



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE MORTON  
Mrs N Christofi  
Ms Y Batchelor

**BETWEEN:**

**Ms N Gurses**

**Claimant**

AND

**Andrea Bullock t/a 77 The Hair Salon**

**Respondent**

**ON:** 17 – 21 September 2018

**Appearances:**

**For the Claimant:** Mr Kerkouki, Lay Representative

**For the Respondent:** Mr P Maratos, Employment Consultant

## **Written reasons produced in response to a request by the Claimant**

### **Introduction**

1. This case was heard by the employment tribunal on 17 – 21 September 2018 and oral judgment with reasons was given to the parties at the end of the hearing after hearing submissions from both parties. The Claimant's claims of constructive unfair dismissal and disability discrimination were dismissed. The tribunal found that the Respondent owed the Claimant sums in respect of holiday pay and statutory sick pay and that she had not given the Claimant a statement of employment particulars. The tribunal had been given insufficient

- information to enable it to resolve the claim in relation to the National Minimum Wage. The Claimant then made an application in writing for written reasons, which are now set out.
2. By a claim form presented on 9 December 2017 the Claimant presented to the tribunal claims of constructive unfair dismissal under s95(1)(c) Employment Rights Act 1996 ("ERA"), disability discrimination under sections 13, 15, 20-21 and 26 Equality Act 2010 ("Equality Act") and deduction from wages in respect of holiday pay, SSP and non-payment of the National Minimum Wage.
  3. At a preliminary hearing before Employment Judge Webster on 12 March 2018 the Respondent's application to have the claims struck out was refused. A list of issues in the case was discussed and agreed at that hearing and is set out in the Appendix to these reasons.
  4. At the full hearing of the claims before this tribunal, the Claimant gave evidence on her own behalf and called as a witness Adem Korkmazyeit, owner of another local hairdressing business and Neeral Patel, friend of the Claimant and client of the Respondent's business. The Claimant's partner and representative at the hearing, Mr Kerkouki had also prepared a statement, but the tribunal did not consider his evidence to be relevant to the issues we needed to decide and he was not called as a witness.
  5. The Respondent's evidence was given by Androulla Bullock, the owner and manager of the Respondent, Andrea Michael, a client of the Respondent, Gary Beckett, owner of a local print business, Wendy Louca an employee of the Respondent and Lutfiye Gurses, mother of the Claimant and client of the Respondent.
  6. There were two bundles of documents, one prepared by each party. This was not in accordance with the case management order made by Judge Webster, but nevertheless the tribunal referred to both bundles as necessary during the course of hearing the evidence. Unless otherwise indicated references to page numbers are to page numbers in the bundle prepared by the Respondent.

### **The issues**

7. The issues to be determined in the case are set out in the Appendix to these written reasons.

### **The law**

1. Section 95 (1)(c) ERA provides as follows:

#### **Constructive dismissal**

#### **95 Circumstances in which an employee is dismissed.**

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) F1. . . , only if)— .....

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

The case law and in particular *Western Excavating (ECC) Ltd v Sharp [1978] ICR 221* sets out the test that has to be met for an employee to establish that there has been a constructive dismissal. There has to be a repudiatory breach of contract by the employer, the employee has to decide to accept the breach by resigning and the employee must not delay too long in doing so. In this case the issue was whether there had been a repudiatory breach by the Respondent.

2. Section 6 Equality Act provides as follows:

#### 6 Disability

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

3. Section 15 Equality Act provides:

#### “Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

4. The duty to make reasonable adjustments arises under section 20 and Schedule 8 Equality Act. Section 20, subsections (3) to (5) imposes on the Respondent a duty with three possible requirements any of which could have applied on the facts of this case:

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

5. S 26 Equality Act prohibits harassment related to a protected characteristic,

including disability.

- (1) A person (A) harasses another (B) if—**
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and**
  - (b) the conduct has the purpose or effect of—**
    - (i) violating B's dignity, or**
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B....**
  - (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—**
    - (a) the perception of B;**
    - (b) the other circumstances of the case;**
    - (c) whether it is reasonable for the conduct to have that effect.**

6. The entitlement to holiday pay arises under the Working Time Regulations 1998. A claim for unpaid holiday pay can be brought as a claim for unlawful deduction from wages, as can a claim that the Respondent has not paid the correct amount of the National Minimum Wage.

### **Findings of fact**

7. Based on the witness and documentary evidence made available to us we make the following findings of fact on a balance of probabilities and reach the following conclusions on the issues we were required to decide.
8. The Respondent is a hairdressing salon in Coulsdon owned and managed by Androulla Bullock, the Respondent. She employed one other hair stylist, Wendy Louca who worked on Fridays and Saturdays and from time to time a Saturday girl.
9. The Claimant had commenced employment with the Respondent as a Saturday girl in 2009 and then began working as an apprentice hairdresser.
10. The Claimant has a number of health issues including a condition known as fibroadenoma. For the purposes of this claim she relies on that condition as being a disability within the meaning of s6 Equality Act 2010. She relies on no other condition although there was evidence that she has had a number of challenges with her health.
11. The Claimant's mother is a friend of the Respondent and the two families are close. The Claimant qualified as a hairdresser in June 2016 having studied at Croydon College and having continued to work for the Respondent throughout her studies. By June 2016, once she had completed her course Levels 1 and 2 NVQ (for she was awarded an Apprentice of the Year award), the Claimant was equipped to perform certain tasks in the salon but still needed practice at others. In particular she needed to develop her skills in cutting and highlighting. The Respondent's view was that these skills required constant practice.
12. The Claimant commenced a Level 3 NVQ in September 2016 which would have developed these skills. For that purpose the Claimant signed an

- apprenticeship agreement for the 2016/17 study year. At page 64 she signed a declaration at the back of the agreement to the effect that she had no disabilities or health problems. There was no written agreement setting out the Claimant's terms of employment.
13. Despite her enrolment on the Level 3 course she made slow progress and did not complete the focused work needed to become proficient at cutting and tinting. This meant that the Respondent was unable to delegate to her the full range of services that the salon's customer's needed. The Respondent envisaged that the Claimant would become skilled enough to start being able to provide the full range of services to clients which would mean that she would not need to turn clients away. However she was strongly personally committed to the Claimant and did not want to recruit another fully qualified stylist in her place. Nor could she afford to recruit an additional member of staff whilst the Claimant remained employed.
  14. The Claimant had become engaged to be married in June 2016 but the engagement was short lived. The Claimant became rather distracted, initially by celebrations to mark her engagement and later, by the breakdown of her relationship with her fiancé. The Respondent was concerned that this was affecting her focus on her work. She was supportive but made it clear to the Claimant that once matters in her personal life had settled down she wanted her to start focusing on her work again. The text messages passing between the two women at that stage (for example pages 279-280) show that the Respondent took a strong interest in the Claimant's welfare.
  15. After the Claimant's engagement was broken off she became depressed and increasingly unreliable and unable to concentrate on her work. She asked her mother to talk to the Respondent and the Respondent was understanding and told the Claimant not to worry about work for a couple of months. Due to the nature of their relationship the Respondent did not take any formal disciplinary action and was tolerant and supportive.
  16. In January 2017 the Respondent needed a six week break from work for a significant medical procedure. During her absence the work in the salon was covered by the Claimant and Wendy Louca. Wendy covered most of the highlighting and cutting and the Claimant did shampooing, blow drying, opening and closing the salon, cashing up and paying Wendy and the Saturday girl. There was no evidence that during that period the Claimant had any difficulties discharging these responsibilities arising from the fibroadenoma or any other health condition.
  17. In or around March 2017 the Claimant met Mr Kerkouki and began a relationship with him.
  18. The Respondent was due to get married on 29 July 2017. The Claimant became closely involved with the preparations, organising one of the Respondent's hen parties, participating in a hen weekend on 24 June and agreeing to assist with preparing the Respondent's hair and that of some of the guests on the morning of the wedding.

19. However the Claimant learned on or around 7 June that she would need an operation to deal with a worsening of her fibroadenoma. The condition had first been diagnosed when the Claimant was 18. It manifests itself as lumps in the breast which may be asymptomatic or may grow and cause discomfort or pain. If that happens they may need to be surgically removed. That occurred in the Claimant's case. The Claimant was offered two dates for her operation – 24 June or 30 June 2017. She opted for the later date so as not to miss the Respondent's hen weekend. She notified the Respondent of the need for an operation by text on 7 June and said that she would explain when she got to work. The Respondent would have preferred her to take the earlier date because she wanted to be sure that the Claimant would be fully recovered in time for the wedding itself.
20. The operation took place as planned on 30 June. The Claimant had told the Respondent that she would need a two week recovery period and the Respondent paid her in full for two weeks. She went to visit the Claimant on 2 July and sent her a number of messages asking how she was feeling. The Claimant recovered reasonably well from the operation but was in some pain and discomfort particularly when she lifted her arm. The Respondent went to visit the Claimant again on 16 July by which time the Claimant had been signed off for a further two weeks. The Respondent then told the Claimant that she would not be able to pay her anything other than statutory sick pay during that two week period as she could not afford to do so. The Claimant queried this with ACAS and then sent a message to the Respondent saying that she ought to have a written contract setting out her sick pay entitlements. The Respondent replied saying, wrongly, that as she was a small business she did not need to give the Claimant written terms of employment (page 69).
21. Nevertheless they continued to correspond by text message and the Claimant agreed to return to the salon on 29 July to carry out the wedding hair preparation as planned. In her oral evidence the Claimant initially sought to say that the Respondent had pressurised her into doing this even though she was not fully recovered from the operation. However under cross examination she conceded that she has not been forced to do this against her will. We find as a fact that the Claimant was not pressurised by the Respondent but wanted to be at the wedding and did not want to let the Respondent down. She in fact had to contend with another health issue at this point as she developed an abscess in her nose. However she voluntarily postponed a medical procedure to have this dealt with so that she would not miss the wedding.
22. The Claimant attended the wedding and went back to hospital the next day.
23. The Respondent was on honeymoon for two weeks after her wedding and the Claimant was covering the salon with Wendy Louca's help. Wendy worked full time during this two week period. The Claimant was suffering some difficulty with blow-drying hair as she was still suffering some discomfort when lifting her arm after the operation.

24. On 5 August the Claimant sent the Respondent a text message informing her that her Mr Kerkouki had booked a holiday for both of them for her birthday at the end of September. The Respondent replied saying that she should have been consulted about the dates as her young son would just have started school at that time and she would need the Claimant to cover for her in the mornings. September was also a busy month for the salon (page 71). It was clear from the text message that the Respondent was annoyed at a request for further time off at this point, particularly as the Claimant was taking holiday in the second half of August with her family. The Respondent also alluded to the Claimant's need to "give me decision about your career". The Claimant replied asking to meet with the Respondent after her return from honeymoon.
25. On 11 August Mr Kerkouki ordered from Mr Beckett's print business some leaflets advertising the Claimant's personal hairdressing services.
26. The Claimant and Respondent met on 14 August in the Costa in Purley. The discussion was difficult. The Respondent expressed her exasperation with the Claimant's lack of commitment to the business and lack of progress in developing her skills. They discussed the future of the business, the holiday, and the Claimant's concern that she was underpaid. There was also a discussion of the Claimant's workload during the Respondent's absence on honeymoon. The Claimant's complaint was that the Respondent had not left sufficient gaps between appointments as she had requested. We find as a fact that that was not the case as the Claimant was largely responsible for booking her own appointments. Prior to the meeting there had also been a tense exchange of messages in which the Claimant had suggested that the Respondent was complaining that she had had time off after her operation, which the Respondent denied. The Claimant was in fact awarded a pay increase after the 14 August meeting, which was confirmed in an email from the Respondent to the Claimant on 4 September. The Claimant's gross pay would increase to £300 but the Respondent indicated that she would no longer make the deductions from PAYE and national insurance on the Claimant's behalf that she had made up until that point.
27. At the end of the meeting the Respondent, who by then had taken HR advice, handed the Claimant an envelope containing a disciplinary procedure without explaining what it was or the purpose of giving it to her.
28. The Claimant went on holiday with her family during the second half of August. We find as a fact that the Respondent did not force the Claimant to change a hospital appointment that had been booked for 23 August. The Claimant was on pre-booked holiday on that date and could not therefore have attended a hospital appointment in that period.
29. The Claimant returned to work on 30 August. On 31 August she needed time off for a medical appointment caused by an infected insect bite. The Claimant was also sent on that day the letter at page 75 informing her that she was at risk of redundancy and inviting her to attend a consultation meeting on 6 September. That meeting did not take place and the process was then overtaken by Claimant resigning the following day.

30. On 1 September the Claimant worked as normal until about 3.00pm at which point she began to feel unwell and went to sit at the back of the salon near the toilet. Mrs Michael was in the salon that day and was able to observe what happened. We found her to be a wholly credible witness. The Claimant asked the Respondent to call her an ambulance as she was feeling sick and faint, but the Respondent did not think an ambulance was warranted and asked the Claimant if she should call her mother instead. The Claimant agreed, her mother arrived and accompanied her to the car. The Claimant was able to walk to the car without help. Her mother took her to St George's Hospital, where she was seen.
31. On 5 September Mr Beckett's print business received an order for a further version of the Claimant's hairdressing leaflets, this time with the added artwork of "Adem hair design", a hairdressing business owned by Mr Korkmazyieit. We preferred Mr Beckett's evidence as Mr Korkmazyieit changed his evidence several times during the course of cross examination.
32. On 7 September the Claimant had a hospital appointment that was marked in the Respondent's diary as a 9.30 appointment for 30 minutes, although the tribunal was not shown an appointment letter for that date. Nevertheless the Claimant did not arrive at work until 11.30, by which time the Respondent had chased her up by text as she had a client waiting. When the Claimant did arrive the Respondent had already put a tint on her client's hair and the Claimant went straight to the kitchen and declared that she was on her break. She proceeded to make phone calls and the Respondent went into the kitchen and asked her in a firm tone to stop making phone calls and come and do some work. We find as a fact that she made no mention of the Claimant's health in that conversation. We find as a fact that she did not shout at the Claimant but spoke to her firmly. We find as a fact that the Respondent reasonably believed that the Claimant was not on the phone to the hospital at the time as the Claimant alleged as she had a Halifax credit card in her hand and appeared to be trying to pay for something.
33. The Claimant resigned by email sent to the Respondent at 14.21 that afternoon. The content of the resignation email had been drafted by Mr Kerkouki and emailed to the Claimant at 12.49 pm.
34. The Respondent replied the same day placing the claimant on garden leave for her one week's notice period and offering to look into the matters raised in the resignation letter by way of a grievance investigation but the Claimant declined that offer the following day.

## **Conclusions**

### **Unfair constructive dismissal**

35. The Respondent conceded that the Claimant had the requisite two year period of service to bring this claim.



36. The Claimant relies on three acts as fundamental breaches of contract by the Respondent as set out in the list of issues:
- a. The Respondent denies issuing the Claimant with a disciplinary sanction. We have found that there was a wide ranging discussion about the employment relationship on 14 August but no formal sanction was imposed. There was no warning and no suggestion that a staged warning process had begun. The Respondent did give the Claimant an unexplained disciplinary process document and the Claimant might therefore have construed the meeting as having been a disciplinary hearing. However the Claimant herself called the meeting and we find that it was intended to clear the air and address the difficulties in the working relationship, rather than being of a disciplinary nature. Furthermore the Respondent had good cause to have a discussion with the Claimant at that point as she had grounds for believing that the Claimant was not committed to the business. She therefore acted with reasonable and proper cause. We conclude that the meeting was not a breach of the terms of the Claimant's contract.
  - b. The Respondent also acted with reasonable and proper cause in inviting the Claimant to a redundancy consultation meeting. We heard evidence from the Respondent that the salon needed another stylist with the full range of hairdressing skills and that she could not afford to appoint someone else alongside the Claimant. The business had a reduced need for an employee with the Claimant's limited skill set and it was therefore appropriate to commence a redundancy consultation. It was not a breach of the Claimant's contract for the Respondent to take that step.
  - c. We have found as a fact that the Respondent did not shout at the Claimant on 7 September or mention her health in front of customers. The Respondent did not breach the Claimant's contract on that occasion.

37. The Claimant has not therefore established that the breaches of contract on which she relied occurred. Her resignation was not therefore in response to a breach of contract by the Respondent and her constructive unfair dismissal claim therefore fails and is dismissed.

38. If we are wrong about that we find that the Claimant would in any event have been fairly dismissed for redundancy within a short period of 7 September.

### **Disability**

39. The Claimant suffers from fibroadenoma. We find that this is a long term condition that was diagnosed when she was 18.

40. We find however no evidence that at the time of the alleged acts of discrimination, the condition had a substantial adverse effect on her ability to carry out day to day activities. The evidence of the witnesses was that the Claimant was able to carry out her duties without difficulty except in the period

immediately following the operation, when she had difficulty lifting her arm for a period of time. Despite providing quite a number of documents about her health the Claimant did not provide the tribunal with any medical evidence of the nature and effects of her condition or the treatment required and we were reliant on her oral testimony which we found to be both unreliable and unconvincing. The Claimant's account of the effect of the condition on her ability to carry out day to day activities contained very few examples and was not compelling. By way of example of unreliability, the Claimant insisted when she gave oral evidence that the Respondent had forced her to cancel her hospital appointment on 23 August, until the employment judge suggested to her that as she had pre booked a holiday on 23 August it was more likely than not that she had voluntarily changed the appointment for that reason.

41. We are aware of the necessity to discount the effects of medical treatment when assessing whether or not a person is disabled within the meaning of the Act and note that the Claimant takes painkillers. However she was unable to show that she had ever been prescribed painkillers for fibroadenoma (except immediately after surgery) as distinct from the various other medical conditions for which she has sought treatment. The burden is on the Claimant to show that she meets the statutory test and she has not discharged that burden.
42. The Claimant's claim of disability discrimination therefore fails and is dismissed.
43. If we are wrong about our conclusion that the Claimant was not a disabled person her disability discrimination claims would nevertheless have failed on the facts for the following reasons:
  - a. The Respondent did not know and could not reasonably have been expected to know that the Claimant had a condition that could have amounted to a disability, particular in light of the Claimant's statement in the apprenticeship agreement that confirmed that she did not have any disabilities or health conditions. Furthermore, in summing up her case at the hearing the Claimant conceded that she had not discussed the details of the condition of fibroadenoma with the Respondent. The claims under s15 and sections 20 and 21 Equality Act would fail for that reason.
  - b. There was no evidence that the Respondent refused to talk to the Claimant after her return from her operation. On the contrary the text messages at page 276 and the facts found about the C's participation in the wedding preparations suggest that communication continued normally. The harassment claim under s 26 Equality Act would fail for that reason.
  - c. The Claimant simply failed to provide any evidence that showed that a hypothetical comparator would have been treated more favourably than she in the manner she alleges because of her disability. The claim under s13 Equality Act would fail for that reason.
  - d. The claim under s15 Equality Act would also fail because we have found as a fact that the Respondent did not tell the Claimant not to

attend hospital appointments. The only occasion on which there was anything approaching an instruction not to attend an appointment was on 6 September when both parties had hospital appointments simultaneously. In any event the Claimant was permitted to attend that appointment as the Respondent closed the shop to enable her to do so. No unfavourable treatment therefore occurred.

- e. The Respondent did not apply the provision, criterion or practice of requiring the Claimant to return to work before she was fit – the Claimant returned to work willingly and in any event did not show that she was not fit to return. The claim under sections 20 and 21 Equality Act would fail for that reason.
- f. The Respondent did not require the Claimant to carry out work that included lifting and straining. She was required as part of her duties to blow dry hair and in that regard adjustments were made by the provision of a stool so that she did not have to lift her arm so high. That part of the claim under ss20 and 21 Equality Act would fail on the facts.
- g. We found that the Claimant was not deprived of adequate breaks.

44. We found however that:

- a. The Respondent had failed to pay the Claimant five days accrued holiday pay on termination of employment and must compensate the Claimant accordingly.
- b. The Respondent had failed to pay the Claimant three days of Statutory Sick Pay and must compensate the Claimant accordingly.
- c. The Respondent had failed to give the Claimant give written particulars of employment and we therefore awarded the Claimant four week's pay under s 38(3) Employment Act 2002.

45. We were unable to resolve the claim in relation to the National Minimum Wage without further documentation and that claim must be dealt with at a separate remedy hearing if the parties cannot resolve it between themselves.

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Employment Judge Morton

Date: 16 November 2018

**Appendix – list of issues**

**1. Unfair dismissal claim (constructive)**

1.1 Does the Claimant have the requisite two years' continuity of employment? The Respondent asserts that she started work on 12 January 2016. The Claimant asserts that she has payslips dating back to at least November 2015.

1.2 Did the Respondent carry out an act or omission or a series of acts or omissions which amounted to a repudiatory breach of contract?

1.3 The Claimant relies upon the following acts by the Respondent:

(a) The Respondent issuing the Claimant with a disciplinary sanction on 14 August 2017.

(b) The Respondent sending a letter to the Claimant dated 6 September 2017 inviting the Claimant to a redundancy consultation meeting.

(c) Ms Bullock shouting at the Claimant on 7 September 2017 whilst she was on the phone to the hospital. The Claimant alleges that this incident took place in the salon, in front of other staff and customers and that Ms Bullock [released] personal information about her regarding her health.

1.4 Did the Claimant resign in response to that breach?

1.5 Has the Respondent shown the reason for the dismissal?

1.6 Was the reason a potentially fair one?

1.7 Did the Respondent otherwise act reasonably?

1.8 If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct?

1.9 Does the Respondent prove that if it had adopted a fair procedure the Claimant would have been fairly dismissed in any event? And/or to what extent and when?

**2. Disability**

2.1 Does the Claimant have a physical or mental impairment namely fibroadenoma?

2.2 If so, does the impairment have substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?

2.3 If so, is that effect long term? In particular when did it start and:

(a) has the impairment lasted for at least 12 months?

(b) is or was the impairment likely to last at least 12 months or the rest of the Claimant's life if less than 12 months?

2.4 In assessing the likelihood of an effect lasting 12 months, account should be taken of the circumstances at the time that the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood.

2.5 Are any measures being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?

**3. Section 26: Harassment related to disability**

3.1 Did the Respondent engage in unwanted conduct as follows: refusing to talk to the Claimant directly after her return from her operation on 30 June 2017 and creating a hostile environment at work.

3.2 Was the conduct related to the Claimant's protected characteristic?

3.3 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for

the Claimant?

3.4 If not did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3.5 In considering whether the conduct had that effect the tribunal would take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

**4. Section 13: Direct discrimination because of disability**

4.1 Has the Respondent subjected the Claimant to the following treatment falling within Section 39 Equality Act, namely:

- (a) Attending the Claimant's home in early July 2017 to get a sick note.
- (b) Requiring the Claimant to return to work before she was ready.
- (c) Sending the Claimant texts, telling her that clients had been booked in to see her.
- (d) Not providing the Claimant with a return to work meeting.
- (e) Writing to the Claimant on 6 September 2017 inviting her to a redundancy consultation meeting.

4.2 Has the Respondent treated the Claimant as alleged less favourably than it treated or would have treated the competitors? The Claimant relies on the hypothetical comparator.

4.3 If so, has the Claimant proved [primary] facts from which the tribunal could properly and fairly conclude that the difference of treatment was because of the protective characteristic?

4.4 If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

**5. Section 15: Discrimination arising from disability**

5.1 The allegation of unfavourable treatment as 'something in writing and in consequence of the Claimant's disability' falling within Section 39 Equality Act has been told not to attend hospital appointments and the Respondent making it known that he was frustrated by the Claimant's lack of ability to work properly. No comparator is needed.

5.2 Does the Claimant prove that the Respondent treated the Claimant as set out in the paragraph above?

5.3 Does the Respondent treat the Claimant as aforesaid because of the 'something arising' in consequence of the disability?

5.4 Does the Respondent show that the treatment was a proportionate means of achieving a legitimate aim?

5.5 Alternatively, has the Respondent shown and it did not know, and could not reasonably have been expected to know, that the Claimant had a disability?

**6. Reasonable adjustments: Section 20 and Section 21**

6.1 Did the Respondent apply the following provision, criteria and/or practice ('the Provision') generally, namely:

- (a) requiring the Claimant to attend work before she was fit to do so;
- (b) requiring the Claimant to carry out work that included lifting and straining.

6.2 Did the application of any such provision put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled in that:

(a) the Claimant was advised that straining (ie holding a hairdryer for long periods of time) would prolong her recovery;

(b) she was unable to work for long periods of time without a break.

6.3 Did the Respondent take such steps as were reasonable to avoid the disadvantage? The burden of proof does not lie on the Claimant, however it is helpful to know the adjustments asserted as reasonably required and they are identified as follows:

(a) Not requiring her to return to work too soon.

(b) Providing her with adequate breaks.

(c) Not requiring her to carry out activities which put her under strain until she had recovered.

6.4 Did the Respondent not know or could the Respondent not be reasonably expected to know that the Claimant had a disability or was likely to be placed as the disadvantaged set out above?

## **7. Unpaid annual leave – working time regulations**

7.1 What was the Claimant's leave year?

7.2 How much of the leave year had elapsed at the effective date of termination?

7.3 In consequence, how much leave had accrued for the year under Regulations 13 and 13(a)?

7.4 How much paid leave had the Claimant taken in the year?

7.5 How many days remain unpaid?

7.6 What is the relevant net daily rate of pay?

7.7 How much pay is outstanding to be paid to the Claimant?

## **8. Unlawful deductions from wages**

8.1 What was the Claimant's hourly rate of pay? Was that hourly rate of pay the same or more than the relevant rate of the national minimum wage (at the time £7.05).

8.2 If more than the national minimum wage, did the Claimant receive her hourly rate of pay for all time worked?

8.3 If less than the national minimum wage to what extent was the Claimant underpaid and for what period?

8.4 Had the claim been presented in time?

8.5 The Claimant asserts that she was entitled to be paid for 10 days sick leave in full. Was the Claimant paid correctly for her period of sick leave? This is to be further particularised by the Claimant as it was not clear how many days the Claimant said she was entitled to be paid for whilst on sick leave but did not receive.