



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Ms Tracey Riches

AND

**Respondent**

Nicola Lloyd t/a Copper Joe's Cafe

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Plymouth

**ON**

3 December 2020

**By Telephone Conference Call**

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** In person

**For the Respondent:** Mr P Maratos, Litigation Executive

### JUDGMENT

**The judgment of the tribunal is that the claimant's claim for disability discrimination is dismissed.**

### RESERVED REASONS

1. This is the judgment following a preliminary hearing to determine whether the claimant was a disabled person at the material times, and whether (and if so when) the respondent knew of the claimant's disability.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Telephone Conference. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 47 pages, the contents of which I have recorded. The order made is described at the end of these reasons.
3. I have heard from the claimant. For the respondent I have heard from Mr Maratos who questioned the claimant and made submissions.
4. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The respondent Nicola Lloyd is the proprietor of a cafe in Winchester known as Copper Joe's Café. The claimant Ms Tracey Riches is aged 46 and was employed as a Cook and

- Assistant from 8 July 2018 until 23 May 2019. The claimant worked on average 20 hours per week and her employment ended when she was summarily dismissed. The respondent asserts that she dismissed the claimant by reason of gross misconduct following her failure to attend for a shift. The claimant asserts that she is disabled by reason of depression and that on the morning in question she walked out because she felt overwhelmed.
6. As recorded by Employment Judge Gray in a case management order dated 23 April 2020, the claimant brings claims of disability discrimination, for breach of contract in respect of her lost one week's notice period, and for accrued but unpaid holiday pay. The disability discrimination claim is limited to one claim of discrimination arising from her disability, namely that the "something arising" from her disability was that she felt overwhelmed by her depression and had to walk out of her shift, and that she was dismissed as a consequence. The respondent denies that the claimant was disabled, and also denies that it knew, or ought reasonably to have known, that the claimant was disabled. This hearing was listed to resolve those issues.
  7. The claimant has adduced two letters explaining the impact which she says her depression has on her normal day-to-day activities. These are dated 6 December 2019 and 31 May 2020. She asserts that depression has been a part of her life since her early 20s. She says that this coincided with her father going to prison, and her trying to commit suicide by overdosing when she was aged 24. She said that she had postnatal depression after her first child was born in 2004 and that she was prescribed antidepressants following domestic abuse and her divorce. She states that if she has a particularly bad episode it can affect her thinking, vision, hearing and mood, and she sometimes finds socialising difficult. She accepts that "most days I can function relatively normal and nobody would know". She says she has learned to live with depression and keep her stress levels down by walking, gardening and reading. She says that she stopped taking alcohol in March 2019 which has "made a huge difference to my mental health". She explained that she visited her GP in November 2019 and described all of these various symptoms which included joint pain, fatigue, panic attacks and palpitations. The claimant's GP diagnosed perimenopause and suggested HRT. There was no diagnosis of depression or treatment for depression at that time.
  8. In response to an order to disclose any medical reports or medical notes upon which she relies, the claimant has disclosed copies of her GP notes. These show that the claimant was only treated for depression between September 2008 and February 2009, when she was diagnosed with depression and prescribed citalopram. There are no other diagnoses or prescriptions for depression since then. Indeed, the claimant did not visit her GP after February 2009 except on these occasions: July 2010 in connection with stopping smoking; 2014 in connection with pregnancy issues; 2015 in connection with feeling tired and washed out; June 2017 in connection with a fractured ankle; and in November 2019 as noted above when her GP diagnosed perimenopause.
  9. During the 10 months or so of her employment the claimant only had the occasional sickness absence which was self-certified, and not by reason of depression. There was one occasion in about September 2018 when the claimant says she felt overwhelmed and mentioned to the respondent and her daughter Layla that she suffered from depression and was thinking of leaving, but was persuaded to stay.
  10. The claimant concedes that she manages her condition with exercise, gardening, diet and help from friends, and has not visited her GP in connection with her depression and that she does not wish to have antidepressant medication. She has not asked for, nor been recommended, any alternative treatments such as counselling.
  11. Having established the above facts, I now apply the law.
  12. The claimant alleges discrimination because of the claimant's disability under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant's sole disability discrimination claim alleges discrimination arising from her disability.
  13. The protected characteristic relied upon is disability, as set out in section 6 and schedule 1 of the EqA. A person P has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on P's ability to carry out normal day to day

- activities. A substantial adverse effect is one that is more than minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months, or is likely to last the rest of the life of the person.
14. As for the claim for discrimination arising from disability, under section 15 (1) of the EqA a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. Under section 15(2), this 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.
  15. I accept the claimant's evidence that she sometimes feels depressed, and I acknowledge that depression is a mental impairment and one which can recur. However, in this case the claimant has not had to seek medical assistance with possible depression, and has had no diagnosis of depression or treatment for depression since 2009. Even when the claimant attended her GP in November 2019 (some months after her dismissal in May 2019) and described all of the symptoms of which she complains, the GP diagnosed perimenopause, and discussed a prescription of HRT.
  16. The burden of proof is on the claimant to establish her disability, and in my judgment she has not discharged that burden. I accept that she sometimes feels depressed, and that this can amount to a mental impairment, but I am not satisfied that the effects which it has on her normal day-to-day activities are substantial (in the sense that it is more than minor or trivial). In addition, such adverse effects as there may be, do not appear to be long-term in the sense that they have lasted or are likely to last for a period of 12 months. The claimant concedes that "most days I can function relatively normal and nobody would know", and that after she stopped taking alcohol in March 2019 this "made a huge difference to my mental health".
  17. The claimant has not established that any impairment from which she says she suffers has a substantial adverse effect on her normal day-to-day activities, nor can be said to be long-term. For these reasons I find that she was not a disabled person at the times material to this claim.
  18. In any event I find that the respondent did not know, nor ought reasonably to have known, that the claimant was disabled by reason of depression. Although the claimant did mention on one occasion in about September 2018 that she felt depressed, the claimant had no sickness absence as a result of that condition, and the respondent did not receive any certificates from her GP to that effect. On the information which the respondent had before her, the claimant has not established that the respondent knew, or ought reasonably to have known, that the claimant suffered from a long-term mental impairment which had a substantial adverse impact on her normal day-to-day activities.
  19. Given that the claimant was not a disabled person at the material time, and the respondent did not have knowledge of any disability, the constituent elements of section 15 EqA cannot be made out by the claimant. I therefore dismiss the claimant's disability discrimination claim.

---

Employment Judge N J Roper  
Dated 3 December 2020  
Judgment sent to Parties on