



5

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4121485/2018 (A)

10

Held on 2, 3, 4 and 5 November 2020 (By CVP)

Employment Judge: R Gall
Members: J McElwee
J McCaig

15

Ms F Greasley

**Claimant
In Person**

20

Common Thread Limited

**Respondent
Represented by:
Mr C Edward –
Advocate**

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Tribunal is that the claims of discrimination, the protected characteristics being disability and race, are unsuccessful.

30

35

As stated at the Hearing, in terms of Rule 62 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the Hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the Hearing. The following sets out what was said, after adjournment, at the conclusion of the hearing. It is provided for the convenience of parties.

REASONS

1. The case proceeded by Video conference hearing utilising Cloud Video Platform (CVP). Due to the coronavirus pandemic a hearing in-person was not practicable. Parties consented to proceeding by CVP.
- 5 2. Ms Greasley represented herself. She gave evidence on her own behalf. The respondents were represented by Mr Edward. Evidence on their behalf was given by Darren Dow who was the respondents' care services manager at date of the Tribunal hearing, Neil McKechnie, Head of Commercial with the respondents and Allison Sharp, formerly a Therapeutic Support Worker with
10 the respondents. A joint file of documents was with the Tribunal.
3. Ms Greasley was employed by the respondents as a therapeutic support worker between 21 February 2018 and 15 June 2018. The respondents provide support and care for young people who have been affected by trauma, serious abuse and neglect.
- 15 4. The claims brought are of discrimination. Ms Greasley alleges race discrimination, being direct discrimination and harassment. She alleges disability discrimination, being a failure to make reasonable adjustments and discrimination arising from disability.

Disability discrimination.

- 20 5. In terms of the Equality Act 2010 ("the 2010 Act") it is a defence to claims under Sections 20 and 21 and also Section 15 of the 2010 Act that the employer did not know and could not reasonably be expected to know that a claimant had a disability.
- 25 6. The disability by which Ms Greasley is affected is dyslexia. Her position was that she had told the respondents of this disability soon after she commenced work with them and also during her employment. She did not disclose it at time of interview or in the offer of employment medical questionnaire (page 220 of the bundle). She disclosed in that form that she had a gluten intolerance and did not mention any disability. She did not raise her dyslexia

at the probation review meeting which led to dismissal or at the appeal meeting following her dismissal. She said that she informed Mr Dow and also Ms Sharp of her disability and that arrangements for a quiet room had been made during training after she had informed staff of her dyslexia. The respondents denied that any information as to her dyslexia had been given to them at those or any other times.

7. The Tribunal weighed the evidence. It has to decide the facts it believes on the balance of probabilities. It concluded that there had been no information given to the respondents by Ms Greasley that she was affected by dyslexia.
8. The Tribunal accepted the evidence of Ms Sharp as being credible and reliable in all areas about which she gave evidence. She is no longer employed by the respondents and cannot therefore be influenced by any existing employment relationship. She explained, in evidence accepted by the Tribunal, that she had assisted Ms Greasley in completion of some forms as it was the first time Ms Greasley had undertaken this task. Ms Greasley had not mentioned dyslexia to her. When Ms Sharp had pressed Ms Greasley to finish the forms later that day, Ms Greasley had said it was too late and she was too tired. She had not mentioned dyslexia or difficulties she was experiencing in completion of the forms. Ms Sharp had no sense then or later that Ms Greasley was affected by dyslexia.
9. The evidence from Mr Dow as to disclosure to Ms Greasley of his own medical issue was somewhat unsatisfactory. Ms Greasley said there was, in effect, an exchange of information by her and Mr Dow. She had told him of her dyslexia, and he had informed her of his own health issue. In his statement he denied having given any such detail to Ms Greasley, although he accepted at Tribunal that he talked relatively openly about his health issue. The Tribunal accepted his evidence that he did not know of Ms Greasley's dyslexia, notwithstanding this movement in Mr Dow's evidence with regard to disclosure of his own health condition to Ms Greasley.
10. One important factor in the Tribunal concluding as it did was that, on its view on the evidence, if the respondents had been made aware by Ms Greasley of

her dyslexia or associated difficulties, steps would then have been taken to try to support Ms Greasley. Alternatively, she would have been likely to follow up any such discussion seeking that such steps were taken. Neither of those things occurred. The respondents have other employees who are affected by dyslexia and therefore have equipment and systems in place which provide assistance to employees with dyslexia. The Tribunal was therefore satisfied that had Ms Greasley intimated that she was affected by dyslexia, the respondents would have made arrangements to assist her with equipment and support, as they did with other employees similarly affected. Both they and Mr Dow were quite open to such steps being taken and were also quite familiar with what could be done to assist in such circumstances.

5

10

15

20

25

30

11. In addition, had Ms Greasley informed the respondents of her disability, then when the respondents mentioned an issue with late completion of reports in the meeting which led to her dismissal, Ms Greasley would have had a starting point in explaining this, by referring the respondents to her disclosure of dyslexia. She made no such reference. During her employment she also made no requests for assistance by way of adjustments. Indeed, her evidence was that she believed at the time and still believed that she had complied with any requirements for submission of reports. She also made no mention of dyslexia at the appeal hearing.

12. Some of those elements were relevant to consideration by the Tribunal of whether the respondents could or could not reasonably be expected to know that Ms Greasley had a disability. On the evidence, forms which required to be completed following incidents were submitted late by Ms Greasley. That however is not of itself indicative of dyslexia existing. There was no evidence of signs of any significance indicating dyslexia from which the Tribunal could conclude that the respondents could reasonably have been expected to know that Ms Greasley was affected by dyslexia.

13. On the basis that the respondents did not know of Ms Greasley's disability and that they could not reasonably have been expected to know of it, the claim of disability discrimination cannot succeed.

Race discrimination.

14. The working environment in which employees of the respondents, including Ms Greasley in her time there, operate is a very difficult one. The young people for whom they care are very wary and mistrustful of adults, including the workers at the homes where they stay. They will test the adults working at those homes by being insulting towards them. The insults are often very personal. The young people look to get a reaction from the worker. They target any perceived weakness. Physical abuse is directed towards workers too. The respondents provide training to try to prepare the workers for this verbal and physical abuse. They have processes in place to try to assist with management of these types of behaviours. There is a high staff to young person ratio. There is a shift arrangement in operation. It is important that there is consistency and that everyone in the team works adopts the same principles.
15. The respondents' clear method of approach is that where a young person is verbally abusive towards a worker, that worker should be the person to respond. It should be made clear to the young person that the behaviour is unacceptable. The respondents' view is that if this is not the procedure followed, if, for example, someone else steps in immediately to address the situation with the young person, the young person will perceive that the worker has a weakness in the area where the abuse is focused. The young person may revisit that topic in being abusive towards the worker in future scenarios, including occasions when the worker is on their own. On the other hand, if the worker addresses the behaviour and makes it clear it will not be tolerated, then the young person will often quite quickly depart from that type of insult. Management or other employees will therefore only intervene if a worker does not reply or deal with a situation themselves.
16. Ms Greasley, on the evidence the Tribunal heard, is of a different view as to how such remarks should be treated. When the basis of the insult is personal and of a serious nature her view is that management should make it clear it will not be tolerated.

17. It is not for this Tribunal to express a view on which approach is to be preferred or is likely to be more successful. The Tribunal does not have the expertise to do that. It is also not relevant to this case.
18. In Ms Greasley's case, the young people made very offensive remarks to her on the basis of her race. Staff, including Mr Dow, did not themselves make any such remarks. Ms Greasley's position was that Mr Dow ought to have stepped in to prevent the type of insults that were made. Other elements of behaviour by Mr Dow were also said to constitute direct discrimination.
19. The allegations of race discrimination required the Tribunal to consider the actings and omissions of Mr Dow. For Ms Greasley to be successful the Tribunal would have to find that Mr Dow was racially motivated when the acts or omissions complained of occurred, if the Tribunal accepted on the evidence that they had occurred.
20. In its assessment, the Tribunal kept in mind the provisions in the 2010 Act as to burden of proof.
21. There was no evidence accepted by the Tribunal from which it could be inferred that Mr Dow was racially motivated in his actions or omissions. Whether and when to intervene at the time remarks of a very offensive nature in relation to her race were being made to Ms Greasley by young people were matters of judgment. Perhaps Mr Dow might have stepped in when he did not. The whole approach and philosophy of the respondents is however based upon the worker challenging such behaviour in the first instance. Ms Greasley was asked by Mr Dow or other workers about the insults directed towards her and said she was "fine", that it "didn't bother" her or that she had "heard it before". There was no evidence that she had asked for support or a different approach.
22. Although Ms Greasley's evidence was that Mr Dow had stepped in when others were taunted by being called names, that was denied by Mr Dow and Ms Sharp. The evidence from Ms Sharp on this and other areas was accepted by the Tribunal as being credible. It was preferred.

23. Ms Greasley also referred to other instances where she said she had been treated differently. There was however no indication, if she was treated differently, that this was because of race.

24. The Tribunal did consider both whether the individual instances were discriminatory behaviour and also whether there was an accumulation of incidents such that an inference of discrimination was appropriately made. It concluded that whether viewed individually or cumulatively there was not a basis for that inference from the facts as it found them to be.

Time-bar.

25. Whilst the dates of some incidents founded upon by Ms Greasley were more than 3 months prior to presentation of the claim and of the initiation of the claim by contact being made with ACAS, the Tribunal regarded there as being allegations of conduct extending over a period, concluding with an alleged act which had occurred within the 3 month period. The claim was not therefore time-barred.

General comments.

26. Dismissal was not viewed by the Tribunal as being an act of discrimination. The reasons explained by the respondents for ending Ms Greasley's employment were accepted by the Tribunal as being the genuine basis for that decision. Whilst the Tribunal could understand that the respondents had concerns as to Ms Greasley's work and her continuing employment with them, there would have potentially been some concern had it been examining the decision to dismiss in the context of unfair dismissal. Careful consideration would have had to have been given to a claim of unfair dismissal had that been a ground open to the claimant and pursued by her. Steps short of dismissal, for example, were open to the respondents. To be clear however, no view is expressed by the Tribunal as to the fairness of dismissal. That is not a matter before this Tribunal.

27. It also appeared to the Tribunal that performance management during the time of probation might have seen clearer guidance given to Ms Greasley in

5 areas where performance was an issue. That might have given her a better chance of addressing those areas. That said, Ms Greasley did not seek help or regard herself as requiring help. Again, this was not a relevant matter looking to the claims open to Ms Greasley and those therefore before the Tribunal.

Conclusion

10 28. This case involved a tricky area of law. Giving of evidence and undertaking cross examination was an understandably emotional experience for Ms Greasley. Conducting the case was demanding for all involved. There were technical IT issues from time to time during the hearing. The Tribunal wishes to express its thanks to Ms Greasley and Mr Edward for their patience and for the diligent and thorough way in which they presented their respective cases.

15 29. For the reasons set out the Tribunal concluded unanimously that the claims were unsuccessful.

20 Employment Judge: Robert Gall
Date of Judgment: 05 November 2020
Entered in register: 23 November 2020
and copied to parties

25

30