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EMPLOYMENT TRIBUNALS

Claimant: Ms Yasemin Ozcan

Respondent: Turkish Bank (UK) Limited

Heard at: East London Hearing Centre (by cloud video platform)

On: 20, 21, 22, 23, 27, 28 & 29 October 2020 and
30 October 2020 in chambers and then delivering Judgment

Before: Employment Judge G Tobin

Members: Ms P Alford
Mr T Burrows

Interpreter: Mr S Ersoy (Turkish)

Representatives:

Claimant	Ms R Canneti (counsel)
Respondent	Mr M Magee (counsel)

JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

1. The claimant's claims of disability discrimination and religious discrimination occurring before 11 April 2019 are out of time pursuant to s123 Equality Act 2010. Such acts that formed part of an alleged continuous course of conduct under s123(3)(a) Equality Act 2010 were not brought within the statutory time limit of s123(1)(a) Equality Act 2010. After due consideration, the Employment Tribunal decided not to exercise its discretion to allow any of the out of time complaints to proceed to a determination, pursuant to s123(1)(b) Equality Act 2010.
2. The respondent should have known that the claimant was a disabled person, under s6 Equality Act 2010, from 21 April 2019.

3. The claimant was discriminated against by the Respondent in respect of proceeding with the disciplinary dismissal hearing on 29 April 2019 in her absence despite her medical explanation for non-attendance. Such discrimination was in respect of a failure to comply with a duty to make reasonable adjustments and harassment in breach of s21 and s25 Equality Act 2010.
4. The claimant's complaints of discrimination arising from her disability, pursuant to s15 Equality Act 2010, are rejected.
5. The claimant's remaining complaints of a failure to comply with a duty to make reasonable adjustments, pursuant to s21 Equality Act 2010, are rejected.
6. The claimant's remaining complaints of harassment based on her disability, pursuant to s25 Equality Act 2010, are rejected.
7. The claimant's complaints of victimisation, pursuant to s27 Equality Act 2010, are rejected.
8. The claimant's complaints of direct religion or belief discrimination, pursuant to s13 Equality Act 2010, are rejected.
9. The respondent unlawfully deducted the claimant's wages in breach of s13 Employment Rights Act 1996 in respect of the non-payment to the claimant of statutory sick pay.
10. The respondent unfairly dismissed the claimant, in breach of s94 Employment Rights Act 1994.
11. The Tribunal makes no deduction from any compensation payable to the claimant for unfair dismissal, under the principles set out in *Polkey v AE Dayton Services Limited*. The Tribunal does make a deduction from the claimant's unfair dismissal compensatory award of 50% pursuant to s123(6) Employment Rights Act 1996. Such a deduction being made on just and equitable principles for the claimant's contributory fault in respect of culpable or blameworthy conduct.
12. The claimant was dismissed in breach of contract, i.e. wrongfully dismissed.
13. In respect of remedy, the Employment Tribunal awards:
 - 13.1 An injury to feel award of £9,000 (nine thousand pounds) in respect of point 3 above.
 - 13.2 A sum equivalent to statutory sick pay (minus the statutory qualifying period) in respect of point 9 above, for the period from 8

March 2019 until the claimant's dismissal was communicated to her.

13.3 Unfair dismissal compensation of:

13.3.1 A basic award; and

13.3.2 A compensatory award (subject to the 50% deduction set out under point 11 above). Any compensation in respect of loss of earnings to be calculated on the basis that the claimant would have been able to return to work despite her ongoing depressive illness and lower back injury and degenerative condition. The Tribunal determines that, in any event, the claimant would have been dismissed by reason of redundancy following the closure of the respondent's Dalston branch on 12 June 2020.

13.4 Damages for wrongful dismissal, to the extent that the claimant was available to work her notice period subject to any likely sickness absence as identified above. The Tribunal notes the overlap with 13.3.1 above, and the fact that the claimant is not entitled to "double recovery". The claimant's shortfall in this regard may be limited to a sum equivalent to statutory sick pay.

13.5 There be liberty for either party to apply for a remedy hearing, should the parties not be able to agree compensation in respect of 13.3 and 13.4 above.

Employment Judge Tobin

2 November 2020

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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