



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G Grubic-Andvari

**Respondent:** Refugee Therapy Centre

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford Employment Tribunal in public      **On:** 04/09/2020

**Before:** Employment Judge Skehan (sitting alone)

### Appearances

For the claimant: In Person

For the respondent: Ms Bann, solicitor

## JUDGMENT

1. The claimant's claim for discrimination contrary to Section 15 of the Equality Act 2010 relating to discrimination arising from disability is struck out under the provisions of rule 37 of the Employment Tribunal Rules on the basis that the employment tribunal considers it has no reasonable prospect of success
2. The claimant's claim for discrimination contrary to sections 20 and 21 of the Equality Act 2010 relating to the duty to make reasonable adjustments is struck out under the provisions of Rule 37 of the Employment Tribunal Rules on the basis that the employment tribunal considers it has no reasonable prospect of success.
3. The claimant's claim for harassment on the grounds of disability contrary to section 26 of the Equality Act 2010 is struck out in accordance with provisions of Rule 37 of the Employment Tribunal Rules on the basis that the employment tribunal considers it has no reasonable prospect of success.
4. The claimant's claim for direct race discrimination contrary to section 13 of the Equality Act 2010 relating to the process of and decision to promote Ms Davanlou to 'mentoring coordinator' or bestow the title of mentoring coordinator upon Ms Davanlou in August 2017 is struck out as the employment tribunal does not have jurisdiction to hear it because it has been brought to the attention of the employment tribunal outside the statutory limitation period contained within section 123(1)(b), Equality Act 2010. The tribunal does not consider it just and equitable to extend the limitation period.

5. The claimant's claim for harassment on the grounds of race contrary to section 26 of the Equality Act 2010 is dismissed upon withdrawal by the claimant.
6. For the avoidance of doubt, the remainder of the claimant's claims are unaffected by the above orders and proceed.

## REASONS

### **Section 15 of the Equality Act 2010 relating to discrimination arising from disability and sections 20 and 21 of the Equality Act 2010 relating to the duty to make reasonable adjustments**

1. At the outset of the hearing the claimant told me that her claim under section 15 of the Equality Act was as follows:
  - (i) the following things arose in consequence of the claimant's disability: the claimant suffered from short memory, fatigue, anxiety, nervousness, mental and palpitations. This information had not been provided to the respondent prior to this hearing.
  - (ii) She was treated unfavourably in that, as set out within the previous list of issues dated 22/11/2019:
    - a. between September and December 2017 tasks were added to the claimant's workload, in particular the claimant was asked to manage to email addresses; and
    - b. the claimant was subject to excessive and public criticism, relating to hoovering duties; and a complaint relating to a client file.
2. The claimant clarified that her claim for reasonable adjustments was that:
  - (i) the respondent applied a provision criteria or practice (PCP) of:
    - a. allocating work;
    - b. requiring employees to cover the workload of ex-employees without additional support, subsequent remuneration time off in lieu.
  - (ii) The claimant says that she suffered the substantial disadvantage of an excessive workload, increases to her anxiety nervousness mental confusion and potential for error.
7. The claimant was a disabled person at the relevant time in accordance with the statutory provisions contained at section 6 of the Equality Act 2010. The claimant's disability is 'thyroid problems/Graves' Disease' that was during the relevant time wholly controlled by medication to the extent that the claimant did not during the relevant period of her employment with the respondent suffer any symptoms connected to her disability.
3. The respondent applied for an order to strike out the claimant's claims as set out above on the basis that:

- (i) the claimant's stated symptoms could not be said to arise in consequence of the claimant's disability (S15).
- (ii) As the claimant suffered no symptoms relating to her disability she could not be said to be placed at a substantial disadvantage to persons who are not disabled (S20/21) by the PCPs.

4. The Employment Tribunal heard submissions from both parties. It is noted that a strikeout of discrimination claims should only be ordered in the clearest case. Where a core issue of fact turns to any extent on oral evidence, it should not be decided without hearing that oral evidence. In this case however the claimant, taking her evidence at its highest, cannot identify that 'something' arising from her disability. In determining the issue of disability, I have found that the symptoms complained by the claimant of are not symptoms of the claimant's disability. It follows that the claimant, taking her evidence at its highest is unable to identify any disadvantage she suffered compared to persons who were not disabled by the application of any provision criteria or practice by the respondent.
5. In the circumstances I consider that the claimant's claims under section 15 and under section 20/ 21 of the Equality Act 2010 are misconceived with no reasonable prospect of success and for that reason these claims are struck out.

**Section 26 harassment relating to race.**

6. The claimant confirmed that she wished to withdraw her section 26 harassment claim relating to race.

**Section 26 harassment relating to disability**

7. The claimant clarified her claim for harassment relating to disability. The conduct complained of was the emails sent by Ms Davanlou to the claimant on 8 and 09/05/2018.
8. The claimant explained that Ms Davanlou was asked to help the claimant, with phone answering duties on Wednesdays but Ms Davanlou, when she put the notes together, tried to change things to avoid helping the claimant. In particular Ms Davanlou, wrote in the email of 8<sup>th</sup> of May 2018 'Action: [Ms Davanlou] is to answer all telephone calls on Wednesdays (provided she is not busy doing a task equally important) as and when instructed by [the claimant].' The claimant told me that this was harassment on the grounds of her disability because Ms Davanlou was under a positive obligation to help her.
9. Within the email of 09/05/2018, the allegation of harassment related only to the comment by Ms Davanlou ' I suggest this to be looked at in the next staff meeting. Meanwhile I will answer calls when I can, as before'. The claimant explained that the allegation of harassment related to the lack of real assistance offered by Ms Davanlou.

10. The respondent submitted that there was no factual link between the above conduct allegations and the claimant's disability and that the claimant's claim had no reasonable prospect of success and should be struck out.
11. I carefully considered the representations made by both parties. Bearing in mind my findings in relation to disability and the fact that the claimant had no symptoms of her disability during the course of her employment, taking the claimant's claim as at its absolute highest, I am unable to identify any link between the above allegations being an expressed reluctance by Ms Davanlou to assist the claimant with answering phones on a Wednesday and the claimant's disability. It is noted that a strikeout of discrimination claims should only be ordered in the clearest case. Where a core issue of fact turns to any extent on oral evidence, it should not be decided without hearing that oral evidence. I have taken the claimant's evidence at its highest and conclude that there is no core issue of fact reliant upon oral evidence. In the circumstances I conclude that the claimant's claim for harassment arising from these two emails have no reasonable prospect of success and is struck out.

**Direct discrimination on the grounds of race**

12. That the previous case management meeting the claimant's claim for less favourable treatment on the grounds of race was stated as:
- (i) the process of and decision to promote Ms Davanlou to 'mentoring coordinator' in August 2017
  - (ii) the initiation of the investigation into the complaints by the client LS , the investigation process itself and the conclusion of the investigation on 24/10/2018
  - (iii) the criticism of the claimant of the way the claimant brought her signature in Farsi and/or recording such criticism of LS in the claimant's record of the investigation
13. The Employment Tribunal considered only allegation (i) above relating to the promotion of Ms Davanlou. The respondent submitted that:
- (i) this allegation was a stand-alone allegation and not part of any continuing act or series of events;
  - (ii) the Employment Tribunal did not have jurisdiction to consider this claim as it was outside the statutory limitation period and it was not just and equitable to extend time in the circumstances. The decision relating to Ms Davanlou was made in August 2017, the claimant commenced ACAS early conciliation on 04/12/2017 and proceedings were issued on 26/02/2019.
14. The claimant explained that this direct discrimination allegation further. She told me that:
- (i) there was no application form, but she applied for and was not appointed to the promotion given to Ms Davanlou. The claimant was given no explanation as to why she was not successful
  - (ii) Ms Davanlou was recommended by a referee due to her Iranian nationality. The claimant says that she was not chosen because she was not Iranian

- (iii) The claimant was referred to her covert recording transcripts relating to a conversation with 'Robin' which occurred on 30/05/2018 where the claimant says in relation to Ms Davanlou role of mentoring coordinator that:
- C: '.... The first promotion was not, you know... It was not like the job was advertised, or people could apply, or... She was just given this... Was I came back from lunch.....
- C: It was just decided by Nerma which in itself seems pretty unlawful, but that's another story...
- R:... But just to respond to that, [Ms Davanlou] is not being promoted and hasn't been promoted...
- C: Well ... She is mentoring coordinator.... That is the title which is different to the one that I have, so therefore
- R: but she looks after the mentoring in the same way that you look after therapy. Aside from the title, the work she does is very similar.
- C: there is no such thing as 'aside from the title' the title is the title.
- R: But it's not a new role, she is not moved into a different job....
- (iv) The claimant confirmed that her allegation was that Ms Davanlou's job title had been expanded, whereas hers had not. The claimant accepted that there was no promotion of Ms Davanlou. The fact that there was no benefits attached to the job title was not the point for the claimant. Ms Davanlou was given a job title that referred to a fraction of her actual job on no fair basis.
15. The claimant told me that she did not bring these allegations to the attention of the Employment Tribunal earlier because it was only after her employment ended when she queried the promotion she wasn't provided with any information and that was discriminatory.
16. The tribunal has the discretion to extend the time limit for a discrimination claim to be presented by such further period as it considers just and equitable (*section 123(1)(b), Equality Act 2010*).
17. I considered the submissions of both parties carefully. The starting point is that the claimant complains about a decision made in August 2017 that was not brought to the attention of the Employment Tribunal until February 2019 and the claim is considerably outside the initial statutory limitation period:
- (i) It can be seen from the claimant's own covert transcripts that the claimant considered the allegation to be 'unlawful' in May 2018. The length of the delay in bringing this matter to the tribunal is in excess of one year.
- (ii) The claimant was unable to provide any reasonable explanation for the delay to the tribunal.
- (iii) I am concerned that the delay in bringing this matter to the attention of the Employment Tribunal will have had a serious detrimental impact on the memories of relevant witnesses and the cogency of the evidence available to the tribunal. The allegation, as is explained by the claimant during the course of the hearing, is different from that set out at the previous preliminary hearing, and according to the

respondent's representative, is different to the respondent's understanding of the allegations prior to today. This further adds to the burden upon the respondent of taking further instructions in relation to a matter that arose in 2017 that has not been properly particularised until September 2020.

- (iv) The information relating to this allegation was available to the claimant from August 2017 in that she was aware of the change within her colleague's job title. I am concerned that the claimant did not take any action, even in May 2018, when it was clear that she was aware of 'unlawfulness' demonstrated by her covert recordings. The claimant exhibited no promptness of action even at this late stage.
  - (v) This is clearly a stand-alone allegation not linked to any course of conduct or continuing event.
18. Taking the entirety of the available evidence into account I conclude that this matter is substantially out of time and it is not just and equitable in accordance with the provisions of section 123(1)(b), of the Equality Act 2010 to extend time in these circumstances.
19. The remainder of the claimant's direct discrimination on the grounds of race claim and other claims not mentioned above are unaffected by this order and proceed.

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**Employment Judge Skehan**

14/9/2020

Sent to the parties on:

15 October 20

For the Tribunal: