

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. 0006 of 2013

BETWEEN

DINDIAL RAGOO

Complainant

AND

MINISTRY OF FOOD PRODUCTION

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 Kevin Ratiram appeared on behalf of the **Complainant**

Mr Kelvin Ramkissoon appeared on behalf of the **Respondent**

Date of Delivery of Judgment: July 21, 2017

JUDGMENT

BACKGROUND:

1. The Complainant by his Complaint and Particulars thereof filed on April 9, 2014 averred that he was discriminated against by the agents/servants of the Respondent, in refusing or deliberately omitting to afford the Complainant access to opportunities for promotion, and subjecting him to detriment contrary to the Act due to his race.
2. In addition, the Complainant contended that he was discriminated against by the agents/servants of the Respondent, in that he Complainant was treated less favourably than in those circumstances the said agents treated or would treat other persons, and did so by reason of his race.
3. It was the further contention of the Complainant (who describes himself as a persons of East Indian descent) that he was discriminated against for promotion to the position of diesel mechanic in favour of Mr. Noellyn Paul (who the Complainant identified as a person of African descent).
4. The Respondent in its Defence filed on April 22, 2014 contended that based on a meeting of March 10, 2010 between representative of the Respondent and the National Union of Government and Federated Workers (NUGFW); it was decided that Mr. Noellyn Paul would be appointed to Act in the position of Diesel Mechanic and be given a probationary period of six months and that an Appraisal Report was scheduled to be conducted on his performance after this six months probation.
5. Moreover, it is the further assertion of the Respondent that the Complainant was not discriminated against on the basis of his race or at all. And that the acting position that Mr. Paul was placed into was in accordance with the Collective Agreement in particular Article 20.2 (the Promotion Policy), Article 20.2.1 (Ability and Experience) and Article 20.2.2 (Seniority). And furthermore, that all decisions made by the Respondent were fair and consistent with its procedures and policy, and therefore, all allegations made by the Complainant are untenable.

THE EVIDENCE:

6. In support of their respective positions hereinabove the parties submitted the following witness statements:
 - (a) Witness statement of the Complainant dated and filed on May 14, 2014
 - (b) Witness Statement of Mr. Alfonso Roper, Agricultural Assistant III, dated and filed on May 29, 2014, made on behalf of the Respondent.
7. Essentially, the evidence of the Complainant was that he began his employment with the Respondent in January, 2008 as a daily-rated class 22 Driver. At that time his comparator Mr. Noellyn Paul (who is of African Descent) was also employed at the Horticultural Services Division as a Labourer.
8. He further indicated that in March 2010 he knew one Mazarus Ali who was employed in his Division as a Diesel Mechanic and is also of East Indian descent. He also knew Richard Paul brother of Noellyn Paul who was promoted ahead of Mr. Ali. He maintained that the minutes of a meeting held on March 10, 2010 between representatives of the Respondent and the NUGFW it was stated that Mr. Ali was in line for promotion and it was agreed for him to be so promoted, thereby causing the position of diesel mechanic to be vacant.
9. The Complainant additionally averred that the minutes also stated that Noellyn Paul was considered as a replacement for Mr. Ali. At that time Noellyn was a gas mechanic, having been promoted to that position in December, 2008. And he was to be on probation for six months, thereafter he would be assessed to determine if he was capable of performing the duties of diesel mechanic. Further, it was suggested that the said assessment be done by a qualified independent body possibly an engineer from the Land and Water Development Division. By October 2010 Noellyn Paul was assessed by Mr. Ali *“as being technically different in his skills and knowledge as a mechanic..... and was not ready to be promoted to the next level”*.

10. The Complainant further contended that according to the said minutes Mr. Walkes, then PIRO III of the Respondent stated that the post of Diesel Mechanic should be advertised internally. And shortly after this meeting the post was advertised and by his application of March 17, 2010 he applied for the said post. At that time he had the following qualifications:

- (i) Electronic Fuel Injection, School of Continuing Studies, UWI
- (ii) Certificate of Completion, Introduction to Hydraulics
- (iii) Certificate of Completion, Autotronics
- (iv) Electronic Diagnostician Training Programme
- (v) Four (4) CXC Subjects

He also indicated that Mr. Noellyn Paul's qualification were as follows:

- (i) N.C.E. Craft Certificate, Auto and Diesel Craft, JSD Technical Institute
- (ii) Gasoline Fuel Injection, Level I
- (iii) Four (4) CXC Subjects

11. The Complainant further asserted that during the period March 2010 to December 2010 he made verbal inquiries of Mr. Roper as to the status of his application, but on every such occasion he would state that he was awaiting a response from the Human Resource Department. However, by January 2011 the Director of his Division wrote the Permanent Secretary seeking to have him act in the then vacant post of diesel mechanic. And by memorandum dated January 26, 2011 the Permanent Secretary indicated that approval had been given to him to act as diesel mechanic with effect from January 7, 2011 and continuing until further notice.

12. The Complainant maintained that he expected his then manager, that is, Mr. Roper to inform him of the approval to act as diesel mechanic, but was never so informed; and only inadvertently discovered about the approval in February 2011, but was never allowed to so act even though he complained to his shop steward, and wrote the Permanent Secretary a letter dated November 11, 2011 indicating the "run around" he was getting.

13. Further, the Complainant stated that Mr. Ali died on July 3, 2012 and had he been promoted to the post of diesel mechanic he would have been next in line for the position that was held by Mr. Ali. And that he is of the firm belief that he was never allowed to act in the position of diesel mechanic due to his race; while Noellyn Paul was unfairly given the opportunity to train for the post of diesel mechanic ahead of him and allowed to act in that position because of his race.
14. The evidence of Mr. Alfonso Roper on the other hand indicated that he was an Agricultural Assistant III attached to the Botanic Gardens Branch of the Horticultural Service Division of the Respondent. He asserted that some of his duties include managing operation in the Horticultural Services Division, and instructing staff including foremen.
15. He further stated that he attended a meeting on March 10, 2010 with other representatives of the Respondent and representatives of the NUGFW, to continue discussions to review the permanent establishment; and made reference to the minutes of this meeting.
16. He further maintained that as Agricultural Assistant III he took part in the discussions but did not make decisions as to who is to be promoted. There is a process whereby discussions between the representatives of the Respondent and the NUGFW engage in to arrive at those employees eligible for promotion. He put forward the position that promotion is governed by the Collective Agreement which provides for the employer to fill a vacancy after agreement with the union.
17. He contended that at this *meeting* "one of the issues discussed was that in 2007, Mr. Richard Paul was promoted to Charge hand CME (Civil, Mechanical and Electrical). At this time in 2010, there were only two positions for CME. These were already filled. However, in order to ensure the smooth running of the Division, another position was deemed necessary for a CME. Mr. Mazarus Ali was placed in the position of CME. Therefore, there were now three positions for CME in the Horticultural Services Division".

18. He advanced the position that as Mr. Ali was promoted the diesel mechanic position became vacant. *"It was decided at the meeting that Mr. Noellyn Paul would be promoted to the position of Diesel Mechanic as he was the next person in line for this position, and that he should be given a probationary period of six months in this position, after which he would be assessed independently by with a representative of the Ministry of Works or a representative of the Engineering Division within the MOFP"*. He also mentioned that during the said six months probationary period Mr. Ali would supervise Mr. Noellyn Paul.
19. Mr. Roper further declared that in early January 2011, on his first day back on the job after three (3) months vacation leave he was approached by the Complainant who informed him that he had to act as diesel mechanic from that day. He told the Complainant that he could not act as the diesel mechanic until the appraisal of Mr. Paul was completed. And that a date needed to be set for the appraisal of Mr. Paul and the Division needed to engage the services of an independent person to do the evaluation.
20. This witness further asserted that while he was on vacation leave Mr. Ali did the appraisal of Mr. Noellyn Paul; this he maintained was inconsistent with the decision made at the meeting of March 10, 2010 between the Respondent and the NUGFW. He pronounced that Mr. Ali was a charge hand CME at the time, was not an independent person for the purpose of the assessment and therefore, he was not supposed to do the evaluation of Mr. Paul.
21. Mr. Roper indicated that while performing his duties in January 2011 he read a memorandum dated January 3, 2011 that Mr. Roberts then Ag. Agricultural Assistant III sought permission from the Permanent Secretary for the Complainant to be placed in the position of diesel mechanic.

22. Mr. Roper further stated that he informed both Mr. Paul and the Complainant that an evaluation was scheduled to take place to ascertain the best person to fill the position of diesel mechanic. However, the Complainant asked him to put that in writing. He maintained that he made the necessary arrangement for both Mr. Paul and the Complainant to be taken for their evaluation; but the Complainant refused and only Mr. Paul went. And when asked by the Tribunal whether he received a report on Mr. Paul he said "No".
23. Under cross-examination counsel for the Respondent sought to make heavy weather that the Complainant had refused to go for the assessment as arranged by the Respondent. He maintained that his complaint was then before the Equal Opportunity Commission (EOC) and he feared that he was being "*set up*".
24. In addition, a lot was made of the term "*different*" as used by Mr. Ali in his appraisal of Mr. Paul on the expiration of his six months probationary period, while the expression "*deficient*" was used in the memorandum dated January 3, 2011 from the Director, Horticultural Services Division to the Permanent Secretary. However, Mr. Ali's **APPRAISAL** of Mr. Noellyn Paul is quite clear since he was of the view that Mr. Paul was not yet ready to be promoted to the next level since he "*is technically different in his skills and knowledge as a mechanic*". To be sure, since Mr. Ali was tasked with the day to day supervision of Mr. Paul he was in an appropriate position to make such an appraisal.
25. However, notwithstanding the foregoing the Tribunal was of the view that the Complainant was generally straight forward and credible as a witness.
26. Furthermore, the cross-examination of Mr. Roper revealed many inconsistencies in his evidence. For instance, he indicated that at the meeting of March 10, 2010 it was decided that Mr. Noellyn Paul would be appointed to **ACT** in the position of diesel mechanic and be given a probationary period of six months. However, the actual minutes of that meeting revealed that: "*After extensive discussions as to whether Mr. Paul would be able*

*to function as diesel mechanic, it was decided that he should be **TRAINED** on probation for a period of six (6) months after which he would be assessed".* This decision was to have Mr. Paul trained on probation and not **ACT** in the position of diesel mechanic. The minutes clearly contradicts the assertion by Mr. Roper. And the only logical inference maybe that it was calculated to mislead. Moreover, at that meeting it was never decided that Mr. Paul *"would be assessed independently by either a representative of the Ministry of Works or a representative of the Engineering Division of the MOFP"*. What in fact happened was according to the said minutes was that: *"It was suggested by Mr. Rousseau that the assessment should be done by a qualified independent body, possibly an engineer from the Land and Water Development Division"*. Thus, it was a suggestion and not a decision arrived at from discussions by the parties of that meeting.

27. In addition, when asked by counsel for the Complainant whether at that meeting it was decided that Mr. Paul would be **TRAINED** on probation for six months and then assessed. He responded "no".

28. Further, in his witness statement Mr. Roper indicated that on his first day back from vacation in early January (around the 7th or 8th) 2011, the Complainant approached him and stated that he had to act as diesel mechanic from that day. He stated that he was unaware of any agreement for him to act as diesel mechanic. And therefore he told the Complainant that he could not act as diesel mechanic until the assessment of Mr. Paul was completed. When confronted with the memorandum from the Permanent Secretary dated January 26, 2011 approving the acting as diesel mechanic of the Complainant with effect from January 7, 2011 and continuing until further notice. He then changed his position by indicating that verbal approval had been sought before the actual written communication from the Permanent Secretary. This attempt to obfuscate is a further indication of this witness unreliability. The Tribunal found that this witness was not credible.

FINDINGS OF FACT:

29. Based on the evidence presented in this case the Tribunal on a balance of probabilities find the following facts:
- (a) The Complainant was employed by the Respondent from January 2008 as a daily-rated Class 22 Driver, and at that time Mr. Noellyn Paul was employed as a Labourer; and that the Complainant was of East Indian descent while his comparator Mr. Paul was of African descent.
 - (b) Mr. Alphonso Roper was employed as an Agricultural Assistant III at the Horticultural Division of the Respondent where both the Complainant and Mr. Paul worked, and had direct supervisory responsibility for both employees.
 - (c) There was a meeting between the representatives of the Respondent and the NUGFW on March 10, 2010 wherein Mr. Mazarus Ali aired his grievance of not being promoted CME in 2007 when the permanent establishment was signed in 2007 but Mr. Richard Paul was given the promotion instead. It was noted that Mr. Ali was in fact senior by classification but was overlooked for promotion. Mr. Lambert, then President of NUGFW express the view that this should be corrected; but Mr. Paul could not be removed. Consequently, Mr. Ali was promoted CME making the post of diesel mechanic vacant.
 - (d) At the said meeting after extensive discussions as to whether Mr. Noellyn Paul would be able to function as a diesel mechanic, it was decided that he should be **TRAINED** on probation for a period of six (6) months after which he would be assessed.
 - (e) Further, at that meeting Mr. Rousseau the Director, Industrial Relations, NUGFW **SUGGESTED** that the assessment of Mr. Noellyn Paul should be done by a qualified independent body, possibly an engineer from the Land and Water Development Division. To be sure, the minutes did not reflect an agreement and/or decision on that suggestion.

- (f) Moreover, at the said meeting the Chairman Mr. Walkes then Personnel and Industrial Relations Officer III of the Respondent requested from Mr. Mazarus Ali a scope of works which Mr. Noellyn Paul would be performing over the probationary period. And he also stated that the post should be advertised internally for the position of Diesel Mechanic.
- (g) Mr. Noellyn Paul completed his training within the six months probationary period under the supervision of Mr. Ali and on October 26, 2010 he wrote a Memorandum to the Acting AA III concerning the appraisal of Mr. Paul's performance for the period April 2010 to September 2010. Mr. Ali clearly indicated that this appraisal was done on the instructions of the then AA III; and his findings were as follows:
- “(i) Mr. Paul is a very regular and punctual employee who displays enthusiastic attitude towards his assigned duties.
 - (ii) However, it has been my experience that Mr. Paul is technically different in his skills and knowledge as a mechanic.
 - (iii) As such, it is my view that he is not yet ready to be promoted to the next level”.
- (h) On January 3, 2011 the then Director, Horticultural Services Division wrote a memorandum to the Permanent Secretary seeking permission to have the Complainant act as diesel mechanic, since Mr. Paul was found to be quite deficient in the required skills during the six month training period. Consequently, the Permanent Secretary by memorandum of January 26, 2011 approved the Complainant to act as diesel mechanic with effect from January 7, 2011 and continuing until further notice consequent on the promotion of Mr. Mazarus Ali, Diesel Mechanic promoted to CME effective March 10, 2010.
- (i) Even though the Complainant was appointed to act as diesel mechanic by the Permanent Secretary, he was never allowed to so do.

- (j) Mr. Roper in his evidence on cross-examination indicated that he did not allow the Complainant to act since there was no independent assessment of Mr. Paul and that he was informed by his Director that the Complainant should not be acting. There was no documentary evidence presented to substantiate any such instruction and/or direction from the Director of the Horticultural Service Division.
- (k) Mr. Roper and/or his Director in setting aside the approval in writing of the Permanent Secretary for the Complainant to act as diesel mechanic, without so much as engaging in consultation with the administrative head and accounting officer of the Respondent acted irrationally and unlawfully; and their conduct may be tantamount to insubordination.
- (l) That the Complainant did not speak to Mr. Roper about his acting when he resumed duties in early January, 2011 since the memorandum from the Permanent Secretary giving approval for his acting as diesel mechanic was dated January 26, 2011.
- (m) That Mr. Noellyn Paul is a fairly good comparator for the Complainant since they appear to have similar – though not identical – qualifications for the position of diesel mechanic; even though Mr. Paul may have entered the service of the Respondent as a Labourer before the Complainant.

ISSUE:

- 30. Whether the Complainant was discriminated against by the Respondent its servants/agents in his employment relationship on the basis of his race.

ANALYSIS:

- 31. The Equal Opportunity Act, Chap. 22:03 makes unlawful discrimination in certain areas of activity, Section 4 states:

“This Act applies to –

- (a) *discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation, if the discrimination is –*
 - (i) *discrimination on the grounds of status as defined in Section 5; or*

(ii) discrimination by victimization as defined in Section 6;

(b) offensive behavior referred to in Section 7”

32. Moreover, Section 3 of the Act which deals with the interpretation of certain words, indicates that the word “STATUS” 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.

33. In addition, Section 5 of the Act goes on to indicate what the term discrimination encompasses, the section states as follows: “*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;

(b) A characteristic that appertains generally to persons of the status of the aggrieved person; or

(c) A characteristic that is generally imputed to persons of 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 he treats another person of a different status”.

34. Simply put, the Act is saying that if (as in this case) you fall within the employment relationship, and you are of an appropriate status (race) and your employer in circumstances that are the same or are not materially different, treats you less favourably than he treats another person of a different status; then once you can adduce evidence to prove on a balance of probabilities that the above characteristics apply to you, then you would have proven your case that you were discriminated against.
35. In this case it is the accepted evidence of the Complainant that when he entered the service of the Respondent in January 2008 Mr. Noellyn Paul was already employed as a labourer. However, when the meeting of March 10, 2010 occurred, Mr. Paul was given the opportunity to be trained for the position of diesel mechanic for a period of six months period with Mr. Ali as his supervisor. However, from the minutes of this meeting there is nothing to indicate whether Mr. Paul was still a labourer or a gas mechanic. Moreover, there was no discussion as to whether the Complainant should be given a similar opportunity to train for the diesel mechanic position; even though at that meeting questions arose as to Mr. Paul's suitability for the position of diesel mechanic. In any event, Mr. Ali in his requested appraisal of Mr. Paul's performance during his six month training found him not to be suitable for that position.
36. At that said meeting Mr. Walkes expressed the view that the post should be advertised internally for the position of diesel mechanic. Consequently, on March 17, 2010 the Complainant by letter addressed to the Manager, Horticultural Services Division, applying for the position of diesel mechanic as advertised on the notice board. In his application he outlined his qualifications and attached his certificates. On the other hand, Mr. Noellyn Paul submitted his written application for the position of diesel mechanic dated October 23, 2012, more than two years after the Complainant. In his application Mr. Paul outlined his experience but failed to mention what qualifications he possessed (if any).

37. Shortly after the expiration of Mr. Paul's six month training exercise, and being found by his supervisor (Mr. Ali) to being unsuitable for promotion to the position as diesel mechanic; the Director, Horticultural Services Division wrote a memorandum dated January 3, 2011 to the Permanent Secretary seeking permission for the Complainant to act as diesel mechanic, since the Agricultural Assistant II and the CME who indicated that Mr. Paul was quite "*deficient*". The Director also indicated that the Complainant had originally applied for the position on March 17, 2010 with all the necessary qualifications.
38. In response, the Permanent Secretary by Memorandum dated January 26, 2011 addressed to the said Director gave approval for the Complainant to act as diesel mechanic with effect from January 7, 2011 and continuing until further notice. However, from that time until the trail of this action, the Complainant was never allowed by Mr. Roper of any other responsible official to act as diesel mechanic. And what is particularly disturbing is that Mr. Roper in cross-examination indicated that the Complainant was not allowed to act due to the pending "*assessment*" of Mr. Paul, and by the fact that the Director had placed his acting on hold. The question that logically arises is how a lower level functionary, that is, the Director could without more countermand the decision of the Permanent Secretary. If Mr. Roper is to be believed, such action is certainly whimsical, irrational and boarding on being unlawful.
39. What emerges from the evidence is that Mr. Paul was given every opportunity to train for the position of diesel mechanic but failed to satisfy his supervisor about his skill and ability to be recommended for the position. Thus, his seniority is of no moment at this juncture, and the Complainant ought to have been given a similar opportunity to prove himself; but he was not. Moreover, even when he was approved to act as diesel mechanic by the highest permanent official of the Respondent, he was prevented from so doing. This type of treatment of the Complainant certainly qualifies as "*less favourable treatment*".

40. Further, there appears to be an emerging pattern of such less favourable treatment; one only has to reflect on the manner in which Mr. Ali was **OVERLOOKED** for promotion to CME in favour of Mr. Richard Paul in 2007. The minutes of the meeting of March 10, 2010 had the President of NUGFW indicating that if Mr. Richard Paul was given the promotion without consideration of Mr. Ali, this should be corrected, but that Mr. Paul could not be removed. He also questioned whether Mr. Paul had the ability to supervise the mechanics. What is pellucidly clear is that Mr. Ali had the confidence of those present at that meeting so that he was charged with the responsibility of supervising Mr. Noellyn Paul during his six month training period.
41. It is in those circumstances hereinabove that the Tribunal is inclined to the view that the Complainant was treated less favourably than Mr. Noellyn Paul, and that the only logical reason for such treatment was because of his race. Support for this approach can be found in *Nagarajan-v-London Regional Transport Board [1999] 4 All ER 65* wherein the House of Lords indicated that:
“Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Normally the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstance”.
42. To be sure, the contemporary approach in determining if a Complainant is treated differently or less favourably, is not to engage in a sterile search for an actual or hypothetical comparator but the need to focus on the “*reason why*” question. In this regard see *Landele and Mc Farlene-v-The United Kingdom [2010] ICR 507* and *Cordell -v-Foreign and Commonwealth Office [2011] Eq. LR 1210*. In the instant case the reason/s why the Complainant was treated less favourably than Mr. Noellyn Paul could only reasonably be because of his race.

CONCLUSION:

43. From the preceding analysis it is evident on a balance of probabilities that the Respondent by its servants and or agents treated the Complainant less favourably on the basis of his race.

REMEDIES:

44. The Tribunal is given jurisdiction by virtue of section 41(4) (c)
“to make such declarations, orders and awards of compensation as it thinks fit”.
45. Further, it is the decision of the Tribunal that the Complainant in this matter is entitled to a declaration and compensation.

DECLARATION:

46. It is hereby declared that the Complainant is entitled to be given a fair opportunity within a reasonable time to be considered for promotion to the position of diesel mechanic at the Horticultural Services Division of the Respondent.

COMPENSATION:

47. 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”.*

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”*

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.

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

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, and suffering, injury to reputation and hurt feelings.

48. In addition in two recent cases decided by this Tribunal, that is, *EOT No. 0003 of 2013 Giselle Glaude -v- Quality Bodyguard Services Limited* where the Complainant was compensated in the amount of \$150,000.00 for discrimination on the basis of religion; and *EOT No. 0002 of 2014 between Kerwin Simmons -v- The Water and Sewerage Authority*, the Tribunal awarded the sum of \$186,000.00.
49. In the instant case the Tribunal is of the view that the discriminatory acts of the Respondent was indeed serious and has placed its award for injury to feelings in the middle of the upper “vento” band in the amount of £18,000.00 which is equivalent to approximately TT\$167,351.00 (using an exchange rate of £1 to TT9.2973). This amount closely approximates the sums awarded in Glaude, Simmons and Moore-Miggins cases cited hereinabove.

ORDER:

50. (i) The Respondent to pay to the Complainant compensation in the amount of \$167,351.00 with interest at the rate of 6% p.a. from the filing of the complaint to judgment.
- (ii) The Respondent to pay the Complainant his cost on the prescribed scale, that is, the sum of \$25,102.65 in accordance with Rule 20.4 (d) of the Rules of Practice and Procedure, 2016 of the Equal Opportunity Tribunal.
51. 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. RAJMANLAL JOSEPH
JUDGE / CHAIRMAN
EQUAL OPPORTUNITY TRIBUNAL**

