



EMPLOYMENT TRIBUNALS

Claimant: A Sanyaolu

Respondent: Faz Sajjadi

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HEARD REMOTELY ON CVP

On: 12-14 July 2021

Employment Judge: Employment Judge Henderson

Members: Mr N Brockmann; Ms M Jaffe

Appearances

For the claimant: In Person

For the respondent: Mr K Chehal (Peninsula consultant)

JUDGMENT

1. The claimant's claim for direct disability discrimination succeeds as regards her dismissal by the respondent. The other direct disability discrimination claims do not succeed and are dismissed;
2. The claims for harassment on grounds of disability do not succeed and are dismissed;
3. The claims for failure to make reasonable adjustments do not succeed and are dismissed;
4. The claim for unlawful deduction of wages (41 hours unpaid) does not succeed and is dismissed;
5. The respondent conceded that the claimant was owed a shortfall of £98.24 (net) with regard to holiday pay. This sum will be paid to the claimant.
6. The Tribunal will now schedule a hearing (1 day) to assess the amount of compensation to be paid to the claimant with regard to her successful direct discrimination (disability) claim.

REASONS

1. This was a claim for disability discrimination (harassment; direct discrimination and failure to make reasonable adjustments) and for unlawful deduction of wages. The claimant was employed by the respondent from 2 or 3 June 2019 to 6 or 13 July 2019.
2. The claimant lodged (on 8 October 2019) an ET1 which included a claim for unfair dismissal: that claim was struck out on 10 December 2019 as the claimant did not have two years' continuous service.
3. The claimant had also brought claims against three respondents but accepted at a Case Management Preliminary Hearing (CPH) on 31 January 2020 that the second and third respondents should be removed as parties to these proceedings. The claim was defended by the remaining respondent.

The Issues

4. At the commencement of the hearing, the EJ clarified with the claimant and Mr Chehal that the issues set out in the Case Management Order (CMO) dated 31 January 2020 were the correct issues for determination by the tribunal in this case. These were as set out below.
5. The claimant had identified the following allegations:
 - a.In the first week of June 2019 the respondent stated "okay I need to feel comfortable around you" when the claimant discussed her anxiety condition.
 - b.In the first week of June 2019, the respondent micromanaged the claimant when she was reconciling bank statements.
 - c.In the third or fourth week of June 2019 the respondent accused the claimant of causing the respondent's brother to have a seizure.
 - d.On 5 July 2019 the respondent refused to allow the claimant to leave work when she had a panic attack and told the claimant "you are not the only one with anxiety. How is it that I can handle mine when you can't control yours?"
 - e.On 5 July 2019 the respondent told a new colleague (X) "I love how you're not nervous like some other people".
 - f.On 5 July 2019 the respondent told the claimant that she would be downgraded to carry out work as a Reconciliation Officer.

- g. On 5 July 2019 the respondent refused to allow the claimant to move desks so that the claimant would not have to sit next to the respondent's brother, which she explained was triggering her anxiety condition.
- h. The respondent forced the claimant to work 6 days each week when she was contracted to work for 5 days.
- i. On 6 July 2019 the respondent decided to terminate the claimant's employment.
- j. On 8 July 2019 the respondent told the claimant to "Fuck off".
- k. The respondent failed to pay the claimant 41 additional hours she worked as follows: 9 hours on every Saturday in June, i.e. 8, 15, 22 and 29 June 2019 and 5 hours on 6 July 2019.
- k. The respondent failed to pay the claimant for 3 days i.e. 27 hours of accrued annual leave on the termination of her employment.

Disability (section 6)

- 6. **Mr Chehal confirmed that as recorded in the CMO of 13 May 2020, the respondent had conceded the issue of whether the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 (EQA).**
- 7. The claimant confirmed that the disability upon which she was relying for the relevant period of time she was employed by the respondent, namely June-July 2019 was the mental impairment of anxiety. The claimant said that she had been recently diagnosed (February 2020) with autism. However, she accepted that her claim for disability discrimination was not based on that condition. The tribunal were not shown (and did not ask to see) the claimant's diagnosis of autism.
- 8. The outstanding issues on the disability discrimination claims were as follows:

Harassment (section 26)

- did the respondent engage in the unwanted conduct set out at allegations a to j above?
- if so did that conduct relates to the claimant's protected characteristic of disability?
- if so, did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Direct Discrimination (section 13)

-did the respondent subject the claimant to the treatment set out at allegations a to j above?

-if so was that less favourable treatment i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others in not materially different circumstances? If so, was this because of the claimant's disability?

The EJ clarified with the claimant at the commencement of the hearing who were the relevant comparators for her direct discrimination claim (explaining what this meant in the context of her claim). As regards allegation (e), the claimant relied on an actual comparator, the new colleague X. As regards the other allegations from (a) to (j) (excluding e) the claimant relied on a hypothetical comparator in materially the same circumstances as the claimant, but who did not share her disability.

Reasonable adjustments (sections 20 & 21)

-was the claimant required to sit next to the respondent's brother, in a corner?

This was the PCP upon which the claimant relied. (The EJ explained the concept of PCPs in the context of a failure to make reasonable adjustments claim);

-did that PCP put the claimant at a substantial disadvantage in relation to a relevant matter at any relevant time in comparison with persons who are not disabled? If so, did the respondent know or could the respondent reasonably have been expected to know that the claimant was likely to be placed at such disadvantage?

-if so, were there steps that were not taken that could have been taken by the respondent to avoid such disadvantage? The claimant says that she should have been relocated to a different part of the office.

Unauthorised Deductions (section 13 Employment Rights Act 1996)

-Did the respondent fail to pay the claimant for 41 additional hours worked and to pay the claimant for 3 days of accrued annual leave on the termination of her employment?

Appropriate Adjustments for the Hearing.

9. The tribunal discussed with the claimant what reasonable adjustments she would need for the purposes of the hearing. The claimant said that as regards her anxiety condition she would need regular toilet breaks (about every 1-2 hours). These breaks were accordingly taken.
10. Initially, the claimant said she would not need any other specific adjustments as regards her autism. At this stage, although the EJ had explained the process of giving evidence and cross-examination, the claimant had not had any direct experience of that process.
11. During the course of her giving evidence, the claimant explained that her condition meant that she found it difficult to cope with confrontation and that she found it difficult to deal with being asked questions and being challenged as

regards her evidence. She said that it would assist her to have the questions for cross examination written down and provided to her in advance.

12. Mr Chehal originally expressed concern at allowing the claimant to have the questions in advance, which he believed would give her an unfair advantage as she could prepare her answers. However, (having taken instructions) he subsequently accepted that this would be an appropriate adjustment to make.
13. The claimant also said that her condition made her emotional and it was agreed that we would take breaks as requested, to allow the claimant to compose herself.
14. The claimant at one point said that she objected to being patronised by the EJ and by Mr Chehal. The claimant also said she felt that her disability was being held against her in the way the hearing was being conducted. She objected to continual references to adjustments having to be made for her and said that she found this offensive.
15. The EJ explained that the nature of a tribunal process was that each side put their case and that some element of challenge through questioning was intrinsically involved. However, the EJ apologised that her explanations may have come across as patronising: the intention was always to ensure a fair hearing (for both parties) and the tribunal wanted to ensure that the claimant was allowed to put her case in the best way for her. Following a break, the claimant said that she recognised this, but had not been fully aware of the nature of the process and that she was finding it extremely stressful.
16. The tribunal halted the proceedings in the early afternoon of the first day and asked Mr Chehal to send, no later than 9 am on 13 July, a list of the questions he wished to ask in cross-examination with page references or references to relevant paragraphs of witness statements. The questions should be expressed in a brief/bullet point format. The claimant would then resume her cross-examination at 10 am on Day 2 of the hearing. The claimant confirmed that she was comfortable with this arrangement.

Conduct of the hearing

17. The hearing was conducted remotely using The Cloud Video Platform (CVP). The claimant confirmed that she preferred this method to a hearing in person. The respondent was also happy with a video hearing. There were some minor connection problems throughout the hearing but these were quickly resolved.
18. The final hearing in this case was originally listed for 4 days, but due to listing restrictions at the tribunal, only 3 days were allowed for the hearing to be concluded. The Tribunal administration had been asked to notify the parties of this in advance – but had failed to do so.

Day 1

19. The tribunal set out a provisional timetable for the hearing over the three days scheduled. The intention was originally to hear the claimant's evidence on the

afternoon of the first day and then hear from the respondent and Melisa Kurban (a former employee of the respondent) on Day 2. Day 3 would be for evidence from Farz Sajjadi (the respondent's brother) and for closing submissions/summaries from the parties. The tribunal explained that it would almost certainly need to reserve its judgment.

20. However, (as set out above) the tribunal adjourned on the afternoon of Day 1 to allow Mr Chehal to prepare his cross examination questions in writing.

Day 2

21. The tribunal heard evidence from the claimant and then from 2.30pm, heard evidence from the respondent, with cross examination remaining unfinished at the end of the day.
22. At the end of Day 2 Mr Chehal said that Ms Kurban would not be able to attend on Day 3 as originally planned as she could not take any more time off work. The tribunal confirmed with the claimant that she should prepare her questions for Mr Sajjadi and need not prepare any questions for Ms Kurban.

Day 3

23. On the morning of the Day 3, Mr Chehal said that Ms Kurban had managed to secure time off and so the respondent intended to call her to give evidence. The EJ queried whether this was fair to the claimant, who as a litigant in person and given her medical condition, would struggle to prepare questions at short notice. The tribunal also went through the content of Ms Kurban's statement and noted that the majority of the evidence repeated/confirmed evidence in the direct knowledge of the respondent. Mr Chehal (having taken instructions) accepted that Ms Kurban would not give evidence in person.
24. The respondent then concluded her evidence and the tribunal heard evidence from Mr Sajjadi. All the witnesses confirmed their written witness statements as their evidence in chief. Both parties gave oral submissions.
25. The tribunal reserved its judgment and confirmed 4 August 2021 as the day for its deliberations.

The Agreed Bundle

26. There was an agreed bundle of documents (of 208 pages) which the parties had submitted on 8 July 2020.

Respondent's objection to documents in the bundle

27. Mr Chehal originally raised objections on behalf of the respondent, saying that the claimant had included additional witness statements in this bundle, following the simultaneous exchange of witness statements. He expressed concern that in those additional statements the claimant appeared to be raising new claims of race and age discrimination.
28. The claimant said that she had not (as a litigant in person) fully understood the concept of simultaneous exchange. Having seen the respondent's witness

statements, she wished to reply by addressing various matters that had been raised in those statements.

29. The EJ noted that as an unrepresented litigant, the claimant (through no fault of her own) would not have known that she could address matters raised in the respondent's witness statements by cross-examination and/or supplemental questions in her own evidence. The EJ also noted that the overriding objective (rule 2 of the Tribunal Procedure Rules 2013) allowed the tribunal flexibility to include the claimant's additional witness statements and so give her a level playing field for the purposes of the hearing.
30. **The claimant confirmed that she was not seeking to bring any new claims for race and/or age discrimination.**
31. After taking instructions, Mr Chehal withdrew his objection to the inclusion of the claimant's additional statements/documents. The tribunal proceeded with the agreed bundle of 208 pages.

Witness Statements

32. The bundle included four witness statements from the claimant: (i) her original impact statement dated 24 February 2020 (pages 129-131); (ii) her impact statement amended on 5 July 2021 (pages 132-135); (iii) her further witness statement 1 dated 7 July 2021 (pages 183-190) and (iv) her further witness statement 2 dated 7 July 2021 (pages 200-203).
33. The respondent submitted separate witness statements for Faz Sajjadi (the respondent) and her brother, Farz Sajjadi.
34. The witnesses adopted their written witness statements as their evidence in chief and were cross examined by the other party/their representative.
35. The bundle also included a statement from Mr Leslie Ado, dated 29 April 2020 (page 140) on behalf of the claimant and two witness statements from Melisa Kurban (dated 20 November 2019 and 5 July 2021 respectively) on behalf the respondent (page 136 and 137-139). The claimant confirmed that Mr Ado was not in the UK and would not be able to attend to give evidence. As noted above, Ms Kurban did not give evidence in person. The tribunal, therefore, placed limited weight on the statements of Mr Ado and Ms Kurban.

The relevant law – The Equality Act 2010

36. The following are the relevant extracts from the statute:

Section 13 - Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others [...]

Section 23 -Comparison by reference to circumstances

(1)On a comparison of cases for the purposes of section 13, [14, or 19] there must be no material difference between the circumstances relating to each case [...]

Section 20 -Duty to make adjustments

(1)Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2)The duty comprises the following three requirements.

(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4)The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5)The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6)Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7)A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8)A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9)In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

- (a)removing the physical feature in question,
- (b)altering it, or
- (c)providing a reasonable means of avoiding it.[..]

Section 26 - Harassment

(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. [...]

(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a)the perception of B;
- (b)the other circumstances of the case;
- (c)whether it is reasonable for the conduct to have that effect. [...]

Section 136 - Burden of proof

(1)This section applies to any proceedings relating to a contravention of this Act.

(2)If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3)But subsection (2) does not apply if A shows that A did not contravene the provision. [...]

37. The tribunal notes the recent case of Royal Mail Group Ltd v Efobi, in which the Supreme Court held that the enactment of S.136 of the Equality Act 2010 did not change the requirement on the claimant in a discrimination case to prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of

discrimination. The change of wording in S.136 compared to the burden of proof provisions in the antecedent legislation did not introduce a substantive change in the law.

Findings of Fact

38. The tribunal heard detailed evidence on several matters but will only make such findings of fact as are necessary for it to determine the agreed issues as set out above. The tribunal explained to the parties that it would flag when evidence was not relevant and therefore not necessary for the tribunal to hear.

Contract of Employment

39. The claimant's Statement of Terms of Employment (pages 42-45) gave the commencement of employment date as 3 June 2019. Her job title was "Property Administrator" and there was a probationary period of three months, during which work performance and general suitability would be assessed. The required notice during the probationary period (after 1 month's service) was one week. It was agreed this was the notice which the claimant was entitled to receive.

40. The claimant's hours of work were stated as 8.30-6.30 Monday to Friday (with a 60 minute break each day) and every other Saturday 10-4 (with a 30 minute break). The claimant accepted in her oral evidence that the provisions of this clause were clear and that it required her to work on alternate Saturdays.

41. The Statement of Terms shows the date of the claimant's signature as 27 June 2019. The respondent initially said in her evidence that she believed that the statement had been given to the claimant to sign within the first few days of her employment.

42. However, page 66 records the document being created by the respondent on 26 June 2019 and being sent to the claimant on the same day. The document was then e-signed by the claimant and returned to the respondent on 27 June 2019. The respondent accepted that the document was correct and her recollection was inaccurate.

43. The letter terminating the claimant's employment was dated 7 July 2019 (at page 92) and recorded the termination as "with immediate effect", with payment in lieu. This was the last day of the claimant's employment but the claimant's P45 (page 98) showed her leaving date as 13 July 2019 (one week later), presumably to take account of the week's payment in lieu – though this is in fact incorrect.

The claimant's employment

44. The majority of the relevant incidents in this case occurred between 3 June and 7 July 2019 (the period of the claimant's employment).

45. During the first week of her employment (3-8 June) the respondent says that the claimant received training and assistance in learning/carrying out her role from herself and her brother, Mr Sajjadi. They observed that despite the experience which the claimant had set out in her CV, her work was not of the standard expected. The claimant says that she did not need training as she was already over qualified for the role. She regarded herself as more of a contractor and she was micro-managed by the respondent and her brother and in fact, she had to show them how to carry out even the most basic tasks.
46. In the claimant's CV (page 107) she describes herself as an "experienced Finance Officer", with management skills and able to work under pressure. The claimant said in her oral evidence that she could deal with pressure at work, but not pressure as regards her "characteristics" or on her personality. The tribunal observes that in a busy work environment it is difficult to distinguish between the two types of pressure as identified by the claimant. The respondent accepted that the work environment could be pressurised.
47. The tribunal finds that what the claimant perceived as micro-management was in fact, the respondent attempting to provide the training and induction process which all employees should go through.
48. The tribunal read the claimant's witness statements: these did not always give relevant dates and covered the same events (in no specific order) using slightly different wording.
49. The claimant said she found that the initial training made her anxious because the respondent spoke too quickly (page 183). The claimant told the respondent that her anxiety was caused by a car accident when she was 8 years old (page 200) and due to matters from her family background: namely that her father had been deported; her mother had died and she was responsible for her younger siblings.
50. The claimant did not explain to the respondent that the anxiety she was experiencing was a medical condition (see page 200) but said that "*my body is scared but I am not scared and once my body gets used to you (the respondent)... it will calm down*". The respondent denied making the alleged comment "I need to feel comfortable around you".
51. In the light of the claimant's own evidence, the tribunal finds that the respondent may well have made a comment about colleagues needing to feel comfortable with each other, but that this was not related to the claimant's disability (which the respondent was unaware of at that time) but would have been more in the context of a management situation.
52. After the first week the respondent said that she reduced the claimant's workload allowing her to focus on one task at a time, because she was making mistakes. However, mistakes were still occurring during the second week (10-15 June). The claimant denied this. The tribunal were not presented with any documentary evidence from either party to support their differing evidence on this point.

53. On 13 June Mr Sajjadi had his first epileptic seizure at work, which was witnessed by the claimant. It was accepted that this was a difficult and distressing incident for any observer. The claimant was referred to the exchange of whatsapp messages (pages 67-73) which did not suggest that the claimant was distressed or made unduly anxious by this event. The claimant said that she was not reflecting her true feelings in the messages but was "sucking up" to the respondent as this is her coping strategy for not being bullied.
54. The tribunal accepts the claimant's explanation of her messages but finds that the tone of those messages did not convey to the respondent that the claimant had experienced any excessive anxiety or stress from the incident. Therefore, the respondent could not have known how the claimant felt about witnessing the seizure.
55. The claimant says that the respondent accused her of causing Mr Sajjadi's seizure. It is not disputed that prior to the seizure Mr Sajjadi had been correcting the claimant's work. (This suggests that the claimant acknowledges that her work needed correcting). Mr Sajjadi said in his oral evidence that because of this, he had failed to have any lunch and failure to eat regularly could cause a seizure.
56. At paragraph 16 of the respondent's statement she said that Ms Kurban had told her on 14 June that the claimant was concerned that she may be blamed for Mr Sajjadi's episode. The respondent then spoke to both Ms Kurban and the claimant to say that she was sorry they had to witness the episode and offered them a day off if that would help. This, and the tenor of the respondent's whatsapp message to the claimant on 13 June (page 68) support the tribunal's finding that the respondent did not hold the claimant responsible for her brother's seizure on 13 June.
57. On 26 June Mr Sajjadi had his second seizure at work. Again the exchange of messages (page 70) between the claimant and the respondent do not show the claimant communicating her anxiety, but are supportive and even affectionate, referring to the respondent and her brother as the claimant's "family". The tribunal accepts that the claimant says that these messages do not reveal her true feelings and responses, but the tribunal finds that it would be reasonable for the respondent receiving those messages to take them at face value. The claimant cannot assume that the respondent knew what she was really feeling/experiencing.
58. On 27 June, the respondent spoke to the claimant to say that she was not needed at work. The respondent says the claimant asked for another chance to improve and the respondent agreed to this. The claimant said the respondent offered her another chance because she liked her- she had not requested another chance. However, this again suggests that the claimant accepted that in any event she had been told about the need to improve. It was at this stage that the contract of employment was signed. This indicates that as at 27 June both parties intended the employment relationship to continue.

59. At paragraph 12 of the respondent's statement she says that during the discussion on 27 June the claimant said that she may be being affected by her anxiety – which was the first time the respondent had heard about this. The tribunal accepts the respondent's evidence on this point given the earlier findings that although the claimant had been experiencing anxiety as regards her work and Mr Sajjadi's seizures, she had not communicated this to the respondent.
60. At paragraph 14 of the respondent's statement she said that on 27 June she told the claimant that "half the population" suffer from anxiety but everyone needed to help and support each other. The respondent did not appreciate at this stage that the claimant's "anxiety" was a medical condition and thought it was the general/common anxiety which she was describing. The respondent also said in cross-examination that she also had stress in her personal life but she put it behind her and did not let it interfere with her business.
61. On 5 July the claimant and the respondent were speaking outside the office. The respondent says that when her neighbour walked past the claimant appeared to fall as if she was unwell or having a panic attack. The respondent believed that this was a pretence by the claimant as she refused to go home (as suggested by the respondent) and then subsequently suggested they all go out for drinks, when she was laughing and joking. The respondent did not give any specific explanation as to why she concluded that the claimant's attack was not genuine- other than she just knew this from observing her.
62. The claimant's allegations at (d) say that the respondent refused to allow her to go home following a panic attack. However, in her oral evidence to the tribunal the claimant said that she did have a panic attack and made reference to having to go back on her medication (confirmed in her whatsapp message at page 72) but she did not accept the respondent's offer to go home as she was concerned this meant she would not be allowed to return to work. That is why the claimant stayed at work and thought it would be sensible to suggest going for a drink (also set out in whatsapp messages at page 72). The claimant's own evidence does not support the allegation at (d) in that it was she who refused to go home (for her own reasons).
63. As regards the claimant's other allegations relating to 5 July 2019: the claimant says the respondent told her she would be downgraded to a reconciliation officer. There was no evidence presented to the tribunal to support this allegation and the tribunal finds that given the timeframe, ie the respondent was taking advice from Peninsula and considering dismissal, that the claimant would be downgraded at this late stage.
64. As regards the respondent's alleged comment to the new colleague X, who was recruited as a second property administrator, the respondent denied making any such comment. The claimant's own statement (at page 134) records the respondent telling X that she loved the way she was not nervous, but makes no reference to the respondent making any comparison with the claimant. It is the claimant herself who draws that comparison with X reflecting on how she had

behaved when she was the same age as X. Based on this evidence the tribunal prefers the respondent's account and finds that no such comment (as alleged) was made.

65. As regards the respondent's alleged refusal to allow the claimant to move her desk away from Mr Sajjadi, the respondent denies that there was ever such a request. The respondent said in her evidence that if the claimant had asked to be moved she would have agreed and the claimant could have moved to a desk in the basement. Both parties agreed that Mr Sajjadi was in the office infrequently and the claimant did not have been near him on a daily basis. The claimant's statement (page 133) suggested that the reason she wished to be moved was because Mr Sajjadi micromanaged her; spoke harshly to her and so made her feel uncomfortable. The tribunal finds that this would have been the case from the start of her employment and there was no explanation as to why the claimant did not address this earlier with the respondent, ie before 5 July. On that basis, and on a balance of probabilities the tribunal prefer the respondent's evidence and finds that no request was made on 5 July by the claimant to move desks.
66. The respondent said in cross examination that she had never had an issue about an employee's mental health before and did not know about the relevant procedures and so sought further advice from Peninsula. The respondent accepted that she had asked the claimant to leave her keys to the offices on 5 July, this was a precautionary measure as there was confidential client information on the premises; however, this indicates that the respondent was already considering the possibility of dismissal.
67. On 6 July (page 72/73) there were messages exchanged where the claimant told the respondent that having worked for about an hour, she was going to the hospital for treatment. On 7 July (Sunday) the respondent messaged the claimant to say that she would receive a letter terminating her probation period as she was not suitable for the job.
68. On 7 July the respondent sent a letter (page 92) which terminated the claimant's employment with immediate effect. In response to tribunal questions, the respondent said that the reason for the claimant's dismissal was her poor performance and repeated mistakes despite training.
69. On 8 July the claimant said that the respondent told her to "Fuck Off". The respondent accepted that she had said this, but only after the claimant had said that she was having a seizure "like your fucking brother", which comment had upset the respondent. The claimant denied making that comment, but did accept that she had told the respondent that she would be taking them to court. In the light of the discrepancy between the parties' evidence and given the lack of any supporting documentary evidence, the tribunal finds that the respondent did swear at the claimant, however, this incident was after the termination of the claimant's employment.
70. As regards the unpaid wages claim: the claimant's ET1 (page 6) records her monthly take home pay as £1610. The claimant's payslip (page 96) for June

2019 shows £1610.69 take home pay. The payslip for end June to 7 July (page 97) shows basic pay of £873.01 gross, which would be just over two weeks' pay, which is pay to 7 July plus a week in lieu of notice.

71. The claimant alleges that she is owed a further 41 hours of pay for Saturdays worked in June and July, however, the claimant accepted that her contract included working Saturdays and so this would have been included in her basic salary. The claimant did not present any evidence to explain why she was owed a further 41 hours pay. The tribunal finds that there is no evidence to show unlawful deduction of wages due to the claimant.
72. As regards unpaid Holiday Pay: the payslip for 5 Aug showed holiday pay of 3 days accrued at £104.76. and a total net payment to the claimant of £946.72. The claimant produced an extract from her bank statement (page 95) which showed that her final payment from the respondent was £848.48. **The respondent accepted in her oral evidence that the claimant had been underpaid by £98.24 and agreed that this amount should be paid.** The respondent said that the payroll was handled by her accountants but accepted that she was ultimately responsible.

Conclusions

The claimant's allegations

a. *In the first week of June 2019 the respondent stated "okay I need to feel comfortable around you" when the claimant discussed her anxiety condition.*
The tribunal found that a similar comment may have been made but it was not specifically in the context of the claimant's medical condition. There was no disability discrimination.

b. *In the first week of June 2019, the respondent micromanaged the claimant when she was reconciling bank statements.*
The tribunal has found that the respondent / her brother did not micromanage the claimant but this was part of her ongoing training.

c. *In the third or fourth week of June 2019 the respondent accused the claimant of causing the respondent's brother to have a seizure.*
The tribunal has found that this was not established by the claimant.

d. *On 5 July 2019 the respondent refused to allow the claimant to leave work when she had a panic attack and told the claimant "you are not the only one with anxiety. How is it that I can handle mine when you can't control yours?"*
The tribunal has found this was not established by the claimant.

e. *On 5 July 2019 the respondent told a new colleague (X) "I love how you're not nervous like some other people".*
The tribunal found that the comment may have been made as regards X not being nervous but was not as a direct comparison with the claimant.

f. On 5 July 2019 the respondent told the claimant that she would be downgraded to carry out work as a Reconciliation Officer.

The tribunal has found that this was not established by the claimant.

g. On 5 July 2019 the respondent refused to allow the claimant to move desks so that the claimant would not have to sit next to the respondent's brother, which she explained was triggering her anxiety condition.

The tribunal found that this was not established by the claimant.

h. The respondent forced the claimant to work 6 days each week when she was contracted to work for 5 days.

The claimant accepted in her evidence that this is not correct

i. On 6 July 2019 the respondent decided to terminate the claimant's employment.

That is undisputed and the tribunal must decide (see below) whether this was because of the claimant's disability.

j. On 8 July 2019 the respondent told the claimant to "Fuck off".

The tribunal has found that this has been established by the claimant.

k. The respondent failed to pay the claimant 41 additional hours she worked as follows: 9 hours on every Saturday in June, i.e. 8, 15, 22 and 29 June 2019 and 5 hours on 6 July 2019.

The tribunal has found that no evidence was presented to support this allegation.

l. The respondent failed to pay the claimant for 3 days i.e. 27 hours of accrued annual leave on the termination of her employment.

It was accepted by the respondent that the claimant has been underpaid by £98.24.

73. Therefore, the tribunal found in the claimant's favour on two of the twelve allegations; namely (i) dismissal and (j) the respondent swearing at the claimant on 8 July.

Harassment

74. The only allegation of harassment found in the claimant's favour was (j) re being sworn at by respondent. That would be unwanted conduct, but tribunal finds that this was post-termination of employment; in the context of a discussion about possible tribunal claims and also involving a possible derogatory reference to the respondent's brother. Given the context of the remark, the tribunal does not find that this related to the claimant's disability.

75. Even if it were to be wrong on that point, the conduct could not have been part of creating an hostile etc environment for the claimant as she had already left her employment.

76. The harassment claim does not succeed.

Direct Discrimination

77. As found above, allegation (j) (re swearing at the claimant) cannot be direct discrimination as it was not because of C's disability.
78. As regards the claimant's dismissal on 7 July (allegation i) this was clearly less favourable treatment – the question is was it because of the claimant's disability?
79. The respondent has shown that they had genuine concerns about the claimant's level of performance and this was raised with her on an ongoing day to day basis and in the discussion on 27 June.
80. The tribunal found that following the discussion on 27 June, when respondent agreed to give the claimant a second chance, she believed that the claimant's references to her "anxiety" were the same as "half the population" and that this anxiety could be managed within the workplace. The tribunal also heard evidence from Mr Sajjadi that he and his sister, coming from an immigrant family, recognised some of the difficulties which the claimant had experienced growing up and were sympathetic and so were prepared to give her a further opportunity and allow her time to improve.
81. The respondent did not record any of these discussions with the claimant in writing. Further, the respondent did not give the claimant a specific time frame in which to improve her performance or indicate the nature of the improvements required from the claimant.
82. The tribunal have found that the claimant raised for the first time on 5 July the fact that she was on medication for her anxiety and she had said on 6 July that she was going to hospital as she was feeling unwell.
83. The respondent said she had taken advice from Peninsula following the 5 July incident and whilst we did not and should not hear what that advice was, the respondent took away the office keys from the claimant on 5 July and she was dismissed on 7 July.
84. The tribunal finds on that basis, that the claimant has shown facts from which the tribunal can conclude that the reason for the claimant's dismissal was because of her disability, as the respondent realised for the first time on 5 July that the claimant's anxiety was a medical condition and not simply what the respondent considered to be "general" anxiety which many people experienced. The respondent did not at that stage ask the claimant for any medical information about her condition or about how this might be managed within the workplace.
85. Further, the respondent did not produce any evidence to show any marked deterioration in the claimant's performance levels from 27 June to 7 July (just over a week): the respondent says the mistakes continued, but they did not appear to be substantially different from the earlier mistakes. There is no

evidence or any other adequate explanation given for the respondent changing her mind as regards the claimant's continued employment.

86. The tribunal asked itself what had changed from 27 June (when the respondent decided to give the claimant another chance to improve) to 7 July when the respondent dismissed the claimant (citing poor performance). From the evidence presented to the tribunal, the only difference appeared to be the discovery of the extent of the claimant's anxiety as a medical condition. The claimant's disability was the operative factor in the decision to dismiss her. A hypothetical employee in the same circumstances, namely being given a chance to improve during a probation period but without disclosing a disability would have been treated more favourably and possibly given longer to improve.

87. The direct disability discrimination claim on dismissal succeeds

Reasonable Adjustments

88. The tribunal have not accepted the claimant's evidence that she requested to move desks and so the claim for reasonable adjustments does not succeed.

Unlawful Deduction of Wages/Holiday Pay

89. The claim for unpaid wages is not successful (see above). The claimant is owed holiday pay of £98.24

Remedy Hearing

90. As the claimant has succeeded in her discrimination claim as regards her dismissal, the tribunal now needs to assess the compensation payable to the claimant arising from this claim (which would include injury to feelings). The claimant's schedule of loss (page 34) indicates a loss of 25 days' pay (£1527.70) as she obtained alternative employment at the roughly the same rate of pay on 8 August 2019. The tribunal needs to hear evidence from the claimant on compensation for injury to feelings. The tribunal needs to fix a hearing (1 day) to hear the remedy claim.

Employment Judge Henderson

JUDGMENT SIGNED ON: 5 August 2021

**JUDGMENT SENT TO THE PARTIES ON
16/08/2021**

AND ENTERED IN THE REGISTER

21/08/21

FOR THE SECRETARY OF THE TRIBUNALS