



EMPLOYMENT TRIBUNALS

Claimant: Ms J Mathurin
Respondent: London Underground Limited
Heard at: East London Hearing Centre
On: 22 and 23 July 2021
Before: Employment Judge Burgher
Members: Ms J Land
Mr M Wood

Appearances

For the Claimant: Ms M Cornaglia (Counsel)
For the Respondent: Ms R Thomas (Counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by telephone Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

1. The Claimant has not established that there was a particular disadvantage to women in relation to the Respondent's non-payment of an unsocial hours allowance to employees who have not been requested to work unsocial hours (6pm to 7am). There was no evidence to establish that women, as carers, are at a particular disadvantage by needing the flexibility to work unsocial hours of 6pm to 7am when compared to men.
2. Given that the Claimant was working unsocial hours as part of her specific flexible working request, she has not established that she was subject to the purported disadvantage.
3. Had it been necessary to do so, the Tribunal would have concluded that the non payment of an unsocial hours allowance to the Claimant

was justified in this matter. The unsocial hours allowance is paid to incentivise staff to work unsocial hours, to ensure continuity of the 24 hour service. Fewer staff wish to, or are able to, work unsocial hours. The payment of an unsocial hours allowance to staff who request to work those hours, following a flexible working request or otherwise (regardless of business need) would undermine the justification for an unsocial hours allowance in the first place and amount to indirect sex discrimination for women who are unable to request to work unsocial hours.

4. Therefore, the Claimant's claim under section 19 of the Equality Act 2010 for indirect sex discrimination, concerning the Respondent's non-payment of an unsocial hours allowance to employees who it has not requested to work those hours, fails and is dismissed.

Employment Judge Burgher
Date: 23 July 2021