



EMPLOYMENT TRIBUNALS

Claimant: Ms H Charles
Respondent: Central Southern Security Limited
Heard at: Bristol **On:** 26-27 July 2021
Before: Employment Judge Oliver
Mr J Ruddick
Mr N Knight

Representation

Claimant: In person
Respondent: Mr C Snell (managing director of the respondent)

JUDGMENT having been given orally on 27 July 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues

1. This was a claim for disability discrimination. There were two Case Management Preliminary Hearings on 10 June and 4 September 2020. The issues were agreed at the second of these hearings as follows.

2. Disability

2.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

2.1.1 Whether the Claimant had a physical or mental impairment. She asserts that she has Type 1 diabetes, necessitating a blood test and an injection of insulin every time she eats?

2.1.2 Did it have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?

2.1.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.1.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

2.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

2.1.5.2 if not, were they likely to recur?

3 Discrimination arising from disability (Equality Act 2010 section 15)

3.1 Did the Respondent treat the Claimant unfavourably by: On Wednesday 13 November 2019, Ms Beverley Humm told the Claimant that a

colleague had been upset by seeing the Claimant inject insulin. She then told her that she must do her insulin injections in the toilet or the spare office. The toilet was filthy.

- 3.2 Did the following things arise in consequence of the Claimant's disability? The Claimant's case is that she needs to take blood tests and inject insulin.
- 3.3 Was the unfavourable treatment because of that thing?
- 3.4 Was the treatment a proportionate means of achieving a legitimate aim?
The Respondent says that:
 - 3.4.1 Its aims were to ensure harmony in the office between the Claimant and her colleagues.
 - 3.4.2 That it was reasonable because one of the Claimant's colleagues, Laura, did not like the sight of blood.
 - 3.4.3 That it was proportionate because it was for everyone's benefit.
- 3.5 The Tribunal will decide in particular:
 - 3.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;
 - 3.5.2 Could something less discriminatory have been done instead;
 - 3.5.3 How should the needs of the Claimant and the Respondent be balanced?

4 Harassment related to disability (Equality Act 2010 s. 26)

Did the Respondent do the following things:

- 4.1.1 On Wednesday 13 November 2019, Ms Beverley Humm told the Claimant that a colleague had been upset by seeing the Claimant inject insulin. She then told her that she must do her insulin injections in the toilet or the spare office. The toilet was filthy.
- 4.2 If so, was that unwanted conduct?
- 4.3 Did it relate to the Claimant's protected characteristic, namely disability?
- 4.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 4.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Evidence

5 The claimant provided a small bundle of documents. The respondent had not disclosed any documents or complied with the order of Tribunal to prepare the bundle. Mr Snell said he had not received the record of the second Case Management Preliminary Hearing.

6 Neither party had prepared or exchanged written witness statements, despite the order of Tribunal to do so. The claimant had not understood that she was required to prepare statement for herself. She provided a brief written statement at the start of the hearing. The respondent had not prepared any witness statements, and Mr Snell explained he had understood he simply had to attend to answer questions.

7 Tribunal decided that in light of the length of time since the alleged events in this case and the relatively simple factual issues, it was possible to proceed without written statements. We obtained oral evidence in chief directed by questions from the Tribunal. We heard evidence from the claimant, and from Ms B Humm the

office manager of the respondent. We also heard submissions from both parties.

Facts

8 The claimant worked for the respondent as an administration assistant from 23 July 19 to 15 November 2019. She resigned 15 November after an alleged incident on 13 November. The respondent says the incident occurred on 14 November. The precise date is not relevant to the issues in the case, as both parties agree an incident took place around these dates.

9 The claimant is a type 1 diabetic. She has had this condition since she was two. This means she takes fingertip blood tests and insulin injections before she eats, and also blood test at other times if she is feeling unwell. If she does not monitor sugar levels through blood tests and insulin, she risks becoming very unwell with a diabetic seizure and would require urgent medical treatment.

10 The claimant would take a blood test and have an insulin injection at the desk in her office before eating lunch, and also if she felt unwell and needed to monitor her blood sugar levels. She said she would do this discreetly under her desk. She sat with three others in office, one opposite and next to two others.

11 There is little factual dispute about what happened on either 13 or 14 November 2019.

12 The claimant says Ms Humm spoke to her at work. She does not recall where, but it was somewhere in the office. Ms Humm asked her to do her insulin injections in the toilet, as a member of staff had complained about her doing this at her desk. She laughed in response, and she cannot remember what else she said. Ms Humm then said she could use an unoccupied room instead.

13 Ms Humm's evidence is that she spoke to the claimant in the stock room, away from other staff. She says that three members of staff had come to speak to her to say they were not happy about the claimant using her desk to do her blood tests and insulin injections, including one who had an issue with needles. She agrees that she initially asked the claimant to use the toilet, and the claimant laughed in response. She then suggested using a spare office. The claimant then said "OK, fine", and that was the end of the conversation. Ms Humm says the claimant did not appear to be upset during this conversation. She did not give details to the claimant about what the other members of staff had said.

14 Ms Humm said that she made this suggestion for the sake of everyone, after having been approached by other staff. She had thought about the issue overnight before speaking to the claimant. She wanted to keep a happy workforce. She thought it would be better for the claimant to do this out of the open office while other members of staff and engineers were around. This would avoid others staring at the claimant, and she thought the claimant would want to do her blood tests and injections out of others' presence.

15 The claimant says that she was very upset as a result of this conversation, and unable to sleep. The claimant said the toilet was filthy as the office did not have a cleaner. In evidence she said that she was not concerned about being asked to use an unoccupied room, and it would have been "OK" if she was just asked to do that. She was upset at being asked to use the toilet, and could not "unhear" this after it had been said to her. She had never been asked to do her tests and

injections away from others before.

16 The claimant did not attempt to speak to Ms Humm about the conversation, or contact Mr Snell the managing director. She said they had made her feel unwelcome. She came into work the next day in the car but did not go into the office as she was too upset. Her father went into the office instead and told the respondent she was resigning.

17 The claimant's evidence was that she resigned because it appeared the respondent did not understand diabetes and her need to do injections and tests, and said they didn't recognise her disability. She says it was wrong for her to be singled out and asked to do tests in a different room.

Applicable law

18 **Disability.** Under the Equality Act 2010 ("EA"), section 6(1), a person has a disability if they have a physical or mental impairment, and that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. "Long-term" means likely to last for twelve months or longer. An impairment will be treated as having a substantial adverse effect on a person's ability to carry out normal day-to-day activities (paragraph 5(1) Schedule 1 EA) if:

- Measures are being taken to treat it or correct it; and
- But for the measures, the impairment would be likely to have that effect

19 **Discrimination arising from disability.** Under section 15(1) EA, discrimination arising from disability occurs where: 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.

20 There is no statutory definition of unfavourable treatment. The Supreme Court gave some guidance in **Williams v Trustees of Swansea University Pension and Assurance Scheme and another** [2018] UKSC 65. The test requires tribunals to answer two simple questions of fact - what was the relevant treatment, and was it unfavourable to the claimant? The Supreme Court said there was a relatively low threshold of disadvantage, and referred to guidance in the EHRC Code of Practice - the courts have found that 'detriment', a similar concept, is something that a reasonable person would complain about; an unjustified sense of grievance would not qualify; and it is enough that the worker can reasonably say that they would have preferred to be treated differently (paragraph 4.9, in the part of the EHRC Code dealing with indirect discrimination).

21 **Harassment.** Harassment is defined in section 26(1) EA:

- (1) *A person (A) harasses another (B) if—*
 - (a) *A engages in unwanted conduct related to a relevant protected characteristic, and*
 - (b) *the conduct has the purpose or effect of—*
 - (i) *violating B's dignity, or*
 - (ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

22 Conduct will be harassment if it was done with the purpose of violating dignity or creating the proscribed environment. Otherwise, the Tribunal must assess whether the conduct had this effect on the claimant. In deciding whether conduct had this effect, the Tribunal must take into account the perception of the claimant

(a subjective test), whether it is reasonable for the conduct to have that effect (an objective test), and the other circumstances of the case.

23 Guidance on this test was provided by Court of Appeal in ***Pemberton v Inwood*** [2018] IRLR 542. In order to decide whether conduct has either of the proscribed effects, a tribunal must consider both: whether the claimant perceives themselves to have suffered the effect in question (the subjective question); and whether it was reasonable for the conduct to be regarded as having that effect (the objective question). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that, if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for them, then it should not be found to have done so.

24 Where the harassment complained of involves a one-off incident, there must be a degree of seriousness for it to amount to harassment, as isolated acts are not equivalent to an environment (***General Municipal and Boilermakers Union v Henderson*** UKEAT/0073/14).

Conclusions

25 We take the issues in turn.

26 **Disability.** *Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about?* We find that she did, for the following reasons.

27 *Whether the Claimant had a physical or mental impairment.* The physical or mental impairment relied on by the claimant is Type 1 diabetes, necessitating a blood test and an injection of insulin every time she eats. It is clear that the claimant does have diabetes, as shown by her oral evidence and some medical information in the documents.

28 *Did it have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?* The claimant's diabetes is controlled by medication, so with this treatment it does not substantially affect her day-to-day activities.

29 *If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?* The claimant did have medical treatment to treat or correct the diabetes, being regular blood tests and insulin injections before eating.

30 *Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?* It would – the claimant would be very unwell and require urgent hospital treatment if she did not take regular blood tests and insulin injections.

31 *Were the effects of the impairment long-term? Did they last at least 12 months, or were they likely to last at least 12 months?* The effects were long term – the claimant has had diabetes since she was two.

32 **Discrimination arising from disability.** *Did the Respondent treat the Claimant unfavourably by: On Wednesday 13 November 2019, Ms Beverley*

Humm told the Claimant that a colleague had been upset by seeing the Claimant inject insulin. She then told her that she must do her insulin injections in the toilet or the spare office. The toilet was filthy. We find that this incident did occur as described, except that Ms Humm asked the claimant to use the spare office rather than telling her to do so, and the claimant agreed to this. We find that the claimant was genuinely upset after this conversation. We find that an unclean toilet was unsuitable for the claimant to use for her medication. However, the claimant was offered a suitable alternative during the same conversation, which she agreed to. The claimant's evidence was that she would have been OK with using the spare office.

33 *Was this unfavourable treatment?* This is a broad test, being something that a reasonable person would complain about. It is enough that the worker can reasonably say that they would have preferred to be treated differently. We find this is a borderline issue. Taking into account the width of the definition of unfavourable treatment, we find that it was unfavourable treatment to ask the claimant to use an unsuitable toilet for her medication, although we note that this was corrected during the same conversation to a suitable spare office.

34 *Did the following things arise in consequence of the Claimant's disability? The Claimant's case is that she needs to take blood tests and inject insulin.* The unfavourable treatment was because of this need to take blood tests and insulin, which was caused by her disability.

35 *Was the treatment a proportionate means of achieving a legitimate aim?* The Respondent says that its aims were to ensure harmony in the office between the Claimant and her colleagues. Ms Humm confirmed in her evidence that she wanted to create a happy workforce, and she also thought the claimant would prefer to use a private space. The respondent's case in the original list of issues is that this was reasonable because one of the claimant's colleagues did not like the sight of blood. The respondent's evidence at the hearing was that three members of staff had raised the issue, including one who had an issue with needles. The respondent says this was proportionate because it was for everyone's benefit.

36 We find that the overall treatment was an appropriate and reasonably necessary way to achieve those aims. Ms Humm had a conversation with the claimant which was prompted by concerns raised by other members of staff. Her initial suggestion of using the toilet was not suitable. However, this was corrected during the same conversation to the spare office, and the claimant agreed to this. We accept that the respondent was attempting to strike a balance between the needs of all its staff. The claimant did not object to the proposal that she should use the spare office, either at the time or later. It would not have been proportionate to insist on the claimant using the toilet, or insist on the claimant using the spare office if she had objected to this suggestion. However, this is not what happened. It was appropriate and reasonably necessary for the respondent to discuss the matter with the claimant, and propose a suitable space which the claimant agreed to.

37 **Harassment related to disability.** *Did the Respondent do the following things: On Wednesday 13 November 2019, Ms Beverley Humm told the Claimant that a colleague had been upset by seeing the Claimant inject insulin. She then told her that she must do her insulin injections in the toilet or the spare office. The toilet was filthy.* As noted above, we find that this incident did occur as described, except that Ms Humm asked the claimant to use the spare office rather than telling

her to do so, and the claimant agreed to this.

38 *If so, was that unwanted conduct?* We accept that the claimant was upset after this conversation, and so it was unwanted conduct.

39 *Did it relate to the Claimant's protected characteristic, namely disability?* The conversation related to the medical treatment for the claimant's diabetes, and we find that this was sufficiently closely connected to her diabetes to be conduct related to disability.

40 *Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?* The conversation did not take place with this purpose. We accept Ms Humm's evidence that she wanted to have a happy workforce and thought the claimant would prefer to use a private space.

41 *If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.* We accept the claimant's evidence that she was upset after this conversation. She was in fact so upset that she went on to resign from work. The claimant did perceive this conversation as creating a hostile environment for her. However, this was a one-off incident. The test for harassment includes considering whether it was objectively reasonable for the conduct to have this effect. The caselaw is clear that, if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for them, then it should not be found to have done so. Having considered this carefully, we find that it was not objectively reasonable for the claimant to regard the comment about using the toilet as violating her dignity or creating an adverse environment for her. This proposal was immediately corrected with proposal to use a spare office that the claimant agreed to at the time, and she said that she would be OK with this proposal in her evidence at the hearing. The outcome may have been different if the respondent had insisted on the claimant using the toilet, or if the claimant had objected to using the spare office but been made to do so anyway. However, this did not happen. In the circumstances, we therefore find that the conversation was not harassment related to disability.

42 In summary, we do accept the claimant was genuinely upset after the conversation with Ms Humm. We also find that Ms Humm could have approached the conversation more sensitively, particularly by asking the claimant about her preferences rather than simply making an assumption that she would prefer to use a private space. It is important to ask disabled people about what they require rather than making assumptions. However, on the evidence we have heard, these events did not cross threshold for liability for disability discrimination or harassment. This means that the claimant's claims do not succeed.

43 We make some final comments about preparation of this case by the respondent. The respondent was at the Case Management Preliminary Hearing, which gave clear directions about what needed to be done in advance of the hearing. Mr Snell said they did not receive the record of this hearing. However, he had attended it and heard the directions. It is the responsibility of every employer to take discrimination claims seriously and engage with them fully so that the case can be properly prepared and heard fairly. We find it disappointing that the respondent in this case made so little effort to prepare for the hearing, or to engage with the claimant after she had sent them emails about preparing for the

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case. We were willing to go ahead with the hearing this time as neither party had prepared proper witness statements, but the respondent should be aware that another tribunal may not be so accommodating.

Employment Judge Oliver

Date: 27 July 2021

Sent to the Parties: 04 August 2021

FOR THE TRIBUNAL OFFICE