has created societal controversy and engaged the attention of the High Court. In the land mark case of *Sumayyah Mohammed – v- Moraine and Another (1995) 49 WIR 371,* which said case concerned a Muslim girl who had passed the Common Entrance Examination for her first choice, that is, Holy Name Convent Secondary School established in 1902, and which had school regulations requiring pupils to wear the school uniform.

32. The applicant's parents asked the school to permit the applicant to wear the dress conforming to the Hijab. The principal of the school and its board of management refused to allow any such exemption, although they accepted the sincerity of the belief of the applicant and her parents that she was required by the Islamic faith to conform to the Hijab. The principal and board of management explained that if an exemption were allowed, other parents would also seek exemptions; further, that the uniform was a useful tool in

administration, was conducive to good discipline, and created a sense of unity and of family. The applicant attended school wearing a modified version of school uniform which conformed to the Hijab, but she was not allowed to attend classes and was in effect suspended.

33. That decision was challenged in the high Court of Justice and after a lengthy Trial the court quashed the decision of the respondents, holding that they had applied the school regulations inflexibly and had not taken into account the psychological effect on the applicant of refusing to allow her to conform to the Hijab.

34. The principle of law applicable to the instant case flowing from the aforesaid decision is that entities (Public or Private) in the application of rules and regulations must do so flexibly taking into account the sincerely held religious belief of the person affected. In this case the Complainant was a practising Muslim who held the belief that she was required to wear the Hijab; since according to her Imam by his letter of March 9, 2012 to the Respondent in which he indicated that the wearing of head covering is a requirement of the faithful, this view is captured by his statement that: *"Our Lord and Master, Allah has commanded the believing women to cover their heads and breast"*.

35. Moreover, in Civil Appeal *No. 153 of 2006 Between Isreal Khan –v- Sherman Mc Nicholls, a case where the Respondent (then Chief Magistrate) refused the Appellant the right of audience in his court on the basis that the Appellant was not properly attired (not wearing a jacket and tie) but was wearing a full Nehru Suit.* The Court of Appeal in the course of deciding this case noted at page 13 and 14 of its decision delivered on January 12, 2012 that: *"There was a time when women never wore trousers to the Courts. Now they do. There was a time when a conventional jacket was expected, even over a dress. Now that is not so and there is much more variety in what is considered a 'jacket'. Indeed, dresses per se are now also worn and there is no uniformity as to style, cut or cloth. Furthermore, saris have been worn in all the courts of the land, even in the High Court with advocates' collars and bands.* ***And recently, Muslim women have been wearing hijabs in all the Courts of Trinidad and Tobago, also with advocates' collars and bands"***. It logically followed that the Court of Appeal quased the decision of the Respondent.

36. What is relevant about the Khan case is that the Court of appeal as a matter of record indicated that *"MUSLIM WOMEN HAVE BEEN WEARING HIJAB in all the Courts of Trinidad and Tobago"*. Yet in the instant case the Respondent did not give an iota of consideration to the Complainant in terms of wearing the Hijab with her approved uniform.

37. Further, there is a discernible requirement in anti-discrimination jurisprudence for employers to strike a balance between the right of an employee to manifest his/her religion provided that there is no unjustified hardship on the employer.

38. The above requirement was more fully articulated in the case *of Eweida and Others –v- The United Kingdom [2013] Eq LR 264 wherein Ms. Eweida a practising Coptic Christian was employed with British Airways which required all their staff in contact with the public to wear a uniform; but the company did concede an accommodation to allow male Sikh employees to wear a dark blue or white turban...* ***and for female Muslim ground staff to wear the Hijab in British Airways approved colours.*** On September 20, 2006 Ms. Eweida was sent home from work because of her refusal to conceal a crucifix she wore around her neck, in breach of the company's uniform code.

39. Ms. Eweida challenged the company's decision in the local (English) Courts and failed. She then appealed to the European Court of Human Rights, which found that a fair balance was not struck in this case by the lower courts, in that it did not strike the right balance between protection of her right to manifest her religion and the rights and interest of others. The Court further considered that the violation of her right to manifest her religious belief must have caused her considerable anxiety, frustration and distress.

40. Furtheremore, the fact that the Respondent admittedly accommodated its security officers of the Seventh-day Adventist faith to be rostered in such a manner that they did not have to work on their Sabbath day is a crystal clear indication that the Respondent was aware that it had a responsibility to take reasonable steps to accommodate – as far as practicable – the religious belief of its officers and their need to manifest same.

41. The above proposition finds considerable support from the recently decided case emanating from the United States Supreme Court, that is, *Equal Employment Opportunity Commission (EEOC) –v- Abercrombie and Fitch Stores, 575 US (2015)* in which Samantha Elauf, a practising Muslim who, consistent with her understanding of her religion's requirements, wore a headscarf (Hijab). She applied for a position in an Abercrombie Store and was interviewed by the Assistant Manager, who using the store's ordinary system for evaluating applicants, gave Ms. Elauf a rating that qualified her to be hired. However, the Assistant Manager was concerned that Ms. Elauf's headscarf would conflict with the store's "Look Policy", that is, dress code. The Assistant Manager sought guidance from her district manager who indicated that Ms. Elauf's headscarf would violate the "Look Policy" and directed her not to hire her.

42. The EEOC sued Abercrombie on Ms. Elauf's behalf, claiming that the store's refusal to hire Ms. Elauf violated her Title VII of the Civil Rights Act, 1964 protection which prohibits religious discrimination in hiring. The District Court granted the EEOC summary judgment and held a trial on damages and awarded US$20,000.00. The decision was reversed on appeal and the matter finally engaged the attention of the Supreme Court in which Justice Scalia, delivering the majority decision (8-1) of the Court, held that Title VII forbids adverse employment decisions made with a forbidden motive, whether this motive derives from actual knowledge, a well founded suspicion, or merely a hunch. He further elaborated by saying that an employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions. The decision of the Tenth Court was reversed and the case was remanded for further consideration consistent with the Supreme Court's opinion.

43. In the instant case Mr. Lennox Copeland, Chief Security Officer of the Respondent, indicated in his evidence before this Tribunal that he received information that the complainant was wearing a Hijab whilst in uniform on duty at the North Central Regional Authority, Mt. Hope. Therefore, the Respondent is taken to have direct knowledge of the Complainant wearing a Hijab on duty - which headwear in this jurisdiction is associated with practising female Muslims. In this regard it was incumbent on the Respondent to not

discriminate against the Complainant for wearing the Hijab which constituted an outward manifestation of her religious belief. Provided, of course, that in making such an accommodation the Respondent would not suffer any unjustified hardship. And in this matter there is not one shred of evidence to suggest that the Respondent would so suffer.

CONCLUSION

44. From the foregoing analysis it is evident that the Respondent did not in any manner attempt to make any accommodation whatsoever to the sincerely held religious belief of the Complainant that it was a religious necessity for her to wear the Hijab – as a true believer must. While at the same time making accommodations for other employees of the Seventh-day Adventist faith to have their Sabbath day off to engage in worship.

45. Moreover, the contemporary approach in anti-discrimination jurisprudence to determine if the Complainant was treated differently or less favourably, is not to engage in an arid search for an actual or hypothetical comparator but to focus on the *"reason why"* question. In this regard see *Ladele and Mc Farlene –v- The United Kingdom [2010] KR 507 and Cordell –v- Foreign and Commonwealth Office [2011] Eq LR 1210.*

46. From the evidence adduced in this case, the findings of facts by this Tribunal, and the analysis contained herein, it is clear beyond peradventure that the Respondent treated the Complainant differently or less favourably to others in its employ of a certain religious persuasion. On a balance of probabilities, it is apparent that the Respondent adopted a rigid attitude to the Complainant in receiving written confirmation of her religious status and her sincerely held religious belief of the necessity of wearing the Hijab on duty. This rigid attitude is manifested by not making any enquiries whatsoever of the Ministry of National Security on whether the wearing of the Hijab with the "approved' uniform was acceptable. This indifference is aggravated by the fact that the Respondent equated the Complainant's wearing of the Hijab with the charge of "gross misconduct", for which she was dismissed and not advised of the right to appeal the decision to terminate her employment.

47. The cumulative effect of the reasons why the Respondent treated the Complainant in the manner in which it did, leads logically and irresistibly to the inference that the Respondent discriminated against the Complainant on the basis of her religious belief contrary to the Act, for which the Complainant must be compensated. The contention by counsel for the Respondent that the Complainant was working for a "Military Establishment" does not make it immune from the provisions of the Act, making certaindiscriminatory acts unlawful. In any event, it is the opinion of this Tribunal that it is erroneous to equate the Respondent to a military establishment which is normally a component of the coercive arm of the State.

COMPENSATION

48. The jurisdiction of the Tribunal to make awards of compensation can be found in Section 41 (4) (c) of the Equal Opportunity Act, Chap. 22:03 (the Act) wherein it states that: *"The Tribunal shall have jurisdiction to make such declarations, orders and awards of compensation as it thinks fit".*

49. The contemporary approach to dealing with the remedy of compensating the victim of discriminatory acts by a discriminator is succinctly stated by the learned author Karon Monaghan in his textbook entitled *"Equality Law"*, Oxford University Press, 2007 at page 575 para. 143 where he states that: "*Remedies for claims of discrimination closely match the remedies available in other claims for breach of a statutory tort. Compensation may be awarded, including compensation for INJURY TO FEELINGS and aggravated damages. Compensation is otherwise generally to be assessed in the same way as with any other statutory tort. Exemplary damages may be awarded in an appropriate case".*

50. In the recently decided Australian case *Richardson –v- Oracle Corporation Australia Pty Ltd [2014] FCAFC 82* the appellant claimed sexual harassment at the workplace. After hearing the matter, the first instant Federal Court awarded $18,000.00 as general damages for emotional suffering. On appeal the Full Court held that the continued adherence to the previously accepted range of awards of general damages and the awards made by the court

at first instant, was judged by prevailing community standards disproportionately low, having regard to the loss and damage which the employee suffered.

51. In the United States of America, the recent case of *EEOC –v- Abercrombie and Fitch Stores (cited earlier in this judgment),* the United States Supreme Court held that Ms. Elauf was discriminated against by the Respondent who refused to hire her due to the fact that her headscarf (Hijab) conflicted with their "Look Policy" (dress code). The First Instance Court, on a jury hearing, awarded the sum of US$20,000.00.

52. In the English jurisdiction, the Court of Appeal in *Vento –v- Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102* in dealing with compensation for injury to feelings in anti-discrimination cases, was critical of the employment tribunal which awarded Ms. Vento £65,000 for injury to feelings, which sum included £15,000 as aggravated damages. The Court of Appeal found the award excessive. It substituted the sum of £18,000 for injury to feelings, plus £5,000 for aggravated damages. The court also discerned three broad bands of compensation for injury to feelings. These are as follows:

"(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. 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.

(iii) Awards of £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 be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings"

53. The above Vento guidelines were updated in line with inflation in *Da'Bell –v- National Society for the Prevention of Cruelty to children (NSPCC) [2010]* IRLR 19 where the top of the lower band moved from £5,000 to £6,000; the top of the middle band moved from £15,000 to £18,000 and the top of the higher band moved from £25,000 to £30,000. The court in that case noted that assessing compensation for injury to feelings is not an exact science. Disputes about the placement within a band are likely to be about fact and impression.

54. In this jurisdiction anti-discrimination jurisprudence has just begun. There is no list of decided cases where awards of compensation have been made. And while we have developed a body of constitutional decisions on the inequality of treatment provision of our constitution, this area of the Law has been described as "sui generis" (see in this regard the case of *Nizam Mohammed –v- The Attorney General, Civil Appeal No. 75 of 2013).* In that regard such cases may not be appropriate or desirable to establish levels of compensation that can be awarded to victims of discrimination under The Act.

55. However, since it has been advanced that *"remedies for claims of discrimination closely match the remedies available in other claims for a breach of a statutory tort"* it may be useful to examine decisions within the tort of defamation to be able to discern a trend of awards in such cases. In this regard the Tribunal examined a number of recent cases; these are as follows:

a) *Pan Trinbago and Owen Serrette –v- Maharaj HCA 1071 of 1995*, where the court by its judgment delivered on December 20, 2002 awarded Pan Trinbago the sum of $90,000.00, being damages for vindication of reputation, while Owen Serrette was awarded $100,000.00 which said award included the additional element of damages for hurt feelings.

b) *In Moore-Miggins –v- TnT News Centre HC 138 of 2001* where the allegation was made that the claimant had abandoned her legal practice to the detriment of her clients,

the court in its judgment of July 17, 2007 awarded the claimant the sum of $130,000.00 as compensatory damages and exemplary damages of $20,000.00.

c) In *Robin Montano –v- Harry Harinarine and Hindu Credit Union Communications Limited CV 2008 – 03039* the court, on March 22, 2012, awarded the claimant the sum of $250,000.00 as general damages to compensate him for his injury to his feelings and reputation.

d) *Nizam Mohammed –v- The Trinidad Express Newspaper Limited, Omatie Lyder and Ria Taitt, CV 2011 – 00264* is a case where the third named defendant wrote an article in which she stated that the claimant had been referred to the Disciplinary Committee of the Law Association and an order was made against him which was shown to be pure misinformation. In this case the court, by its judgment delivered on July 19, 2013, awarded the claimant the sum of $325,000.00, inclusive of aggravated damages.

e) *Dr. Keith Rowley –v- Michael Anisette, CV 2010 – 04909* is a case where the Defendant made certain defamatory statements of the claimant in Parliament and subsequently republished those statements in the media. The court by its decision delivered on February 12, 2014, awarded the sum of $475,000.00, inclusive of an element of aggravated damages.

f) *Rajnie Ramlakhan –v- Trinidad and Tobago News Centre Limited and Ramjohn Ali, HCA No. S-634 of 1999* a case where the Plaintiff was called a racist, inter alia. The court, by its decision of May 29, 2009, awarded the Plaintiff the sum of $700,000.00 as general damages, inclusive of aggravated damages, to compensate the plaintiff for the serious distress, hurt and humiliation suffered for the injury to her reputation and as a vindication of reputation.

56. It is apparent from the cases from this jurisdiction mentioned hereinabove, that our courts have awarded sums ranging from $90,000.00 to $700,000.00, depending on the seriousness of the defamation. And generally awarded compensation, taking into consideration the distress, hurt, suffering, injury to reputation and hurt feelings.

57. It is the considered opinion of the Tribunal that the discrimination of the Complainant by the Respondent was serious, in that the discriminatory act was not a one off incident but continued for some time, including the discomfort of a Tribunal hearing and eventual dismissal. Under cross-examination the Complainant indicated that after her dismissal she was "stressed out". And that during the period March 5, 2012 and March 22, 2012 whenever she reported for duty she would be asked to remove her Hijab and when she refused she was made to sit and wait for long hours and then told to return home.

58. Consequently, the Tribunal has placed our award of compensation for injury to feelings in the upper quadrant of the "Vento" Middle band, that is, the sum of £16,000 which is equivalent to approximately to TT$150,000.00 (using an exchange rate of £1 to TT $9.3590). This amount closely approximates the sums awarded in Pan Trinbago and Moore-Miggins, supra; once they are adjusted for inflation. There were no pleadings on special damages and no evidence led, and therefore no award can be made in this regard.

ORDER

59. (i) The Respondent to pay to the Complainant compensation in the amount of $150,000.00 with interest at the rate of 6% per annum from the date of the filing of the Complaint to payment.

(ii) The Respondent to pay the Complainant her costs on the prescribed scale consistent with rule 20.4 (e) of the Rules of Practice and Procedure, 2016 of the Equal Opportunity Tribunal, that is, the sum of $22,500.00.

60. The foregoing decision is made and delivered by the Judge/Chairman of the Tribunal in accordance with Section 44 (7) of the Act, which states:
"The decision of the Tribunal in any proceedings shall be made by the Chairman and shall be delivered by him".

HIS HONOUR MR. RAJMANILAL JOSEPH
JUDGE / CHAIRMAN
EQUAL OPPORTUNITY TRIBUNAL