



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss S Samuels

**Respondent:** The Commissioner of Police of the Metropolis

**Heard on:** 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> February 2021

**Before:** Employment Judge Pritchard

**Members:** Mr J Hutchings  
Ms C Upshall

## Representation

**Claimant:** Mr P Hainsworth, lay representative

**Respondent:** Mr P Edwards, Counsel

# RESERVED JUDGMENT

- 1 The Claimant's claim of disability discrimination under sections 20/21 of the Equality Act 2010 (failure to make reasonable adjustments) is dismissed upon withdrawal.
- 2 The Claimant's claim of disability discrimination under section 19 of the Equality Act 2010 (indirect discrimination) is dismissed upon withdrawal.
- 3 The Claimant's claim of disability discrimination under section 15 of the Equality Act 2010 (discrimination arising) is dismissed.

# REASONS

1. Having withdrawn her claims for failure to make reasonable adjustments and indirect discrimination, the Claimant's remaining claim was for disability discrimination under section 15 of the Equality Act 2010. The Respondent resisted the claim.
2. The Tribunal heard evidence from the Claimant on her own behalf. The Tribunal heard evidence from the Respondent's witnesses: Caroline Price (Team Leader at relevant times); Steven Longhurst (at relevant times Team Leader within the LDSS team at Central South BCU); Andrew Walker (Area Service Delivery Manager); Michelle David (Local Services Delivery Manager at relevant times); and DCI David Rutter. The Respondent also placed in evidence the statement of James Cole (Tasking and Events Inspector).

3. The Tribunal was provided with a bundle of documents to which the parties variously referred.
4. At the conclusion of the hearing the parties made oral submissions supported by written argument.

### **Issues**

5. The issues relating to the Claimant's claim under section 15 had been discussed at a preliminary hearing before Employment Judge Tsamados on 28 October 2019 and set out in his case management order. Those same issues were presented to the Tribunal in an agreed list as follows:
  - 5.1. The Respondent accepts that the Claimant was a disabled person in accordance with the Equality Act 2010 at all relevant times because of the following conditions: Ehlers-Danlos syndrome and Marfans Syndrome.
  - 5.2. Did the following thing(s) arise in consequence of the Claimant's disability:
    - 5.2.1. The discrepancy of at least 20 to 30 minutes between the time she signed out of work and the time she claimed to have worked on several occasions: 31 May, 4 June and 8 June 2018 (this arising as a result of the time it took her to remove her car from the Respondent's car park)?
  - 5.3. Did the Respondent treat the Claimant unfavourably as follows:
    - 5.3.1. By instructing Reed Specialist Recruitment Ltd to terminate her assignment with the Respondent at Walworth Road Police Station as a result of the allegations of claiming for hours not worked?
  - 5.4. Did the Respondent treat the Claimant unfavourably in any of those ways because of any of those things?
  - 5.5. If so, has the Respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim?
6. The hearing proceeded on the basis that the Tribunal would consider liability only at this stage; a further hearing would be held to consider remedy if the Claimant were to succeed in her claim.

### **Findings of fact**

7. The Claimant's disability condition is a rare hereditary muscular-skeletal disorder which affects her bones, joints, internal organs and connective tissue. It causes tiredness and severe pain in her back. She cannot sit for more than about 60 to 75 minutes at a time and cannot walk for more than 10 to 15 minutes without a rest. The Claimant is a blue badge holder and, subject to certain time limitations, permitted to park her car in otherwise restricted places.
8. Having graduated with a first-class degree in forensic science, the Claimant secured an unpaid placement with the Respondent at Croydon Police Station. Thereafter, from 12 May 2017, the Claimant was engaged by Reed Specialist

Recruitment Ltd (“Reed”) and was assigned to work at the Croydon Police Station as an Administrator in the Criminal Exhibit Store (CES). The Claimant had no difficulties parking her car sufficiently close to the police station while working at Croydon.

9. From 15 January 2018, the Claimant was assigned to work at Walworth Police Station within the CES situated there. She joined a team of five staff within the CES, a mixture of directly employed civilian staff and agency workers supplied by Reed.
10. The CES is where all items of evidence relevant to active and non-active criminal cases are kept. This included high value evidential items. The Tribunal accepts that the Respondent needs to have confidence that those individuals working within the CES possess a high degree of integrity, not only in relation to their work within the CES but in making accurate records in the logbooks and, since there was no formal clocking in and clocking out mechanism, completing timesheets.
11. Approximately 80 to 100 individuals work at Walworth Road Police Station which is open 24 hours a day, 7 days a week. There is a small car park within the yard with just 25 parking spaces. The parking spaces are principally occupied by unmarked police cars and other vehicles from time to time. The yard is extremely busy with vehicles coming and going. In particular, because Walworth has a large custody facility, the only operational custody facility in the Basic Command Unit (BCU), there are often large prison transport vehicles and police cars dropping off and collecting people to and from custody. In addition, there are delivery trucks, property store vehicles and ambulances using the yard.
12. The Respondent allocated, and appropriately marked, two of the parking bays for use by disabled drivers. These bays are situated next to the door where the Respondent constructed a ramp for wheelchair use.
13. The CES at Walworth operates from 7.00 am to 4.00 pm to ensure that Police Officers have immediate access to evidence when required. Between 4.00 pm and 5.30 pm the CES is closed to Police Officers but must be staffed by at least one member of staff for internal administrative purposes. The member of staff rostered to work the “late shift” would be expected to commence work at 9.30 am and finish 5.30 pm.
14. Once the late shift finishes at 5.30 pm, the last member of staff on duty is required to ensure that all the doors and evidence lockers and cages are secured and alarms set. Upon completion, the member of staff is then required to confirm that all the appropriate checks have been made by signing and entering the time and date in the CES Signing Out Logbook. The keys are then stored in a separate location and the member of staff signs the Key Signing Out Logbook, again noting the time.
15. Mr Longhurst has responsibility for authorising hours claimed by agency workers in accordance with the electronic time sheets they have submitted. He noticed, by chance, that the Claimant had been delayed in traffic one day during her first week working at Walworth. When the Claimant claimed for her full scheduled hours that week, he brought the matter to the Claimant’s attention and she amended her timesheet accordingly. Mr Longhurst accepted that the

Claimant had made a genuine mistake and took no further action. The Tribunal is satisfied that the Claimant was thereby aware that she was not permitted to claim for hours which she had not worked.

16. During the first few weeks of the Claimant's assignment at Walworth, the Respondent made a number of reasonable adjustments to assist the Claimant. Save for that relating to car parking, the details of the adjustments in relation to this claim are not relevant and will not be further described here.
17. Although there were blue badge parking bays on the street nearby, parking for blue badge holders was limited to four hours. On 19 January 2018, having sought agreement from DCI Rutter, Mrs Price informed the Claimant that she could park in one of the disabled parking spaces in the yard. DCI Rutter issued a station wide email giving instructions that no private or operational vehicle should be parked in the disabled bays unless they were displaying a disabled badge. Notwithstanding the efforts made by the Respondent, the Claimant experienced difficulties because vehicles obstructed the disabled parking space.
18. On 8 February 2018, after the Claimant had informed him of the difficulties she was experiencing when her car was obstructed, DCI Rutter sent an email to the Claimant informing her that he had been getting vehicles moved and taking possession of vehicle keys to be collected from him personally. He apologised to the Claimant for the continuing difficulties and asked the Claimant that she should speak to him at any time. DCI Rutter then issued a station wide email to staff and officers that the disabled parking spaces must only be used by those displaying a disabled badge and that the spaces must not be obstructed; if there was an operational reason for blocking the space, such as prisoner transfer to custody, it must be for as short a time as possible. He also issued the instruction that the keys for all vehicles must be left on the dashboard and the mobile telephone number of the driver displayed so the driver could be contacted.
19. The Claimant continued to experience difficulties and therefore on or about 19 February 2018 Mrs Price informed the Claimant that she was henceforth permitted, one hour before the end of her shift, to go out to the yard to see if her car was obstructed. If so, she was to write down the registration number(s) of the car(s) blocking her in and give the numbers to reception to Tannoy and arrange for the obstructing vehicle(s) to be moved. Alternatively, if the Claimant's car was not obstructed, she could move it to one of the disabled parking bays on the street nearby or park on the double yellow lines in front of the Police Station (in accordance with her blue badge permission) so that she could leave quickly at the end of her shift.
20. Unfortunately, these measures did not completely alleviate the Claimant's difficulties. She continued to find her car obstructed; on occasions this process had to be repeated because her car might be again obstructed after the initial obstructing vehicle had been moved. The Tribunal heard conflicting evidence as to how long it might take for the Claimant to have obstructing vehicles moved and to free her car. The Tribunal has no need to decide exactly how long it might have taken but the Tribunal accepts that it must have been a frustrating process for the Claimant and might have taken more than just a few minutes.
21. In late May 2018, Ms David, who had overall responsibility for the Walworth CES, was instructed by her line manager, Mr Walker, to investigate why the

Walworth CES was underperforming. In particular, the CES was not processing as much evidence as it should have been. Having reviewed the logbooks, Ms David discovered that members of staff within the Walworth CES were not working their scheduled hours. Mrs Price held a meeting with the CES staff. Staff admitted they had been leaving early: the Claimant admitted that she left the CES early because of the problems she had been experiencing with getting her car unblocked. The Respondent emphasised the requirement for the CES to remain staffed until 5.30 pm.

22. Shortly afterwards, Ms David reviewed the timesheets of staff working in the CES. In the Claimant's case, examination of three samples showed:
  - 22.1. On Thursday 31 May 2018, the Claimant signed the CES Signing Out Logbook at 16.45 and the Key Signing Out Logbook at 17.00. She had completed her Reed electronic time sheet stating that she finished work at 17.30.
  - 22.2. On 4 June 2018, although there was no entry in the CES Signing Out Logbook, the Claimant signed the Key Signing Out Logbook at 17.00. She had completed her Reed electronic time sheet stating that she finished work at 17.30.
  - 22.3. On 8 June 2018, the Claimant signed the CES Signing Out Logbook at 16.10 and the Key Signing Out Logbook at 16.15. She had completed her Reed electronic time sheet stating that she finished work at 16.30.
23. Although other members of staff working within the CES had not worked to their scheduled hours, their time sheets were consistent with the hours claimed to have been worked.
24. On 19 June 2018, Mrs Price and Mr Longhurst met with the Claimant to discuss the inconsistencies. The Claimant made a recording of the discussion on her mobile telephone. The Claimant's explanation was that it could take up to 45 minutes to get her car unblocked. She said that it made more sense for her to finish her shift early, arrange for her car to be unblocked and then go home but that she never left more than 20 minutes before her scheduled finishing time. Mr Longhurst told the Claimant that the matter could be deemed as possibly fraudulent where times on the timesheet did not marry up.
25. Mrs Price prepared a brief note of the meeting which was sent to Ms David and Mr Walker. Mr Walker was concerned that the Claimant had made claims for hours to which she was not entitled. He took the view that the Claimant had left early of her own volition. He was also concerned that the Claimant had unilaterally chosen to change the agreement reached with Mrs Price without informing her that she had done so. Ms David shared the same concerns as Mr Walker but was also concerned that the Claimant had chosen to close the CES before 5.30 pm contrary to clear instructions. Mr Walker and Ms David agreed that the Claimant's assignment with the Respondent should be terminated as she had demonstrated a lack of integrity.
26. On 3 July 2018, while on leave, the Claimant was informed by Reed of the Respondent's decision that her assignment with the Respondent had been terminated. This was confirmed in writing by Reed on 4 July 2018.

## Applicable law

27. Section 41 of the Equality Act 2010 provides, among other things, that a principal must not discriminate against a contract worker by not allowing the worker to do, or continue to do, the work.

28. Section 15 of the Equality Act 2010 provides that 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.

29. The provision requires an investigation of two distinct causative issues:

29.1. Did A treat B unfavourably because of an (identified) something? This involves an examination of the putative discriminator's state of mind and mental process to determine what consciously or unconsciously was the reason for any unfavourable treatment found. This was confirmed by the Court of Appeal in two cases: Dunn v Secretary of State for Justice [2019] IRLR 298 and Robinson v DWP [2020] EWCA Civ 859. It is not enough for B to show that 'but for' his disability he would not have been in the unfavourable situation complained of, even if he was not well-treated by A and had an understandable sense of grievance.

29.2. Did that something arise in consequence of B's disability? As the EHRC Code of Practice 2011 explains, there must be a connection between whatever led to the unfavourable treatment and the disability. This is a question of objective fact for the Tribunal to decide in light of the evidence: City of York Council v Grosset [2018] EWCA Civ 1105. It does not depend on the employer's knowledge.

30. In Pnaiser v NHS England [2016] IRLR 170, the Employment Appeal Tribunal summarised the proper approach the Tribunal must take:

30.1. A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

30.2. The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it. Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572. A

discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises.

- 30.3. The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact. This stage of the causation test involves an objective question – a question of fact rather than belief - and does not depend on the thought processes of the alleged discriminator.
- 30.4. It does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of 'something arising in consequence of the claimant's disability'. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment.
31. Unfavourable treatment will not be unlawful under S.15 if it is objectively justified. This will require A to show that the treatment is a proportionate means of achieving a legitimate aim.
32. Section 136 of the Equality Act 2010 sets out the burden of proof that applies in discrimination cases. Subsection (2) provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that person (A) has contravened the provisions concerned, the Tribunal must hold that the contravention occurred. However, subsection (2) does not apply if A shows that A did not contravene the provision.

## **Conclusion**

33. As conceded by the Respondent, terminating the Claimant's assignment was unfavourable treatment by Mr Walker and Ms David.
34. The Tribunal is satisfied, having heard the evidence of Mr Walker and Ms David, that their reasons for ending the assignment arrangement were as they stated in evidence, namely that the Claimant's actions had broken the trust they must have in someone in the Claimant's position, not least to accurately record her timesheets. They held genuine concerns that the Claimant had left early of her own volition and unilaterally chosen to change the agreement reached with Mrs Price. Ms David additionally held the genuine concern that the Claimant

had chosen to close the CES before 5.30 pm contrary to clear instructions to the team which included the Claimant.

35. Although it could be said that 'but for' her disability the Claimant might not have taken the decisions to act as she did, that is not the test the Tribunal must apply.
36. In particular, the discrepancy of at least 20 to 30 minutes between the time she signed out of work and the time she claimed to have worked on several occasions did not arise in consequence of her disability. The Claimant chose to take the actions she did: to change unilaterally the agreement reached with Mrs Price; to close the CES before 5.30 pm contrary to instructions; and to record that she had worked to 5.30 pm on her timesheets. Those voluntary actions did not arise in consequence of the Claimant's disability.
37. The Tribunal concludes that the Respondent did not treat the Claimant unfavourably because of something arising in consequence of her disability.
38. Given this conclusion, the Tribunal has no need to consider whether the Respondent has been able to objectively justify the treatment by showing a proportionate means of achieving a legitimate aim.

Note

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Employment Judge Pritchard

Date 25<sup>th</sup> February 2021