



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J Rowland

**Respondent:** Somerset Partnership NHS Foundation Trust

**Heard at:** Bristol                      **On:** 12-13 July 2021

**Before:** Employment Judge Reed

**Representation**

**Claimant:** In person

**Respondent:** Mr D Steward, counsel

**JUDGMENT** having been sent to the parties on 20 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

1. In this case the claimant Mrs Rowland said she had been unlawfully discriminated against by her employer Somerset NHS Foundation Trust (“the Trust”). The Trust conceded that Mrs Rowland was disabled by reason of an allergy. She said her treatment amounted to discrimination arising from disability and harassment. The claims were resisted by the Trust.
2. I heard evidence from Mrs Rowland herself and on behalf of the Trust from Mr Eagle, who sent the claimant’s colleagues an email on 16 or 17 December 2019 and from Mrs McEvansoneya who attended a meeting with her on 12 December. On the basis of their evidence and documents I was shown I reached the following findings:
3. Mrs Rowland is employed by the Trust in two different capacities. Her normal job is as a phlebotomist. In that capacity she works at the Trust’s Wellsprings Hospital covering some five psychiatric wards. She also works

as a bank worker at the Trust's Willerton Hospital and it was an event at that hospital that gave rise to the claims before me.

4. On 23 October 2019, somebody walked past Mrs Rowland with a prawn salad. She reacted to the presence of the salad, was taken very ill and had to be taken to hospital. She might well have died.
5. She returned to her place of work on 25 October and insisted that she should be allowed to work. The Trust took a different view and effectively suspended her pending the receipt by them of an Occupational Health report. There was a delay in that report being received by the Trust. That appeared at least in part to be a result of the claimant's attempts to amend its contents and it was only received by the Trust in early December. A meeting then took place on 12 December. Discussions took place in the course of that meeting as to what steps ought to be taken by the Trust before Mrs Rowland returned to work, in order to ensure there was no repetition of the events of 23 October. They were recorded in a letter that was sent to her setting out what was said by the Trust to have been agreed between the parties as to their relations going forward. Mrs Rowland returned to work on the basis of the contents of the letter and a risk assessment was also produced at that time.
6. Certain steps were taken by the Trust to address the situation. For example, signs were put up to alert employees and others to the potential danger and advise what steps to take in the event of another attack. On 16 or 17 December Mr Eagle sent an email to Mrs Rowland's colleagues on the Riding ward at the Wellsprings Hospital together with other senior clinicians. The email identified Mrs Rowland as the person who had the allergy which had given rise to various steps taken by the Trust.
7. Under s15 of the Equality Act 2010, 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.
8. Under s26 of the 2010 Act, a person (A) harasses another (B) if A engages in unwanted conduct related to disability and the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether the conduct has that effect, the tribunal must take into account the perception of B, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
9. Mrs Rowland said that the episode of anaphylactic shock on 23 October 2019 and the ensuing hospitalisation was something arising as a consequence of her disability, as it undoubtedly was, and that she had been treated unfavourably as a consequence. At the case management hearing in this matter in September 2020 she identified four respects in which she considered she had been treated unlawfully.
10. The first of those was her suspension on 25 October 2019. It was undoubtedly the case that she was suspended. She declared her intention to return to work on that day and was told she could not until the receipt of

an Occupational Health report. I was satisfied that that was unfavourable treatment and therefore the only issue for me was whether it was a proportionate means of achieving a legitimate aim.

11. The Trust said that the legitimate aim was ensuring the safety of Mrs Rowlands and that suspension pending receipt of the report was a proportionate means of achieving that aim.
12. The aim was certainly legitimate. Was suspension in those circumstances a proportionate means of achieving it? I was bound to speculate as to what might have happened if the Trust had acceded to Mrs Rowland's request to return immediately. She might have had a further attack and indeed she might have died. What if the Occupational Report had then been received, identifying steps that should have been taken and that would have avoided that outcome?
13. It was perfectly reasonable for the Trust to require Mrs Rowland to stay away from work until it had fully informed itself what needed to be done to safeguard her health. Indeed, in fairness to Mrs Rowland she seemed to accept that analysis in her evidence. Suspension in those circumstances was a proportionate means of achieving a legitimate aim and this claim therefore failed.
14. The next allegation of unlawful action was prohibiting Mrs Rowland from eating on the Trust's premises from 13 December. Prohibition connotes informing the claimant she cannot do something that she might want to do. It seemed to me that was not an accurate description of what happened in this case. The Occupational Health report identified that this was a step that the claimant herself had indicated that she had already adopted in order to minimise the risk of exposure to shellfish. It is recorded as an agreed step following the meeting on 12 December and indeed it was. What Mrs Rowland told me in the course of her evidence was that she felt pressured into giving her agreement. That did not seem to make sense. The Trust was led to understand that this was something Mrs Rowland had decided to do (or rather not do) herself, and with which she had no problem. She did not so much agree with the Trust that she would not eat on the premises as acknowledge that was what she had decided to do.
15. In short, Mrs Rowland had failed to make out that there had been unfavourable treatment, since the Trust had not prohibited her as she claimed. It followed that that claim also failed.
16. The next allegation was that the claimant was excluded from the staff room of the Trust from 13 December 2019.
17. The first point to make in that context was that that did not seem to accord with Mrs Rowland's evidence. On the face of it, such a direction could only have been given at the meeting of 12 December but in her oral testimony Mrs Rowland said this was a direction given to her by Mr Osborne on 16 December. Mr Osborne did not give evidence before me - he has left the Trust. In the light, however, of the way Mrs Rowland put the matter in her witness statement and her oral testimony this did not appear to me to be a likely scenario.

18. I was prepared to accept that Mr Osborne may have said something to her on or around 16 December about her use of the staff room. Indeed, he might have advised her that it would be unwise for her to be in there while other people were eating in there. I was not prepared, however, to accept that Mrs Rowland was excluded from the staff room on 13 December or indeed any other date and therefore that claim failed.
19. The final allegation of discrimination arising from disability was the sending of the email to staff by Mr Eagle identifying the claimant as the person with the allergy that had led to signs being put up. That was also alleged to amount to an act of harassment
20. There was no doubt the email was sent. Nor was the claimant informed that it would be sent before it was. It clearly identified Mrs Rowland as the person who had the allergy. She would have preferred that fact not to have been circulated as widely as now it was.
21. There were essentially two reasons for it to be sent and for Mrs Rowland specifically to be identified. The first was that those around her would know to be especially vigilant if she was there. Secondly, they would be aware that if she did have a further reaction, this was a likely explanation for her condition. This might be particularly important given that, as she told me, on a previous occasion when she had had an attack she had actually lost consciousness. She would not be in a position to explain. Those were the two reasons why it might be wise to alert a wider range of people to the fact that she was the one with the allergy.
22. Mr Eagle told me, and I accepted, that the wards that he was concerned about were ones in which there was a particular risk because patients might come and go more regularly and therefore might be more likely to bring items onto the wards that would adversely affect Mrs Rowland.
23. So to address this matter as a claim of discrimination arising from disability, I had to ask whether the sending of the email amounted to unfavourable treatment. I came to the conclusion it simply was not. This was treatment that would improve the prospect of Mrs Rowland avoiding a further attack and also surviving an attack if she had one. It would certainly have been diplomatic of Mr Eagle to warn her it was being sent before it was but the allegation of unlawful action was the specific sending of the email and it seemed to me that was the sensible thing for him to do. Since she was not treated unfavourably, that claim had to fail.
24. Addressing then the claim of harassment arising from the sending of the email, I had to ask whether it was unwanted conduct. Clearly, it was. Furthermore, it was clearly related to her disability. The issue for me was whether the conduct had the purpose or effect of violating Mrs Rowland's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
25. I accepted Mr Eagle's evidence that it was not his purpose to violate Mrs Rowland's dignity or create and intimidating etc environment. Quite the

contrary. His purpose was to improve the prospects of her not having an attack and surviving one if it occurred.

26. However, it would still amount to harassment if the act had the prohibited effect. I was satisfied that Mrs Rowland was deeply upset by the fact that she was identified as the person with the condition, to a relatively wide range of employees. She told me she felt humiliated and I did not doubt that was the case. I was bound to take into account her perception – that the email had created a humiliating environment for her. I also had to take into account, however, the other circumstances of the case and whether it was reasonable for the conduct to have had that effect.
27. I was bound to reflect on the seriousness of the situation. Mrs Rowland told me that the next attack she has is likely to result in her death. Any steps that could be sensibly taken to reduce the likelihood of such an outcome were ones the Trust was bound to put in place. The sending of the email and the alerting of those around Mrs Rowland to her condition were such steps. Although she undoubtedly felt humiliated, it was not, in my view, reasonable for the conduct to have had that effect.
28. For those reasons her claim of harassment also failed and therefore all her claims were dismissed.

Employment Judge Reed  
Date: 02 September 2021

Reasons sent to the parties: 13 October 2021

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