



EMPLOYMENT TRIBUNALS

Claimant: Mr S Donnelly

Respondent: PQ

Heard at: Liverpool **On:** 6, 7 and 8 February 2023

Before: Employment Judge Horne

Members: Mr R Cunningham
Mrs A Ramsden

Representatives

For the claimant: Mrs Holliday, friend

For the respondent: Mr P Maratos, consultant

JUDGMENT

1. The respondent did not directly discriminate against the claimant by asking him about his experience of working with females in interview.
2. The tribunal did not determine whether or not that complaint would also fail on the ground that it was presented after the expiry of the statutory time limit.
3. The respondent did not directly discriminate against the claimant in the final paragraph of her e-mail of 21 February 2022.
4. The respondent directly discriminated against the claimant by extending his probationary period because he is a man.
5. That discrimination was not a contravention of section 39(1)(a) or section 39(2)(a) of the Equality Act 2010 ("EqA").
6. That discrimination was a contravention of section 39(2)(b) of EqA.
7. The exception in paragraph 1 of Schedule 9 to EqA does not apply. Although it was an occupational requirement that a personal assistant was required to be a woman in order to carry out the full responsibilities of the role, and the application of that requirement to the claimant by extending his probationary period was a means of achieving the legitimate aims of dignity and privacy, the means were not proportionate.
8. Any damages for unlawful discrimination will be reduced to reflect:

- (a) The certainty that, had the respondent acted proportionately and not in contravention of EqA, the claimant's feelings would still have been significantly hurt; and
 - (b) A 75% chance that, had the respondent acted proportionately and not in contravention of EqA, the claimant's employment would have ended on or about 11 March 2022 in any event, whether by the claimant's resignation or by a dismissal that did not contravene EqA.
- 9. The respondent did not discriminate indirectly against the claimant.
 - 10. The claimant was wrongfully constructively dismissed.
 - 11. The respondent did not make any unauthorised deduction from the claimant's wages.
 - 12. The tribunal makes an award of 2 weeks' pay under section 38 of the Employment Act 2002 because of the respondent's failure to comply with section 1 of the Employment Rights Act 1996.

Employment Judge Horne

10 February 2023

SENT TO THE PARTIES ON

21 February 2023

FOR THE TRIBUNAL OFFICE

Note:

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party makes a request in writing within 14 days of the date on which this judgment is sent to the parties. If written reasons are provided, they will be published on the tribunal's online register, which is visible to internet searches.