



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Nina Rahel

v

University of the Arts London

Heard at: London Central (in public; in person)

On: 8-12 April 2024

Before: Employment Judge **P Klimov**
Tribunal Member **M Ferry**
Tribunal Member **J Marshall**

Representation:

For the Claimant: **Mr P Tomison** of Counsel.

For the Respondent: **Ms A Palmer** of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The claimant's complaints of direct disability discrimination (s.13 Equality Act 2010) and discrimination arising from disability (s.15 Equality Act 2010), having been withdrawn by the claimant, are dismissed pursuant to Rule 52 of the Employment Tribunals Rules of Procedure contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
2. The claimant's complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.
3. There is a zero% chance that the claimant would have been fairly dismissed in any event.

- 4. The claimant did not have a disability within the meaning s.6 Equality Act 2010 at the relevant period by reason of stress, anxiety, and depression.
- 5. The respondent was not in breach of the duty to make reasonable adjustments under s.21 of the Equality Act 2010. Therefore, the complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.
- 6. The following complaints of victimisation are well-founded and succeed:
 - i. detriment 16a,
 - ii. detriment 16b,
 - iii. detriment 16c,
 - iv. detriment 16d,
 - v. detriment 16e,
 - vi. detriment 16f
 - vii. detriment 16g(i),
 - viii. detriment 16g(ii), and
 - ix. detriment 16j¹
- 7. The remaining complaints of victimisation are not well-founded and are dismissed.
- 8. All remedy issues will be determined (if not agreed earlier) at the remedies hearing on 1 and 3 July 2024.

Employment Judge Klimov

8 May 2024

Sent to the parties on:

9 May 2024

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For the Tribunals Office

Notes

Reasons for the judgment have been given orally at the hearing. Written reasons have been requested by the claimant at the end of the hearing and will be sent to the parties in due course.

¹ See the List of Issues in Annex.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant (s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

Annex – The final List of Issues

Disability - Introduction

1. The parties agree the Claimant's disability-related claims require her to have been disabled during the period May 2021 – August 2021 (the "**relevant period**").
2. The Claimant alleges she had two relevant disabilities during the relevant period: Type 1 Diabetes, and stress, anxiety and depression (**SAD**).
3. The Respondent accepts the Claimant was disabled because of Type 1 Diabetes during the relevant period. It does not accept the Claimant was disabled because of SAD.

Disability – Stress, Anxiety, Depression

4. Was the Claimant disabled because of SAD during the relevant period? In particular:
 - 4.1 Did the Claimant have mental impairments of stress, anxiety and/or depression?
 - 4.2 If yes, did that impairment have a substantial adverse effect on the Claimant's ability to carry out normal day to day activities?
 - 4.3 If yes, was that substantial adverse effect itself long-term, ie:
 - a. had it lasted 12 months? or
 - b. was it likely to last 12 months?

Jurisdiction / Time Bar

5. Were the Claimant's Equality Act 2010 claims presented in time, ie, within 3 months of the conduct (act, omission, detriment) relied upon (taking into account the effect of ACAS early conciliation)?
6. If not, did that conduct form part of conduct extending over a period of time in respect of which the Claimant timely presented a claim?
7. If not, and a claim was presented out of time, is it just and equitable to extend time to allow the claim to be presented?

Claim #1: Failure to make reasonable adjustments (ss.20-21 Equality Act 2010)

8. During the relevant period, did the Respondent apply the following PCP to the Claimant: "*a requirement to have to be fit to attend the interview for the Grade 5 post by 3 August 2021 at the latest*". The Respondent accepts that this was a PCP that it applied to the Claimant during the relevant period.

9. Did the application of that PCP put the Claimant to the following comparative disadvantages which applying the PCP to her non-disabled work colleagues did not or would not put them to:
 - 9.1 not being able to interview for the Grade 5 post;
 - 9.2 not being able to secure the position of the Grade 5 or Grade 4 posts;
 - 9.3 not being able to be retained;
 - 9.4 not being able to avoid dismissal.
10. If yes, did the Respondent know, or could it reasonably be expected to know –
 - 10.1 that the Claimant had the disability of stress, anxiety and depression, and
 - 10.2 that she was likely to be placed at a substantial disadvantage by the PCP.
11. If and to the extent the Claimant was put to the disadvantages referred to in 9 above, would the following adjustments have avoided or materially reduced those disadvantages:
 - 11.1 extending the deadline for the Grade 5 post by granting the Claimant a further 3 weeks (from 3 August to 23 August 2021) to return to work and be fit to attend the interview for the Grade 5 EDI Manager post;
 - 11.2 allocating someone other than Ms Chan to deal with the Claimant (the Claimant alleges this would have facilitated a faster return to work and enabled her to have interviewed for the Grade 5 post on 3 August 2021);
 - 11.3 offering the Claimant the following alternative Grade 4 posts:
 - a. full time EDI Officer post;
 - b. full time EDI Disability Officer post.
12. Did the Respondent make those adjustments?
13. Were those adjustments reasonable adjustments for the Respondent to have to make to avoid/reduce those disadvantages?
14. Given the foregoing, is the Respondent in breach of its duty to make reasonable adjustments for the Claimant?

Claim #3 - Victimisation (s.27 Equality Act 2010)

15. The Claimant relies on the following protected acts. The Respondent accepts that these were protected acts:
 - a. In her PRA form on 26 August 2020:

- (i) Allegation of disability discrimination and harassment (bundle page 246) ending “If I did not have these impairments I would not be in this situation, I think that amounts to harassment and discrimination and certainly feels hostile.”
 - (ii) Allegations of disability and age discrimination (page 247) ending “Maybe my impairments, my age and my experience are all too much for UAL to manage”
 - b. In her response to the proposed restructure on 17 March 2021:
 - (i) Allegations of disability and race discrimination contained in bullet points on first page (page 373) and expanded upon thereafter;
 - (ii) Allegations of disability, race and age discrimination (page 383): “The repetition of Full-time for all the posts as opposed to 1FTE, is discriminatory against me, the only current post holder at risk of redundancy from this proposal, a disabled, woman of colour of a certain age, working part-time.
 - c. In her letter to the Vice Chancellor on 19 April 2021:
 - (i) Allegations of disability, age and race discrimination as explained in letter whereby she explains that the restructure is designed against her and concluding with “*It feels that I am an inconvenience to management for a number of reasons, including my disability, age and my lived experience as a person of colour who will challenge bad practice*” (page 413);
 - (ii) Allegations of disability discrimination contained in bullet points on page 413.
 - d. In her meeting with Stephen Marshall on 12 May 2021: “NR stated that she believes it is indirect or direct discrimination due to her age, disability or race” (page 432), plus preceding and following factual details supporting that allegation.
 - e. In her appeal against redundancy on 26 July 2021:
 - (i) Allegations of disability, age and race discrimination as stated in first and second bullet points on p1 (page 484) and detailed thereafter
 - (ii) Allegation of disability discrimination and harassment contained under “context” sub-heading (page 484)
 - f. In her Dignity at Work complaint on 7 September 2021;
 - (i) Allegations of disability, age and race discrimination explained in bullet points on page 1 (p500 bundle) and expanded upon thereafter
 - g. In her revised Dignity at Work complaint on 4 October 2021:
 - (i) Allegations of disability, age and race discrimination explained on page 1 and expanded upon thereafter.
- 16. Did the Respondent do (or fail to do) the following:
 - a. select the Claimant’s post for redundancy in January 2021 (protected act (a));

- b. fail to slot/match the Claimant directly into the Grade 5 EDI Manager role (which the Claimant alleges was effectively her role). This decision was taken by 27 January 2021 (protected act (a));
 - c. fail to share the details of the slotting exercise with the Claimant until after 12 May 2021 (the Claimant alleges it ought to have been shared on 3 February 2021) (protected act (a));
 - d. fail to extend the interview period for the Grade 5 EDI Manager role beyond 3 August 2021. The final decision was taken on 23 July 2021 (protected acts (a)-(d));
 - e. fail to consider the Claimant for the following alternative roles once it was decided that the grade 5 deadline would not be extended. C alleges that consideration should have been given on 23 July 2021 (protected acts (a)-(d)):
 - (i) full time EDI Officer post;
 - (ii) full time EDI Disability Officer
 - f. dismiss the Claimant (protected acts (a)-(d));
 - g. fail to properly investigate and respond to the Claimant's allegations of race, age and or disability discrimination made between 26 August 2020 (complaints first raised) until the outcome of her appeal (21 December 2021) – here, the Claimant will allege that:
 - the Respondent failed to provide any investigation notes;
 - the Respondent failed to investigate/determine whether the Claimant had been discriminated against by Ms Chan;
 - the Respondent failed to interview any of her colleagues were interviewed to establish whether there were any concerns regarding her treatment;
- In terms of timing:
- (i) Ms Chan should have responded to the allegations of discrimination contained in the PRA within one month (protected act (a)).
 - (ii) Ms Chan should have responded to the allegations of discrimination made in the Claimant's response to the proposed restructure on 17 March 2021 in her outcome letter on 30 March 2021 (protected acts (a)-(b)).
 - (iii) Mr Marshall should have investigated and responded to the Claimant's allegations of discrimination on 12 May 2021 in his outcome letter on 20 May 2021 (protected act (c)).
 - (iv) The appeal panel should have investigated and responded to the Claimant's allegations of discrimination on outcome of the appeal (protected acts (b)-(e)).
- h. delay dealing with the Claimant's appeal (5 months). The appeal was dealt with on 17 November 2021. (protected acts (b)-(e));

- i. delay sending the outcome following the appeal meeting in November 2021, thereby breaching the Respondent's own policies. The outcome was sent on 16 December 2021 (protected acts (b)-(e));
 - j. fail to deal with the Claimant's 'dignity at work' complaints on the basis that she was no longer an employee. The failure occurred on 4 October 2021.(protected acts (f)-(g))
17. If and to the extent the conduct occurred, did the Respondent thereby subject the Claimant to a detriment?
18. If the Claimant was subjected to a detriment, was that because she had done one or more protected act (and if yes, which specific protected act/acts)?

Claim #5: Unfair Dismissal (ss.94-98 Employment Rights Act 1996)

19. Was the Claimant dismissed for the potentially fair reason of either
- 19.1 Redundancy? or
 - 19.2 Some other substantial reason, namely, restructure of the EDI Unit in which the Claimant worked?
20. If so:
- a. did the Respondent engage in a reasonable consultation process?
 - b. did the Respondent make reasonable efforts to find alternative employment for the Claimant before dismissing her on grounds of redundancy?
21. Was the Claimant's dismissal within the range of reasonable responses open to the Respondent at the time?
22. If the Claimant was unfairly dismissed, is there a chance – and if so, how great a chance – she would have been fairly dismissed if a fair process had been followed?