



EMPLOYMENT TRIBUNALS

Claimant Bernadette Divers
Represented by David Dunitz (solicitor)

Respondents Balayage Hair and Beauty Salon
Represented by Soumaya Saab (director)

Before: Employment Judge Cheetham QC

Hearing held on 6 December 2021 at
London South Employment Tribunal by Cloud Video Platform

JUDGMENT

1. The claim for disability discrimination pursuant to the Equality Act 2010 s.15 succeeds.
2. The Respondent will pay the Claimant the sum of £4,200, as follows:
 - (i) £200 for loss of wages;
 - (ii) £4,000 for injury to feelings.

REASONS

Background

1. This claim was previously before the Tribunal on 28 September 2021, when the Tribunal found that the Claimant was a disabled person within the Equality Act 2010 by reason of her polycystic ovarian syndrome and that she also suffers from undiagnosed IBS and scoliosis.

2. On that occasion, there was no appearance by the Respondent and the Claimant indicated that there had been no recent contact from the employer. The Tribunal therefore ordered the Respondent, within 28 days of the Order being sent out, to confirm in writing to the Tribunal whether it intended to defend this claim.
3. As the Respondent failed to do so, the response was struck out. Pursuant to Rule 37(3), where a response is struck out, the effect shall be as if no response had been presented, as set out in Rule 21. The Respondent was therefore entitled to notice of any hearings and decisions of the Tribunal, but only entitled to participate in any hearing to the extent permitted by the Judge.
4. The issues that remained to be resolved at the final hearing were as follows:
 - (i) the Claimant's employment status;
 - (ii) the issue of knowledge in respect of her disability; and
 - (iii) the determination of the claim and any compensation arising.
5. The final hearing could be heard by a Judge alone, because Rule 37(3) applies on the strike out, which means the claim is treated as if no response had been entered, pursuant to Rule 21. That Rule allows a determination of the claim "*before a Judge alone*".

The Respondent's attendance at this hearing

6. Ms Saab attended on behalf of the Respondent. She told the Tribunal that she had heard nothing herself, but that Peninsula Business Services (who are retained by her company) had called her salon to tell her about today's hearing. She also said that her solicitors, Messrs Lock and Marlborough, remained instructed.
7. The Notice of the claim was sent to the Respondent at the correct address, 358 Lordship Lane, London SE22 8LZ. That was obviously received, because an ET3 was then filed. The ET3 gave the name of Lock and Marlborough Solicitors as the Respondent's representatives. Notice that the response had been accepted was sent to that address. The solicitors' address was also used for notification of an earlier Preliminary Hearing, which again was not attended by the Respondent.
8. However, subsequently, the Tribunal used the Lordship Lane address, so that – for example - the Judgment striking out the response was sent to that address.
9. Quite how Peninsula knew of today's hearing remains unclear. However, given that the ET1 was safely received at the Lordship Lane address, the Tribunal considered it very likely that all other documents had also been properly served. It would be strange indeed if, apart from the successful service of the ET1, all other communications failed to reach either of the addresses provided to the Tribunal. In addition, the Respondent has

solicitors on the record and it is curious that there have been no communications at all from them.

10. That being so, there was no proper basis for reconsidering or otherwise revisiting the judgment striking out the response.

The Claimant's disability

11. As noted above, at the previous hearing, the Tribunal found that the Claimant was disabled within the meaning of the Equality Act 2010 by reason of the condition known as polycystic ovarian syndrome or "PCOS".
12. PCOS is a disorder in which a woman's levels of the hormones oestrogen and progesterone are out of balance. The condition causes the Claimant to suffer painful and irregular periods.
13. In her impact statement, the Claimant described having had this condition since she was 14 (she is now aged 25), but it was not diagnosed until June 2019, when she was 23. She said that, as a result of the PCOS, the pain at the start of her periods was so great that she had great difficulty getting out of bed and would be very sick and, at times, would faint. Her periods would also last for much longer than normal. She described in detail how her condition affected her physically and, in the Tribunal's judgment, there was no doubt whatsoever that this had a significant impact on her ability to carry out day-to-day activities. Further, this is a long-lasting condition.
14. The Claimant's own evidence was supported by medical evidence and, with little difficulty, the Tribunal concluded that she was disabled by reason of the PCOS.

Knowledge of the disability

15. At this hearing, the Claimant gave evidence – which the Tribunal accepted – that she had made her employer aware of her condition. She said that she had informed her manager (who is called Jade) of her diagnosis of PCOS in June 2019. She had also specifically referred to it on 6 July 2019 and was dismissed on the same day.
16. The Tribunal concluded that the Respondent knew of her condition. It is self-evidently not a short-term condition and the Respondent was also well-aware of how it affected the Claimant, not least because of the amount of time off she had needed. Therefore, the Respondent knew or ought reasonably to have known that she was disabled.

Employment status

17. In its ET3, the Respondent contended that the Claimant was not an employee, but there was documentary evidence showing regular shifts, payments and there was also reference in text message to the Claimant as

an “employee”. Equally, there was no evidence to support the Respondent’s contention that the Claimant paid a £250 per week fee to the Respondent.

18. The Tribunal was therefore satisfied that the Claimant was an employee for the purposes of her discrimination claim.

The claim

19. The claim is that, after the Claimant explained on 6 July 2019 that she had PCOS, the Respondent dismissed the Claimant. There was also a claim that the Respondent failed to make adjustments during the short time after she told her manager about the condition a couple of weeks before in June.

20. The Claimant gave evidence to this effect, which the Tribunal accepted.

21. In the Tribunal’s judgment, the reason why the Claimant lost her job is for a reason arising from her disability. She had explained her medical condition and she was going to need adjustments made if she was to manage her work. For that reason, which arose from her disability, she lost her job. It may also have been reasonable to make some adjustments in the short period between telling the Respondent of her condition in June and losing her job, but the Claimant’s representative (understandably) focused on the dismissal.

22. On the evidence, the Tribunal was satisfied that the Claimant’s dismissal on the same day she spoke to her employer about her medical condition was treatment arising from that disability, in that this condition required her to have time off and she would need adjustments to be made to her working pattern. The claim for disability discrimination pursuant to the Equality Act 2010 s.15 therefore succeeds.

23. Although there is an argument around a failure to make reasonable adjustments, there was insufficient evidence about this part of the claim to make any positive findings. The Tribunal also had in mind that there was a very short period of time between when the Claimant first alerted her employer to her PCOS and the termination of her employment.

Remedies

24. The Claimant claimed £200 net loss of earnings, as fortunately she had found another job by 15 July 2019. She also sought compensation for loss of statutory rights, but as she was only employed for 9 months, she had not gained sufficient continuity of service to benefit from the statutory rights around dismissal.

25. As to injury to feelings, the Tribunal awarded the Claimant £4,000. On the one hand, the Claimant lost her job as a result of discrimination by her employer, which is always a serious matter and which caused her considerable upset at the time. On the other hand, everything happened within a short amount of time and the Claimant started working elsewhere

almost immediately. Doing the best it could, this sum seemed to the Tribunal a fair amount in all of the circumstances.

26. Therefore, the Respondent will pay the Claimant the sum of £4,200 in total.

Employment Judge S Cheetham QC
Dated 15 December 2021