



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms R Akhtar

**Respondent:** NewDay Cards Ltd

## JUDGMENT

1. The claims of direct discrimination because of race and religion or belief and of harassment set out at paragraphs 3.1.1 to 3.1.3 and 4.1.1 to 4.1.3 of the list of issues annexed to this Judgment are struck out.

## REASONS

1. The claimant was ordered to pay a deposit of £5.00 in respect of each of the complaints set out at paragraphs 3.1.1 to 3.1.3 and 4.1.1 to 4.1.3 of the list of issues annexed to this Judgment following a preliminary hearing held on 20<sup>th</sup> July 2021.
2. The Order was sent to the claimant on 21<sup>st</sup> July 2021. The claimant has failed to pay this deposit. The listed complaints of direct discrimination because of race and religion or belief and of harassment are therefore struck out under rule 39(4) of the Employment Tribunals Rules of Procedure 2013.

Employment Judge Evans

Date: 27 August 2021

BETWEEN:

**MS RUKSANA AKHTAR**

Claimant

**AND**

**NEWDAY CARDS LTD**

Respondent

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**REVISED LIST OF ISSUES  
PREPARED BY RESPONDENT**

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**1. Unfair Dismissal**

1.1 What was the reason or principal reason for dismissal? The Respondent says the reason was redundancy.

1.2 If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

- 1.2.1 The Respondent adequately warned and consulted the Claimant;
- 1.2.2 The Respondent adopted a reasonable selection decision, including its approach to a selection pool;
- 1.2.3 The Respondent took reasonable steps to find the Claimant suitable alternative employment;
- 1.2.4 Dismissal was within the range of reasonable responses.

1.3 The Claimant in particular alleges that the criteria adopted did not reflect the role she performed, that she was unreasonably scored in circumstances where she was denied opportunities for training and there was a delay in training, she was not given an opportunity to raise her concerns in consultation meetings, did not have any concerns considered as had been promised, in incomplete minutes of consultation meetings being compiled, in her being treated in a dismissive manner and not afforded an opportunity to take a vacant position.

## **2. Remedy for unfair dismissal**

- 2.1 Does the Claimant wish to be reinstated to their previous employment?
- 2.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
- 2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- 2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- 2.5 What should the terms of the re-engagement order be?
- 2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
  - 2.6.1 What financial losses has the dismissal caused the Claimant?
  - 2.6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
  - 2.6.3 If not, for what period of loss should the Claimant be compensated?
  - 2.6.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
  - 2.6.5 Does the statutory cap of fifty-two weeks' pay or [£86,444] apply?
- 2.7 What basic award is payable to the Claimant, if any?

## **3. Direct religion discrimination (s.13 Equality Act 2010)**

- 3.1 Did the Respondent do the following things:
  - 3.1.1 In November 2017 did Gaynor Davey change the Claimant's working hours in comparison to all other agents whose work hours were set by Manpower at the start of employment and were not changed (with minor exceptions only);
  - 3.1.2 In November 2017 did Sarah Trigg ask the Claimant in her first one to one meeting where she was from and where she was really from, tell the Claimant that she did not sound Asian and say that the Claimant was not what Ms Trigg expected;
  - 3.1.3 In February 2018, during the Claimant's probation period, did Sarah Trigg and Gaynor Davey advise the Claimant she would not be paid for sick leave following a road traffic accident and refuse a shift slide request to start her shift earlier;

- 3.1.4 From November 2017 to April 2019 did Sarah Trigg and Gaynor Davey provide unequal training opportunities to the Claimant, the Claimant being the only colleague across the department who was trained in only one referral up to April 2019;
- 3.1.5 From April 2019 to March 2020 was the Claimant provided with insufficient training, receiving less training for Co brand in comparison with the majority of colleagues and was required to work both co & own at the same time in comparison with colleagues who started in 2017 who received training throughout 2018 and were not required to work both in 2018. Was the Claimant not provided with the same opportunity as newly trained Co brand staff to remain on Co brand only for 6 months;
- 3.1.6 From November 2019 to June 2020 did Gaynor Davey deny the Claimant progression opportunities after a meeting addressing the Claimant's treatment on the department in November 2019 when Ms Davey advised the Claimant could train other colleagues?;
- 3.1.7 During collective representative meetings did Fran Rae and Helen Carter speak to the Claimant in a more aggressive manner than white colleagues? Were her points dismissed even when she brought an error that was made to Ms Rae's attention? Did Ms Rae say in an aggressive tone in response to concerns about BAME colleagues being at a disadvantage and explaining the Claimant's own circumstance 'Erm I don't think so Ruksana' making the Claimant feel like a liar in front of other representatives. Was the Claimant told in a scornful manner by Helen Carter, when the Claimant asked if at risk colleagues could have someone accompany them to meetings 'They don't need someone to hold their hands';
- 3.1.8 Did the Respondent fail to fully document or address sufficiently the points raised by the Claimant in her consultation meetings? When the Claimant emailed HR stating notes from these discussions were missing and detailing her treatment, this was put through as a grievance and dealt with separately to her redundancy.

3.2 Was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant has named the following comparators:

- 3.2.1 Aleysha Kitchingman
- 3.2.2 Kiran Kaur
- 3.2.3 Saajid Ghatti
- 3.2.4 Olivia Sutcliffe
- 3.2.5 Kirsty Parker-White
- 3.2.6 Emma Johnson
- 3.2.7 Kyle Lumba
- 3.2.8 Natalie Blain
- 3.2.9 Gaynor Davey
- 3.2.10 Linda Brook
- 3.2.11 Karen Atkins
- 3.2.12 Muhammad Naas

3.3 If so, was it because of religion?

3.4 Did the Respondent's treatment amount to a detriment?

3.5 Are any of the Claimant's claims brought outside of the relevant time limits and does the Tribunal therefore have jurisdiction to consider them?

#### **4 Harassment related to religion (s.26 Equality Act 2010)**

4.1 Did the Respondent do the following things:

- 4.1.1 In November 2017 did Gaynor Davey change the Claimant's working hours in comparison to all other agents whose work hours were set by Manpower at the start of employment and were not changed (with minor exceptions only);
- 4.1.2 In November 2017 did Sarah Trigg ask the Claimant in her first one to one meeting where she was from and where she was really from, tell the Claimant that she did not sound Asian and say that the Claimant was not what Ms Trigg expected;
- 4.1.3 In February 2018, during the Claimant's probation period, did Sarah Trigg and Gaynor Davey advise the Claimant she would not be paid for sick leave following a road traffic accident and refuse a shift slide request to start her shift earlier;
- 4.1.4 From November 2017 to April 2019 did Sarah Trigg and Gaynor Davey provide unequal training opportunities to the Claimant, the Claimant being the

only colleague across the department who was trained in only one referral up to April 2019;

- 4.1.5 From April 2019 to March 2020 was the Claimant provided with insufficient training, receiving less training for Co brand in comparison with the majority of colleagues and was required to work both co & own at the same time in comparison with colleagues who started in 2017 who received training throughout 2018 and were not required to work both in 2018. Was the Claimant not provided with the same opportunity as newly trained Co brand staff to remain on Co brand only for 6 months;
- 4.1.6 From November 2019 to June 2020 did Gaynor Davey deny the Claimant progression opportunities after a meeting addressing the Claimant's treatment on the department in November 2019 when Ms Davey advised the Claimant could train other colleagues?;
- 4.1.7 During collective representative meetings did Fran Rae and Helen Carter speak to the Claimant in a more aggressive manner than white colleagues? Were her points dismissed even when she brought an error that was made to Ms Rae's attention? Did Ms Rae say in an aggressive tone in response to concerns about BAME colleagues being at a disadvantage and explaining the Claimant's own circumstance 'Erm I don't think so Ruksana' making the Claimant feel like a liar in front of other representatives. Was the Claimant told in a scornful manner by Helen Carter, when the Claimant asked if at risk colleagues could have someone accompany them to meetings 'They don't need someone to hold their hands';
- 4.1.8 Did the Respondent fail to fully document or address sufficiently the points raised by the Claimant in her consultation meetings? When the Claimant emailed HR stating notes from these discussions were missing and detailing her treatment, this was put through as a grievance and dealt with separately to her redundancy.

4.2 If so, was that unwanted conduct?

4.3 Did it relate to religion?

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.

4.6 Are any of the Claimant's claims brought outside of the relevant time limits and does the Tribunal therefore have jurisdiction to consider them?

## **5 Remedy for discrimination**

5.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

5.2 What financial losses has the discrimination caused the Claimant?

5.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

5.4 If not, for what period of loss should the Claimant be compensated?

5.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

5.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

5.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

5.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.9 Did the Respondent or the Claimant unreasonably fail to comply with it [specify breach]?

5.10 If so, is it just and equitable to increase or decrease any award payable to the Claimant?

5.11 By what proportion, up to 25%?

5.12 Should interest be awarded? How much?