Neutral Citation Number: [2024] EAT 188

Case No: EA-2022-000971-BA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12 November 2024

Before:

HIS HONOUR JUDGE SHANKS

MR D SMITH

MRS E WILLIAMS

- -

Between:

MS ANNE-MARIE ALEXIS

Appellant

- and –

WESTMINSTER DRUG PROJECT

Respondent

- -
- -

The **Appellant** appeared **in person**

Mr Mark Williams (instructed by DAS Law) for the **Respondent**

Hearing date: 12 November 2024

- -

JUDGMENT

SUMMARY

UNFAIR DISMISSAL

The claimant/appellant and two other employees of the respondent were the subject of a restructuring exercise whereby their three posts would be replaced with two new posts for which the three of them would apply and undergo competitive interview.

The claimant was unsuccessful in the interview. She had dyslexia and she raised a grievance about the interview process saying that she should have been provided with the questions 24 hours in advance. She rejected the outcome of the grievance (which was largely favourable to her, offering her a new interview) and appealed. She also rejected the outcome of the appeal (which was also largely favourable to her) and wrote numerous emails to the decision maker and the chairman of the respondent.

She was called to a meeting to discuss whether her continued employment was tenable. The decision maker decided based on these events that she had shown she had no confidence in her employer and that the relationship had irretrievably broken down. He dismissed her with 11 weeks' notice for "some other substantial reason".

The ET rejected her claim of unfair dismissal.

She appealed on the grounds that no sufficient consideration had been given to her length of service or an alternative to dismissal. The EAT dismissed the appeal because, given the decision-maker's finding that the relationship had irretrievably broken down there was no alternative to dismissal and length of service was not relevant.

HIS HONOUR JUDGE SHANKS:

1. This is an appeal by Anne-Marie Alexis against a decision of the employment tribunal sitting in London Central (EJ Grewal, Ms Foster-Norman and Mr Pearlman) following a hearing over five days in May 2022, whereby they rejected a number of claims that she had brought against her employer, Westminster Drug Project ("WDP"), in particular a claim of unfair dismissal.

2. The appeal which relates only to the employment tribunal's decision on unfair dismissal was ordered to proceed to a final hearing by HHJ Auerbach on 12 June 2023, but Judge Auerbach limited the grounds that could be pursued to those amended grounds which had been put forward by an ELAAS representative who was representing Ms Alexis on that day and those grounds are at page 36 in the EAT bundle. The delay in the hearing of the appeal is regrettable and I am afraid to say a function of the resources and capacity of this tribunal along with many other parts of the court and tribunal system which is just the way it is at the moment.

3. The factual background to this case is set out very fully and clearly by the tribunal in paragraphs 10 to 53 of their judgment. Ms Alexis was employed as a receptionist/administrator at the Westminster Drug Project, Cobbold Road site. Her employment dated back to 2010 and it had transferred over to WDP in 2015. In August 2018, Ms Alexis had informed her employers that she had dyslexia and a report was prepared by Dyslexia Assessment and Consultancy ("DAC") which made various recommendations. Those recommendations included one that in any future exams or interviews she should receive 25% additional time.

4. In autumn 2020 a restructuring exercise was started at WDP with a view to reducing the three existing receptionist/administrator posts to two new posts, one receptionist and one administrator. All three of the existing receptionists/administrators were interested in applying for the two new roles and it was decided that the selection between the three of them would be based on a competitive interview with standard questions being asked of all three. The claimant did not request any adjustments in her response to the invitation to interview sent ready for 8 October 2020.

5. The chair of the interview panel was aware of the claimant's dyslexia and she made a decision to send Ms Alexis copies of the questions that were going to be asked a quarter of an hour before the first of the interviews. She sent them by email to her work email address but she did not take the step of telling her that they were on their way. The claimant later said she only had the questions relating to the second of the two interviews ten minutes in advance and that she had not seen the questions relating to the first one at all. The interviews of the three candidates were scored in due course and Ms Alexis, unfortunately, did badly compared to the two other interviewees. She was told that she had not been successful in applying for either of the new posts on 9 October 2020.

6. She raised a grievance in relation to the conduct of those interviews which resulted in the redundancy process being put on hold. At the grievance meeting she maintained not only that she had not had any notice of the questions in one interview and only short notice in the other but that she should have been provided with the questions 24 hours in advance. The outcome of the grievance was sent to her on 16 December 2020. The suggestion that she should have been sent the questions 24 hours in advance was rejected. The decision-maker said that being provided with the questions 15 minutes in advance would be a reasonable

adjustment. Because Ms Alexis had not been told that this was to happen, her grievance was upheld and she was offered the opportunity of having a fresh interview for both roles.

7. She appealed against that decision and the outcome of the appeal was sent to her on 15 January 2021. That outcome was effectively that she should indeed be re-interviewed with new questions and the interview should be extended by 15 to 30 minutes and that she should be provided with question headings and a summary of competencies 24 hours in advance. Within two hours of being sent that decision, Ms Alexis responded with a series of three emails to Ms Whitton, who was the appeal decision-maker, taking issue with aspects of that decision. An hour later she wrote three emails to the chairman of the project, Ms Batliwala, complaining about the outcome of her appeal.

8. On 20 January 2021 Ms Whitton responded. She made the point that the claimant could not have the same set of questions as the last time as she had requested but that she, Ms Whitton, would make sure that the new interview was fair and she gave Ms Alexis four options which are set out in the judgment at page 15. She gave her the option of continuing in line with the recommendations set out in the grievance appeal outcome letter. The second option was to continue with the recommendations set out in the appeal outcome letter but with one change, namely that she should receive the questions one hour before the interview instead of the information referred to above 24 hours before the interview. The third was that she should continue in line with the recommendations set out in the grievance appeal with no information provided before the interview and the fourth was that she should opt out of the re-structuring process and enter a redundancy consultancy process herself. She said that she considered that the claimant's communications indicated a lack of trust in the whole grievance procedure.

9. Ms Alexis responded on 22 January 2021 with a five-page letter. She said she could not decide between options (i) and (ii); that was, either to have general topics 24 hours in advance or the questions themselves one hour in advance, and she said she left it up to the employer to decide. She said that both of them discriminated against her based on the fact that the WDP was refusing to provide her with the questions 24 hours in advance.

10. Following all that, on 9 February 2021, she was invited to a meeting which was to take place on 18 February 2021 with a Mr Pink, an HR consultant, to discuss whether her continued employment was tenable. There were really four matters that Mr Pink summarised as the primary concerns that he wanted to address: (i) her perceived unmanageability; (ii) her rehearsing of complaints that had already been dealt with and her inability to accept the grievance outcome; (iii) her actions were causing an unsustainable demand on HR and management, including executive time and resources; and (iv) the belief that relations, trust and confidence between her and the respondent had irretrievably broken down. He said the hearing was being held to establish whether there was "some other substantial reason" for her dismissal, a phrase familiar to lawyers in this jurisdiction which comes out of the Employment Rights Act 1996.

11. At the meeting with Mr Pink, Ms Alexis said that she should have been asked the same questions at the re-interview as she had been asked at the original interview. She said she had not refused options (i) or (ii) that I have mentioned, although she had not, she said, accepted them.

12. The decision letter arising from that meeting was sent to her on 23 February 2021 and it is at pages 184 to 189 in our bundle. Mr Pink explained why he had reached the view that she was not accepting the outcome of the grievance and said the delay was not fair on the

organisation or the other two applicants and that she had shown she had no confidence in her employers and the relationship had irretrievably broken down. He said that he had considered alternatives but felt that none of them was a viable option and concluded that the employment relationship could not be sustained. He ended by saying: "It is my belief that even if we had trialled alternatives to dismissal it would not have had a lasting impact and you would soon default to your standard behaviour. That is because you do not accept that you are doing anything wrong or that you need to change. I believe that to continue with your employment would only likely risk further complaints or grievances (including by other employees against you or the organisation) within a very short time and we would soon find ourselves back in the same position." Her employment was terminated with 11 weeks' notice and no requirement to work out the notice period. Her subsequent appeal was rejected.

13. She brought claims of disability-related harassment, failure to make reasonable adjustments, dismissal arising from disability, victimisation based on her grievance and unfair dismissal. So far as the unfair dismissal claim is concerned, the employment tribunal found that the reason for the dismissal was because her response to the grievance appeal outcome showed that she would not accept any outcome which did not meet her unreasonable demands, would continue to challenge decisions by her managers and that the restructuring process would be held up. This indicated that the relationship of mutual trust and confidence had broken down and become unsustainable. This was "some other substantial reason." The employment tribunal considered whether the dismissal on these grounds was fair at paragraph 63: the respondent genuinely and reasonably believed in the irretrievable breakdown, a reasonable enquiry had been held and the claimant had been given an opportunity to put forward her arguments. The dismissal was therefore fair.

14. The appeal is really based on two complaints: (1) no sufficient consideration was

given to the claimant's length of service; (2) no or no sufficient consideration was given to the alternative outcome of a warning.

15. At this hearing Ms Alexis plainly had difficulty representing herself and we had some sympathy with her position. We allowed her extra time to gather her thoughts after we had started and we have read a document she prepared entitled 'Further Skeleton Argument in Response to EAT Judgement'.

16. We remind ourselves that we can only allow an appeal on a question of law and that the hearing is governed by the order of HHJ Auerbach. We do not consider that either of the grounds which he allowed to proceed should succeed. In relation to the length of service, it is plain that Mr Pink would have had this in mind: see page 144 of the bundle which recites the dates of Ms Alexis's employment. But, more importantly, an employer can only be obliged to consider length of service if it is relevant to the decision to dismiss. The decision to dismiss in this case was based on the proposition (for which he had reasonable grounds) that trust and confidence had already irretrievably broken down between the parties. Ms Alexis's length of service was therefore irrelevant to the decision on dismissal in our view.

17. Other sanctions were considered in detail by Mr Pink: see the dismissal letter at page 188 in the EAT bundle. Again, this was not a case where any other sanction would have been appropriate. Once trust and confidence had irretrievably broken down the only option was dismissal, particularly given the need to get on with the redundancy process.

18. In her submissions the appellant raised two main points both of which were outside the ambit of Judge Auerbach's order. First, she said that the summary in the dismissal letter at page 186 was wrong and that she had not have an opportunity to challenge it before Mr

Pink. That is undoubtedly a new point. In any event it is clear from his letter and the employment tribunal's decision that it was only 'context' and was not relied on as part of the decision. Also, the ET say at page 22 in the judgment that she had been given the opportunity to put forward her arguments. Second, she complained about the lack of support at the meetings with Mr Pink. She said that she was at home during this period and had been told that she could not speak to anyone. The relevant ET findings are at paragraphs 31 and 50 of the judgment which relate to the earlier grievance proceedings. According to those findings, Ms Alexis was told several times that she could speak about the case to a colleague who was to accompany her to a hearing; those are findings of fact by the ET which we could not in any event go behind.

19. In all the circumstances we are not persuaded that there is any basis for disturbing the ET's decision and we dismiss the appeal.