



THE EMPLOYMENT TRIBUNALS

BETWEEN

Lionel Wright

Claimant

AND

London Borough of Hackney

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: London Central

ON: 11, 12, 13, 14, 17 and (in chambers) 18 September 2018

EMPLOYMENT JUDGE: Mr Paul Stewart

MEMBERS: Mr Martin Ruby and Ms Jill Tombs

Appearances:

For Claimant: in person

For Respondent: Mr R Kohanzad of Counsel

JUDGMENT

The unanimous decision of the Tribunal is that the various claims of disability discrimination, victimisation and harassment are all dismissed.

REASONS

Introduction

1. C brings this claim alleging that the Respondent has discriminated against him on the grounds of his disability and, further, had victimised him. A full list of the complaints and issues arising in the case are as set out in Schedule A of the Order made at a Preliminary Hearing (Case Management) conducted by Employment Judge Snelson on 18 July 2017. An amendment to paragraphs 6.1 and 6.2 was sought to be made by the Claimant at this hearing and was not opposed by the Respondent.
2. Therefore, paragraph 6.1 now reads:

6.1 In relation to PCP 4.1:

- (a) having obtained special advice, allowing C to have a suitable working environment on the main floor of the neighbourhood contact centre;
- (b) inviting input from the on the seating location at any time;
- (c) providing C with a head set and/or other equipment to reduce ambient noise and improve the audibility of calls;
- (d) fully training see on the optimal use of the facilities provided to him, including the volume control on his telephone set.

6.2 in relation to PCP 2.4:

- (a) reminding see that he could put aggressive calls through to a supervisor;
- (b) providing C with additional support when dealing with aggressive calls, among other things by floor support staff, managers and other experienced advisors monitoring C's situation, giving support and as necessary working proactively with C to assist him in utilising the auction in (A);
- (c) providing C with additional tailored training.

3. In the course of the hearing, we heard evidence from six witnesses. On the Claimant's side, we heard from him and from Ms Natasha Johnson while, from the Respondent's side, we heard from Ms Jonnelle Sandiford, Ms Lindsay Matthews, Mr David Saxon and Mr Barnes Cook. The Claimant's written witness statement ran to 85 pages and 609 paragraphs.

The Facts

4. The Claimant was employed by Service Care Solutions who acted as a provider of agency to Randstad who in turn had a contract with the Respondent for the provision of agency workers. The Claimant's assignment was to work as a Customer Service Adviser [CSA] at the Respondent's housing Neighbourhood Contact Centre [*the NCC*] at Shoreditch.
5. The Claimant started his assignment with the Respondent on 29 February 2016 and remained there until the assignment was terminated on 6 September 2016.
6. The Claimant's period of working for the Respondent during his assignment started with some induction training delivered by a Senior CSA, Mr Blake Young. Mr Young, in an affidavit sworn before a Justice of the Peace (Qualified) in Queensland, Australia where Mr Young now resides, asserts that the Claimant disclosed that he had a hearing impairment and that he had suffered trauma during childhood which, as a result, made confrontation difficult to manage. This disclosure supplemented that which the Claimant had made to Randstad on a form entitled Health Declaration with the logos of both the Respondent and Randstad Managed Services at the top of the page. In this declaration, the Claimant identified himself to have a hearing impairment in respect of which he had two digital hearing aids. He also disclosed that he had "Higher than average anxiety level arising from childhood trauma."
7. This form may not have been passed on to the Respondent but any omission on the part of Randstad was remedied by the Claimant in that, in his account of what he told Mr Young on the first day of training, he says that he disclosed he had "a hearing impairment and anxiety related to childhood trauma." Mr Young asserted

in his affidavit that he was told that a consequence of this childhood trauma was that the Claimant found confrontation difficult to manage. The Claimant does accept that part of Mr Young's evidence.

8. The Claimant had come to his first day of training armed with medical reports attesting to his condition. It would appear that, in the period 2012 to 2014, he had experienced a number of dizzy spells which had been linked to working at home which had led to him being treated in the Older Persons Assessment Unit at Guy's Hospital. This had led to Dr Thomas Ernst, a consultant physician, identifying the first of the problems affecting the Claimant to be "Anxiety on the background of childhood trauma (post-traumatic stress disorder)". The other problems were:
 2. Single episode of collapse
 3. Dizzy spells, neurogenic, due to random cerebral small vessel vasospasm seen in anxiety.
 4. Essentially normal ENT evaluation, slight sensorineural hearing loss only.
9. However, Mr Young did not ask to see any medical records and the Claimant did not inform Mr Young that there had been any suggestion he suffered from PTSD. He suggested that the Claimant should take a five-minute break every hour.
10. In the course of the training, the Claimant was placed with an experienced CSA to watch and learn. However, on the first call he took under the tutelage of the experienced CSA, he found he could not hear the caller clearly. In consequence, Mr Young arranged for the Claimant to move from the main office to a small office that formerly was used by a manager. This office was situated off a larger room that was some distance down a corridor from the main office. The Claimant was the sole occupant of the small office. Initially one other worker occupied the outer office but later that worker was joined by two other workers.
11. The move allowed the Claimant a less noisy environment in which to field telephone calls from tenants of the Respondent. Occasionally, the Claimant would have to move out of the office and back into the main office if a manager had to conduct a meeting in private.
12. The Claimant had previously worked at call centres of 6 different telephone sales and market research centres. Notwithstanding this experience, he told us that the phone he was given had lost through wear the 'transfers', that is the printed information on the handset indicating the function of the buttons. As a result, he says he did not know that the telephone had a volume control allowing an increase in the earpiece volume.
13. We were not satisfied that the training which the Claimant had received did not cover the existence of a volume control on the handset and neither were we satisfied that the Claimant's previous experience did not expose him to handsets with volume control. However, we do accept it took the Claimant a week or so to recognise and make use of the volume control. Thereafter, he was able to conduct telephone conversations without any appreciable difficulty.
14. Mr Young left the service of the Respondent in April 2016. His replacement as one of the two Senior CSAs was Ms Una Douglas. On or about 13 June 2016, the

Claimant fielded a call from the Department of Work and Pensions asking for information on a particular tenant. The Claimant put the caller on hold pending his making enquiry as to how he should respond. He sought out Ms Una Douglas. He explained the request he had received and indicated that it would be of assistance were her line managers to provide CSAs with information on how to deal with such requests. He told us that Ms Douglas did not grasp the point and simply told him he should tell the caller to email his request. The Claimant complied with that instruction but, after doing so, he emailed Ms Douglas and the other CSA, Ms Jonnelle Sandiford. Ms Douglas responded to this email by giving him what he described as a 'fierce lecture about never disclosing a tenant's information to a third party etc'. Ms Sandiford was present when Ms Douglas spoke to the Claimant and told us that Ms Douglas had deferred to her before speaking to the Claimant "in a professional way and answered his concerns". Ms Sandiford did not accept that Ms Douglas had bullied the Claimant or lectured him in an inappropriate way. However, it was evident to her from the Claimant's body language that he was dissatisfied with the advice he had received.

15. The next day that the Claimant attended work was Wednesday 15 June when he pointedly failed to acknowledge Ms Douglas. This led Ms Douglas into seeking to ascertain what was wrong. The Claimant politely indicated he did not wish to speak but, in the following week on 22 June, he emailed Ms Douglas and asked to speak to her. They arranged to meet on 24 June. At the meeting, the Claimant indicated he considered Ms Douglas to have bullied him on 13 June to the extent that he had felt ill. Ms Douglas expressed surprise and said words on the lines of "Oh no!" The meeting continued with the Claimant recording responses from Ms Douglas that indicated she accepted she had behaved in an aggressive way and that she was sorry for the impression she had made on him.
16. In the weeks that followed, the Claimant said things returned to normal:

I went out of my way to be friendly. For a while, Una reciprocated, and treated me to a kind of 'matey' behaviour. Looking back, I think this was a case of Una Douglas surviving to bully another day.
17. While the Claimant believed he was getting better at dealing with difficult callers, he generated a complaint received by the Respondent on 5 August 2016. The complaint was from a leaseholder of a flat who had phoned and spoken to the Claimant. He had asked for her email address, had told her to slow down and had then repeatedly put her on hold while he acted as a sort of intermediary between the department the caller understood as the right department and the caller. When, after some 15 minutes of this and she had not got around to putting the actual question she wanted, she suggested she might speak to the department herself. At this point, the Claimant had told her, so she complained, that she was not co-operating with him.
18. On 8 August 2016, the Claimant experienced three difficult calls, two of them within half an hour of each other, The following day, he spoke to Ms Sandiford regarding the difficult calls he had received. She found it surprising that the Claimant did not appear to know what he could do in the event of receiving a difficult call given that she herself had, on occasions too numerous to particularise and when she had observed on the computer monitoring system that the Claimant was on a lengthy call, had either sent him an instant message or sent

one of the floor support staff to ask was he okay or had gone herself to speak with the Claimant. Her evidence was to the effect that she would often explain that he could put a difficult call through to supervisors. She had noticed that the Claimant would sometimes take on calls that he should have passed on to others.

19. The Claimant lived in a flat, part of a block, that he rented from the London Borough of Southwark. He was the chairman of a tenants' committee and regarded the calls he received as indicating that the Respondent was not as forward thinking as he perceived Southwark to be. Because of this, he accepted that he sometimes attempted to handle quite complex calls that he should have been referring either to a supervisor or to the department of the Respondent dealing with repairs. He accepted that Ms Sandiford had spoken to him about escalating difficult calls and claimed that, once he had been reminded of the option of transferring calls, he had thereafter reined in his instincts to attempt to resolve the caller's problem himself and starting transferring calls. However, Ms Sandiford repeatedly found he was attempting to handle calls he should have transferred and reminded him of the same.
20. On 18 August 2016, Ms Douglas and Ms Sandiford spoke to him about the complaint that had been received on 5 August. They explained in some detail as to how a call from a leaseholder should be dealt with. Later, in a communication to Randstad, the Claimant referred to Ms Douglas on this occasion as having behaved reasonably and not to have engaged in bullying.
21. On 19 August 2016, the Claimant took a call from a person SC. Later, SC made a second call and spoke to a different CSA who escalated to Ms Sandiford. SC was extremely upset and angry about the way in which the Claimant had spoken to her. Specifically, she asserted that the Claimant had been rude to her and told her "not to be sarcastic". She claimed to be a nurse well used to working with vulnerable people and would never be sarcastic. She had never been spoken to in such a manner. She was threatening to escalate her complaint to the Mayor of Hackney.
22. On 24 August 2016, Ms Sandiford and Ms Douglas conducted a supervision meeting with the Claimant to ascertain what exactly had happened in the call with SC. Initially, the Claimant did not say he had used the word "sarcastic" to SC. Then Ms Sandiford read out her note of what SC had said to her. The Claimant then admitted he had used the word "sarcastic". Ms Douglas told him he should avoid using that word and suggested a number of ways in which he could have better dealt with the call. The Claimant explained he was stressed over the nature of the calls he had to deal with and both supervisors reminded him that he should escalate calls to management if he felt unable to help or a customer was being particularly rude.
23. The Claimant was asked by Ms Douglas to produce a written account of the conversation he had had with SC but he indicated he was not willing to do this until he had a copy of the note that Ms Sandiford had made of her conversation with SC. Ms Douglas repeated this request in writing although we were not shown a copy of that written request.
24. On 25 August, Mr Saxon who was the Head of Centralised Services wrote to Ms Lindsay Matthews, the Operations Manager of the NCC, pointing out his concern

reached on reviewing the complaints data about the number of complaints involving the Claimant. In particular, he expressed concern at the complaint relating to the use of the word “sarcastic”. Ms Matthews responded to Mr Saxon, her line manager, pointing out that she had asked Ms Douglas to interview the Claimant and was awaiting Ms Douglas’ feedback. That feedback had reached her by Monday 5 September and she sent a copy of Ms Sandiford’s note of her conversation with SC plus Ms Douglas’ note of her interview of the Claimant in conjunction with Ms Sandiford on 24 August. In her covering email, Ms Matthews pointed out that she had met with the Claimant on Thursday 1 September and that, in the course of the discussion, he had told her that, when speaking with SC, he had removed his headset and placed it on the desk until SC had disconnected the call. She expressed the view to Mr Saxon that this was unacceptable behaviour and that she felt that they had to terminate his temporary contract. She asked for Mr Saxon’s thoughts on the matter.

25. Mr Saxon responded in a lengthy email in which he endorsed the approach that Ms Matthews was contemplating. In the course of the email, he considered whether the complaint made by SC “in any way related” to the Claimant’s hearing disability. He concluded that the complaint was, on face value, in relation to conduct over which the Claimant had full control and was not in respect of the Claimant being unable to hear the customer. For our part, we considered the complaint to have been arisen out of the conversation that flowed from the Claimant disclosing his initial difficulty in hearing what SC said. However, the distinction made by Mr Saxon struck us as valid. The Claimant did have full control over the choice of words he used.
26. We heard surprising little evidence of the actual meeting at which the Claimant was informed that his assignment with the Respondent was terminated but it appears that Ms Matthews conducted a meeting with the Claimant on 6 September 2016, having received the second opinion of Mr Saxon.

The law

27. The Claimant helpfully set out in his written submissions the statutory material we should be addressing when considering his claim. These reasons should be treated as though we had set out the same statutory material because that is what we have had in mind considering the issues.

Discussion

28. In the list of issues under Schedule A, the question arises at 3.1 as to whether the Claimant was at any material time disabled by anxiety and / or PTSD, it being conceded that he was disabled in respect of his hearing. We were satisfied that the above average level of anxiety was an impairment which the Claimant suffered. However, it was not an impairment which had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. In his cross-examination of the Claimant, counsel for the Respondent had deliberately asked an open question seeking to establish the ways in which anxiety as an impairment had affected the Claimant. The answer he received was that the Claimant had been affected in three ways. He was unable to socialise as well as he would like. He had certain sleep difficulties which entailed him waking up in the middle of the night and having difficulty in getting back to sleep. And, finally, he

was a bit of a hoarder: he had, in fact, converted his bedroom into a store room so that he could keep those possessions he wished to hoard in storage and he now used his living room as his bedroom.

29. We take the view that none of these demonstrate that his anxiety is an impairment which had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. Not being able to socialise as much as he would like seemed to us to be a common condition. It did not mean he was prevented from undertaking a job answering callers to the NCC and it did not prevent him from being able to await the arrival of his witness, Ms Natasha Johnson, after work to walk together to the tube station. Waking up in the middle of the night and having difficulty in being able to get back to sleep did not result in any complaint from the Claimant that he was deprived of sleep or that sleep deprivation affected his ability to do the job or any other day to day activity. His hoarding activities were not cited as having any effect on his day to day activities other than causing him to sleep in what had been his living room.
30. Further, there was a complete absence of any evidence of behaviour associated with PTSD, such as flashbacks, that the Claimant asserted had any adverse effect on his ability to carry out day to day activities.
31. Question 3.2 raises the question of knowledge. Given we take the view that we do not consider he suffered a disability arising out of his anxiety or PTSD, this does not arise. However, lest we be wrong in our view of that disability, we should say that the Respondents have established that they did not know, and could not reasonably have been expected to know, that the Claimant had such a disability.
32. The Provisions, Criteria and Practices [*PCPs*] as set out in paragraph 4.1 to 4.3 are all conceded. The Claimant was required to field telephone calls from tenants of Hackney Homes and / or Hackney Housing and some of those telephone calls might be from tenants who were aggressive. And the third PCP was that the Claimant was required to undergo the standard CSA induction / training process operated by the Respondent.
33. The first two of these PCPs were admitted by the Respondent to put the Claimant at a substantial disadvantage in comparison with people who were not disabled. The third was denied to have that effect and we were not satisfied that the Claimant had established that it had.
34. Paragraph 6 of the list of issues as revised by the Claimant during the hearing is set out in paragraph 2 above. We consider that the measures undertaken by the Respondent of moving the Claimant into the former manager's office away from the main office and providing him with a double headset, once the Claimant had recalled and made use of the fact that digital handsets had a volume control, substantially removed the disadvantage which his hearing impairment put him at. It may be the case that the Claimant felt in due course somewhat isolated in the room by himself but that was not any aspect of his hearing impairment. The move to the former manager's office meant that input from the Claimant was not required on his seating location at any time. Further, there was now no need for the Respondent to provide a headset or other equipment that reduced ambient noise and improve the audibility of calls.

35. Nor was there need for the Respondent to take specialist advice on improving the position for the Claimant once the substantial disadvantage had been removed. In any event, we note that it is the employee to trigger the government's access to work scheme, not the employer, that being what the Claimant asserted in the course of his closing submissions as being something that the Respondent should have done.
36. We do not accept that the Respondent failed to train the Claimant in the optimal use of the facilities provided to him including the volume control on his telephone handset.
37. In respect of paragraph 6.2, we were satisfied that the Respondent, in the shape of Ms Sandiford and others, reminded the Claimant on numerous occasions that he could put through aggressive calls to a supervisor or manager. In his evidence, the Claimant acknowledged that Blake Young had, in the course of his training, told the Claimant precisely that but that he, the Claimant, had forgotten the point. We were also satisfied that the Claimant was provided with additional support when dealing with aggressive callers in precisely the way suggested by the Claimant in his revised paragraph 6.2 – Floor Support staff, managers and other experienced advisers monitoring the Claimant's situation, giving support and working pro-actively with the Claimant in utilising the option of transferring calls through to supervisors or managers.
38. Again, we repeat the view that once the Claimant had been removed to the manager's office, been provided with the double headset and made use of the volume control, the obligation on the part of the Respondent to make reasonable adjustments was satisfied.
39. In respect of direct disability discrimination at paragraph 7 of the list of issues, we were satisfied that the Respondent did not treat the Claimant less favourably than they treated or would have treated a non-disabled contract worker. Indeed, the evidence of Mr Saxon referred to another staff member who had had her contract terminated by the Respondent for not following the Hold Policy for the NCC (as set out at page 282 in the papers before us). We were satisfied that the Respondent did not terminate the Claimant's engagement because of his hearing disability.
40. In respect of discrimination arising from disability, we do not accept that the termination of the Claimant's engagement was because of something arising out of his disability. The termination arose because of the choice of words the Claimant employed in the course of the telephone call and because of his removal of his headset and placing the same on his desk until the caller SC hung up. We observe that the Claimant did not dispute the gravity of both these allegations although he initially asserted that the removal of the headset was a measure that Mr Blake Young had advocated, an assertion which we do not accept and which the Claimant in the course of the hearing accepted he may have been the result of his misunderstanding of what Mr Young had said during the initial induction.
41. As regards victimisation, we are satisfied that, in the course of the discussion that the Claimant had with Ms Matthews on 1 September 2016, he used the term 'discrimination' but we are also satisfied that Ms Matthews was unable to make

sense of the complaint that the Claimant was making that day about the bullying which he asserted Ms Douglas had engaged in. Ms Matthews described him as “rambling” and to be “incoherent”. She could not get to the bottom of the allegation about bullying because the Claimant was not able to particularise the way in which he said Ms Douglas had bullied him. Ms Matthews viewed the meeting as being pointless because he provided no evidence on which she could act on the allegation of bullying.

42. We take the view that, while Ms Matthews heard the word “discrimination” being used, it was not in any context by which she could understand that what was being complained of was some breach of the Equality Act 2010. And, because she was not in a position to know that the Claimant was alleging that the Respondent in the shape of Ms Douglas had contravened the Equality Act, Mr Saxon was also not in such a position given that Ms Matthews reported to him what she had understood the Claimant to have said during her meeting with him.
43. Therefore, while we accept that the Claimant may have committed a protected act in making a complaint about discrimination on 1 September 2016, the Respondent did not terminate the Claimant’s engagement because of that protected act.
44. In respect of the claim of harassment, we preferred the evidence of Ms Sandiford to that of the Claimant in respect of the way Ms Douglas behaved to the Claimant on the occasions she spoke to him concerning his performance on calls. We accept Ms Douglas behaved professionally and appropriately and we note that the Claimant was unable to particularise to us what it was about Ms Douglas’ behaviour which he asserted to be bullying thus replicating for us the difficulty that Ms Matthews faced on 1 September 2016.
45. Thus, having considered all the issues before us, we dismiss all the claims.

EMPLOYMENT JUDGE STEWART

On: 18 September 2018

**DECISION SENT TO THE PARTIES ON
19 September 2018**

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FOR SECRETARY OF THE TRIBUNALS