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EMPLOYMENT TRIBUNALS

Claimant: Mr R Hirani

Respondent: The Royal Bank of Scotland Plc

Heard at: East London Hearing Centre

On: 19, 20 and 21 February 2019

Before: Employment Judge Elgot

Members: Mr L Purewal
Mrs A Berry

Representation

Claimant: Mr Rozycki (Counsel)

Respondent: Ms H Coutts (Solicitor)

JUDGMENT

The unanimous judgment of the Employment Tribunal is that: -

1. The complaint of unfair dismissal does not succeed and is **DISMISSED**.
2. The claims of disability discrimination **FAILS** and are **DISMISSED**.
3. The claim for damages for breach of contract (notice pay) does not succeed and is **DISMISSED**.

REASONS

1. In this case there are three claims. The Claimant says that on 5 December 2017 he was unfairly dismissed and that his dismissal was a constructive dismissal.

2. Secondly, he says that he has been the subject of disability discrimination by reference to s.15 and s.20 Equality Act 2010 and that those acts of discrimination occurred in respect of two-time periods. The first time period is 18 September to 9 October 2017 during the Claimant's temporary transfer to the Hackney branch of the Respondent Bank. The second period is between the dates of 9 October to 5 December 2017 when he was back at his 'home' branch at Stratford Broadway.

3. At a meeting held at Stratford on 5 December 2017 he resigned verbally and confirmed his resignation in writing. That letter of resignation is at page 88 of the bundle; it gives no specific reasons for the resignation. The Claimant thereafter did not contact the Respondent, raised no grievance, no complaint and no request to withdraw his resignation.

4. The Tribunal heard evidence from the Claimant himself and his friend and colleague Mr Sajid Goriya. The Respondent's witnesses were the Claimant's line manager Ms Shahida Salim, the Branch Manager at Stratford together with the Deputy Branch Manager Mr Mohammed Degia. Mrs Johanna Woolston, the Local CEO of the Bank also gave evidence for the Respondent. The Branch Manager at Hackney Mrs Omowunmi Adeniyi prepared and signed a witness statement which we read. She was unfortunately unable to attend the hearing because she was unexpectedly unwell. In accordance with usual practice we read only those documents in the agreed bundle to which our attention was specifically directed by the parties, the witnesses or the representatives. We had the benefit of oral submissions from counsel for both parties.

5. The Claimant is a disabled person within the definition set out in s.6 of the 2010 Act, by reason of his type 2 diabetes and, as the Tribunal found at the commencement of this Hearing, also by reason of dyslexia including particular difficulty in processing numbers and calculations.

6. The Respondent knew that the Claimant was type 2 diabetic. Indeed, his line manager Mrs Salim has personal and family experience of the illness and its symptoms and effects. The Respondent also knew that the Claimant was dyslexic including difficulties with numbers and this knowledge occurred as early as 23 October 2006 by reference to page 84 of the bundle, in which it is acknowledged by the Respondent that the Claimant need not work on manual tills or be involved in counting money. Mrs Salim told us that she had seen the 2006 correspondence on the Claimant's personnel file. In any event, when the Claimant moved to Stratford in 2014 and certainly from 2015 onwards there was no need for him to use manual tills.

There were electronic tills which he could use at Stratford. The reference to this change of equipment is in Mrs Salim's witness statement at paragraphs 4 and 5.

7. In September 2017 the Claimant was asked to transfer temporarily to the nearby Hackney branch. There were several reasons for this, one of which was that he could fairly easily do the alternative travel arrangements to Hackney and also that Hackney was very short staffed at that time. We established that it is Mrs Woolston as Local CEO that has the discretion and authority to make transfers of this type. The Claimant agreed willingly to be seconded to Hackney at her request.

8. The Claimant's complains that when he arrived at Hackney he was required to use manual tills and undertake cashier duties involving manually counting money. We are satisfied that in advance of his transfer to Hackney Mrs Salim did not communicate to Mrs Adeniyi that the Claimant could not use manual tills but that when he arrived the Claimant immediately told his new branch manager of his inability to undertake this type of duty. However, he was given no option by Mrs Adeniyi. The Hackney branch was extremely short staffed. She herself noticed no concerns about his work and found that the Claimant could manually balance a till when she asked him to do so. She was not concerned that such minor discrepancies as arose in his work could not be eventually resolved at the end of the accounting period whether at the end of the day or at the end of the week if the Claimant was provided with some suitable assistance. She offered him some help from another more senior cashier who was also busy and she never reprimanded him about any till float arrears. Indeed, Mrs Adeniyi exhibited little or no concern about the potential for minor cash discrepancies arising from the Claimant's work. She makes it clear in her witness statement that she continued to require the Claimant to do part of his work on the manual tills. Paragraph 7 of her statement says; "*given that we were short staffed, I had no option*". At paragraph 12, she states that she told Mrs Woolston, "*I do not have the luxury of being able to have a staff member who can only undertake till walks*". Till walks are when an employees is allocated to handle only face to face customer enquiries inside the bank branch but is not involved with the cashier duties.

9. Although Mrs Adeniyi had few concerns about his work the effect on the Claimant when he was required to use manual tills was to cause him significant stress and anxiety. He eloquently describes the effects of that stress at paragraphs 15 to 18 of his witness statement. His anxiety became so serious that it culminated eventually in a call to Johanna Woolston which she described as a '*meltdown*'. She told us that she was worried that the Claimant was '*really struggling with the manual tills, very upset*' and without hesitation she agreed to transfer him back to the Stratford branch. She told him to go home early on Friday 6 October 2017 and that he would recommence his work at Stratford on Monday 9th. By the time the Claimant returned to Stratford Mrs Salim had unfortunately suffered an injury in which she broke her ribs and was off work until 27 September 2017.

10. We are therefore satisfied that during the three-week temporary period at

Hackney there is an arguable case that the Claimant was subjected to a provision criterion or practice (PCP) that he must do some cashier work on manual tills and that this PCP on the face of it placed him at a substantial disadvantage compared to others who do not have his disabilities. He says that he was caused stress and anxiety and his general physical health was affected. There is a strong case that the Respondent's duty to make reasonable adjustments arose by reference to s 20 Equality Act 2010.

11. However those acts of alleged disability discrimination occurred outside the time limit for making such a claim. Those time limits are set out at s.123 of the 2010 Act. We are satisfied that the claims are out of time and we decline to exercise our discretion to extend time. It is not just and equitable to do so.

12. The reasons for our decision not to extend time are as follows:-

12.1 The Claimant made no approach to any relevant person to complain about the allegedly discriminatory behaviour of the Respondent until four and half months after he left Hackney and returned to the Stratford branch. He in fact only contacted ACAS on 22 February 2018 and made his claim to this Tribunal in April 2018. He raised no grievance of any type, not even an informal employee complaint, after he went back to Stratford.

12.2 We are satisfied that he knew he had some potential legal redress because Mrs Adeniyi says, at paragraph ten of her witness statement, that the Claimant said to her, "*I am threatening to go on sick leave. The bank aren't treating me right. I could raise a claim*". The Claimant was in contact with Human Resources and he spoke to the Local CEO. He knew that there were resources which he could consult so as to at least discuss, if not assist, in any such claim but he did not formally or informally raise the alleged discrimination issues again.

12.3 The Claimant went back Stratford and even at the meeting on 5 December 2017 when he resigned he did not raise past allegations of disability discrimination with Mrs Salim or Mr Degia. We conclude that he was insufficiently aggrieved to pursue these matters at the time or within the statutory time limits and when he did bring his claims in the Tribunal the complaint of disability discrimination which relates to his short secondment at Hackney it is out of time.

12.4 The subsequent conduct of the Respondent with which we deal below is not linked factually nor indeed does it relate to the same disability as the conduct of the Respondent at Hackney. When the Claimant returned to Stratford his subsequent complaints referred to his disability of type 2 diabetes and not to his dyslexia. We are satisfied therefore that there was no conduct extending over a period, by reference to s.123(3)(a) of the 2010 Act, which ended with the meeting on 5 December 2017 and which also encompassed the discrete events

which occurred in Hackney.

- 12.5 Finally, we have heard no evidence from the Claimant, oral or documentary, giving any reason for the delay in bringing a claim in relation to the allegations of disability discrimination (failure to make reasonable adjustments) at Hackney or in respect of his failure to comply with the relevant time limits. The time point issue was brought to the Claimant's attention in the telephone case management hearing conducted by Employment Judge Prichard on 19 November 2018. The time point issue was raised by this Tribunal on the first day of this Hearing. However no explanation or mitigation was forthcoming about the circumstances in which the relevant time limits were missed.

These claims are lodged out of time and thus outside the jurisdiction of this Tribunal.

13. We turn now to the events which occurred upon the Claimant's return to Stratford. The first of his complaints is that upon his return to Stratford his colleagues, of whom there were approximately eight at the Stratford branch, became '*stand offish*' towards him. He says they were not as chatty, friendly or inclusive as they had been before he left for Hackney. He agreed that '*some were supportive, some still remained the same*'. The Claimant gave no specific incidents or examples of any time when he was badly treated by his colleagues, ostracised or otherwise dealt with unfairly by them.

14. We find that there is no breach of the contract of employment by an employer nor it can contribute cumulatively to a breach of contract by an employer if a particular employee's colleagues are not consistently and reliably good friends with him and with each other. So long as employees who are colleagues in the work place behave towards each other in a professional and civil fashion and maintain a courteous and professional relationship there is no breach of the employer's obligations towards an employee who feels less happy in his working relationships than he previously did. The situation as described by the Claimant cannot be categorised in any way as unacceptable conduct by the Respondent and we are certain that it did not cause his resignation.

15. We also find that this allegedly less cordial attitude towards the Claimant from his co-workers was not disability discrimination. We heard no evidence, by reference to Section 15 of the 2010 Act, that this treatment by some the Claimant's colleagues was because of something arising out of either of his disabilities. Even if they were '*standoffish*' and less friendly than they previously were it was not, on the evidence before us, done because of something arising from his dyslexia or something arising from his diabetes. The only suggestion we heard about the reason for the change in atmosphere in the workplace at Stratford was that when the Claimant's colleagues saw him return so quickly from the Hackney secondment they became concerned that they might be the next ones to be the subject of a transfer which was not a generally popular move. The workplace became subdued at this prospect. This concern was unrelated to the Claimant's disability.

16. On 5 December 2017 the Claimant was asked to attend an informal meeting at Stratford with Mrs Salim and Mr Degia. The account of what occurred at that meeting on that afternoon differs significantly between the Claimant's statement of what happened and what the two Respondent's witnesses say occurred. We have preferred the evidence of the Respondent for all the reasons set out below.

17. We find as follows:

- 17.1 The Claimant was asked to attend an informal meeting at approximately 3.45 pm on 5 December 2017. The Claimant confirmed the time as "*well after 3pm*". It was just before the bank closing time at 4:30pm. The meeting was in the staff room at Stratford and it was also attended by Mrs Salim and Mr Degia. The Respondent's witnesses are very clear about the timing. It was fixed for a time when the other staff's lunches and breaks would be finished, the staff room would be free and the meeting would be uninterrupted. The staff room has facilities for making drinks including tea and coffee.
- 17.2 The purpose of the meeting was to discuss an incident in which the Claimant had allegedly been rude and uncooperative with a customer leading to a customer complaint. It was not a formal disciplinary investigation or a disciplinary hearing likely to result in sanctions. It was an informal chat to attempt to obtain the Claimant's version of events and to understand why he was being difficult with customers. The Respondent's witnesses told us that this was becoming an uncharacteristic pattern of behaviour by him which was causing them concern.
- 17.3 We do not accept the submission that the failure of the two principal Respondent's witnesses to recall every detail of every customer complaint is fatal to their credibility. Indeed, if each of them had the exact same detailed recollection it might rather have showed that they had colluded in an artificially uniform authorised version of events. The differences between them made their evidence more credible rather than less in all the circumstances.
- 17.4 The Claimant claims constructive dismissal and says that it is the conduct of the Respondent at the 5 December meeting that caused him to resign in the circumstances which are set out at s.95(1)(c) Employments Rights Act 1996 which refers to the contract of employment being terminated because of the conduct of the employer. He complains that because of the intolerable conduct of the Respondent at that meeting, amounting to a fundamental breach, he was forced to resign because the Respondent thereby indicated that it no longer intended to be bound by the terms of the said contract of employment and repudiated its obligations towards him. We cannot agree.

- 17.5 The Claimant takes his regular 15-20 minute afternoon break each working day for a sugary drink and/or a sugary snack to help control his diabetes. He says he invariably takes that break at 2:30pm. The Respondent's witnesses are certain that it was closer to 3pm and they gave a good reason for that timing. The break was permitted when all the other lunchbreaks were finished and there was cover for the Claimant to take his afternoon break having had an early lunch. He quite regularly leaves the branch, goes to the local shop and buys a snack or drink which he then consumes either outside of the branch or in the staff room.
- 17.6 The Respondent's managers did not actually see him take the break on 5 December 2017 but they are certain and we are convinced that by 3.45pm he had done so. Mrs Salim made it clear to us in credible terms that the Claimant invariably took his 3pm break and rarely if ever delayed it. The Claimant says that he had been too busy that day to take his break even by 3:45pm and that when he went into the staff room he asked if he could have his break first before the meeting. He says that he was resolutely refused a break despite that request. We do not find the Claimant's evidence credible. We prefer the evidence of the Respondent's witnesses who are absolutely certain that this break was not requested (because the Claimant had already had his break) and that they did not refuse a break :-
- 17.6.1 The Claimant's managers knew that this afternoon break was part of the Claimant's healthy routine. Mrs Salim told us that he always takes the 3pm break regularly without delay; she understands from personal knowledge the need of this kind of break for a sugary drink or snack. She was absolutely clear that the provision of an extra break had never been an issue when she was the manager in charge of the Claimant's work.
- 17.6.2 Both managers knew that the Claimant needed this break to maintain dietary control and there is no reason which we can identify why either of them would refuse this break. We find it extremely unlikely that they would have done so. Mr Degia said there was no possibility of a break or a drink or a snack being refused. There was no fixed timetable for this meeting; it was an informal in-branch discussion and no one was attending from outside the branch. Five or ten minutes delay would have made no difference.
- 17.6.3 We also observed that the management style of Mrs Salim and Mr Degia were generally easy going, inclusive and non-authoritarian. They did not make a fuss about the breaks and indeed other staff took breaks and went out for cigarettes and to buy snacks. Mrs Salim did not make this a disciplinary issue with anyone. No previous allegations against the Claimant that he had

been rude to anyone (colleagues or customers), that he had made inappropriate comments and/or that he had behaved out of character, were ever the subject of disciplinary action against him by Mrs Salim or Mr Degia. We observed that both of them were the type of manager who were more likely to discuss and deal with such matters informally rather than imposing disciplinary measures upon on their staff. Their approach did not suggest to us that they are the type of manager who would insist on a meeting with a disabled employee taking place with no break and no drink.

- 17.7 There are contemporaneous notes written very shortly after the 5 December 2017 meeting by Mrs Salim with input from Mr Degia which appear at pages 89-90. They are not a comprehensive transcript but they certainly make no mention of the Claimant's request for a break or his need that afternoon for a sugary drink or snack. The Claimant has never contacted the Respondent to put his version of the meeting, to complain about his behaviour at the hands of Mrs Salim and Mr Degia and, we repeat, he did not contact ACAS until mid-February 2018. He has never sought to retract his resignation or set out his reasons for resigning. The content of the notes is therefore unchallenged.
- 17.8 The Claimant alleges that at the meeting he asked to see the CCTV film of the alleged altercation with the customer and offered to pay for a lip reader if there was no sound on the CCTV footage. He alleges that Mrs Salim categorically refused to disclose the CCTV tapes. Again, we prefer the evidence of the Respondent's witnesses that CCTV and a lip reader were not mentioned at all. We repeat that the stated purpose of the meeting was not to conduct a disciplinary investigation utilising CCTV evidence but to have an initial informal talk. For this reason we find it more likely than not that the CCTV was not spoken about at all.
- 17.9 We find that the Claimant made no further requests during the 5 December meeting for a drink and was not refused one. He neither asked for nor was refused a snack or a drink and, in any event, the staff room had facilities which would allow him to help himself to a drink. It is inherently unlikely that an employee who began to feel increasingly unwell during an informal meeting, as the Claimant described to us, would not simply have stood up and got himself a drink using his own initiative.
- 17.10 We do not accept that there was any part of the conversation during which Mrs Salim suggested that she had been told by Human Resources or by anyone else that there was no legal entitlement to the type of breaks that the Claimant had been having or that she said that in future such breaks would not be allowed. Every part of that alleged conversation is categorically denied by Mrs Salim and we find her evidence completely credible. She knew the Claimant needs breaks for health reasons and indeed other staff have breaks for other reasons. It

is not her management style to have denied breaks in the past or to seek to remove breaks in the future especially those essential to health and wellbeing.

17.11 Similarly we find that Mrs Salim did not suggest that the behaviour of Claimant in taking regular breaks meant that he was letting his colleagues down or letting her down and was not a team player. She did not tell him that he was not wanted at the branch. She did not tell him that the door was open and that he could leave at any time. Her account was corroborated entirely by Mr Degia.

17.12 We find that, on his part, Mr Degia urged the Claimant not to resign, to reconsider his position, to take time to think about it and not to leave the bank. Mrs Salim asked the Claimant whether he would look at other options such as a move away from the Stratford branch and she told him that she would make enquiries on his behalf. She did not say, as the Claimant alleges, that she would block any such transfer.

17.13 The Claimant remained adamant that he wanted to resign. Both of the Respondent's witnesses including Mrs Salim who is aware of the symptoms arising from diabetes saw no signs of illness from the Claimant during this short meeting.

17.14 When the Claimant insisted that he wished to resign his post Mrs Salim checked, it is somewhat unclear from her evidence whether it was with Ms Woolston or Human Resources or with both, whether she must accept a resignation from an employee who was certain that he wanted to go. She was told that she could not refuse to accept a resignation but she should ask for it to be put into writing. During one of those conversations she was told that she must print off the 'leavers pack' and give it to the Claimant. Mr Degia agreed to print it for the Claimant. Both the Respondent's witnesses are certain that the Claimant remained angry throughout this period and indicated no intention of withdrawing his resignation. He left the pages of the leavers pack scattered across the staff cloak room and did not take any part of the pack home. He made no further contact with the Respondent until ACAS were contacted and then this claim was lodged.

18. In all the circumstances of this case and by reference to the detailed findings of facts set out above we have determined that there was no action of the Respondent which occurred on 5 December 2017 which amounted to disability discrimination and that the Claimant was not constructively dismissed. The reasonable adjustments at that meeting for which the Claimant contends i.e. that he should have been given a break before or during the meeting in order to take a sugary drink/snack were never asked for and certainly not refused. There was no imposition of a provision, criterion or practice (PCP) that the Claimant must attend the said meeting without the opportunity for any break or without the provision of a

suitable drink and/ or snack. There was therefore no PCP which put the Claimant at a substantial disadvantage compared with others who are not disabled by type 2 diabetes and the Respondent's duty to make reasonable adjustments did not arise.

19. The need to have breaks is stated by Mr Rozycki on behalf of the Claimant to be the 'something arising' from the Claimant's disability which caused unfavourable treatment. We find that there was no such unfavourable treatment. The Claimant was not treated unfavourably because of his need for breaks because he had already had a break on 5 December 2017, did not articulate his need for a further break and had no such break refused.

20. There was no conduct of the Respondent which occurred on 5 December 2017 which amounts to a serious breach of contract entitling the Claimant to resign in response to it and treat himself as having been dismissed. The Claimant's account of the way in which he was treated by the Respondent at that meeting is not credible and we prefer the evidence of the Respondent's witnesses as set out above. The Claimant was not dismissed and his claim for notice pay does not therefore succeed. He resigned with immediate effect. The claim for damages for breach of contract does not succeed.

21. The claims for unfair dismissal, breach of contract, for notice pay and for disability discrimination fail and are dismissed.

Employment Judge Elgot

25 March 2019