



EMPLOYMENT TRIBUNALS

Claimant: Claire Cullimore

Respondents: (1) James Foley
(2) Adult Home Care Limited trading as Right At Home
Swansea

Heard at: Cardiff (in public; by video) On: 24th 25th and 26th August 21
and 22nd 23rd and 24th November 21

Before: Employment Judge Howden-Evans
Tribunal Member K Smith
Tribunal Member L Bishop

Representation:

Claimant: In person, supported by her aunt, Ms Fanner

Respondent: Mr C Murray, Counsel

JUDGMENT

The Employment Tribunal's unanimous decision is as follows:

1. The Second Respondent subjected the claimant to disability discrimination by failing to comply with its duty to make reasonable adjustments (Sections 20, 21(2), 25(2)(d), 39(2)(c) and 39(5) of the Equality Act 2010).

2. Contrary to s39(2) Equality Act 2010 the Second Respondent has treated the claimant unfavourably because of something arising in consequence of her disability (s15 Equality Act 2010).
3. The claimant's claim that she has been harassed because of her disability (per s26 Equality Act 2010) is not well founded and is dismissed.

EMPLOYMENT JUDGE HOWDEN-EVANS

Dated: 25th January 2022

Judgment posted to the parties on 26 January 2022

For Secretary of the Tribunals
Mr N Roche

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Note of Key Findings to assist parties to prepare for the Remedy Hearing

1. It is accepted that at all relevant times the Claimant has had a disability as defined in s6 Equality Act 2010 by reason of her having Bi-Polar Disorder. It is accepted that both respondents were aware of the Claimant's disability at all relevant times.

Equality Act 2010 section 20 & 21: reasonable adjustments (for disability)

2. The Tribunal accepted the Second Respondent had a policy of requiring staff to work at any time, as requested by the Second Respondent without reference to the number of days or hours worked previously and that this policy was applied to the Claimant and others that did not share her disability. Whilst staff were working a zero hours contract, they were required to accept the hours that were allocated to them on the rota. If they refused to work on 3 occasions in a rolling 3-month period, they could be dismissed.
3. This policy did put the Claimant at a substantial disadvantage, in that the claimant's health deteriorated significantly and she still had to accept further work despite becoming unwell. The Second Respondent was aware that the Claimant was placed at a substantial disadvantage; at the start of her employment the Claimant had told Mr Foley she needed an average of 36 hours per week and she needed rest and regularity to be able to manage her health condition. In her interview with Ms Lewis on 14th March 2018 the Claimant fully explained the adjustments she needed to manage her disability; she told Ms Lewis that she was better able to manage her condition if, on average, she worked five days out of 7 following a pattern of 2 or 3 days working followed by a day off. She explained it was better for her to work all day and fit the average 36 hours into 4 or 5 days so that she could then take 2-3 full days off a week, rather than working half days and not having a full day off. By July 2018, Mr Foley and Ms Lewis had noted the deterioration in the Claimant's health.
4. There were steps that could have been taken that would have avoided the disadvantage. The Second Respondent should have given the Claimant a day's rest after two consecutive days of work. Instead, the Second Respondent prioritised other carers' requests for work patterns to fit in with childcare, rather than prioritising the Claimant's request for reasonable adjustments. The Second Respondent could have provided the Claimant with more office-based work. The Second Respondent was able to find office based work for another carer (that didn't have a disability). The Second Respondent could have monitored the hours worked by the Claimant and limited these, so she was working within the Working Time Regulations. All of these were reasonable steps to expect the Respondent to take and they would have been effective at avoiding the disadvantage the Claimant faced. Instead, we note
 - 4.1. There was never any attempt to refer the Claimant to occupational health.

- 4.2. In the week commencing 2nd April 2018, the Claimant was instructed to work every day for 7 days.
- 4.3. The next week, 9th April 2018, she was instructed to work every day except for Wednesday 11th April. This meant in this fortnight she had only had 1 day of rest and had worked 13 days. Some of these days were very long days of work, for instance on Monday 9th April and Friday 13th April her first appointment was 9am and her last appointment ended at 8pm.
- 4.4. The rota for the next week required the claimant to work 6 out of the 7 days (giving the claimant Thursday 19th April as a rest day). In the week commencing 23rd April, the claimant was again working 6 out of 7 days (with only Tuesday 24th April off work) and her days were getting longer; on Friday and Saturday she was working 9.15 am until 9.45pm, attending 7 care visits on both days but was only paid for 6 ½ hours on each of these days.
- 4.5. On 1st May 2018 Ms Lewis conducted a supervision meeting and noted that she was to “take on board [the Claimant’s] requests with regards to respite breaks”
- 4.6. The rota for week of 14th May 2018 required the claimant to work on 6 of the 7 days, with her having Thursday 17th May as a rest day. The claimant’s hours of work were 8am to 5pm Monday; 10am to 8pm Tuesday; 10 am to 6pm Wednesday; 10 am to 5pm Friday; 10 am to 8pm Saturday and 8am to 8pm on Sunday.
- 4.7. The week beginning 21st May claimant worked all 7 days without a day off: Monday 12.30 to 6.30 pm; Tuesday 8.30 to 9pm; Wed 8.30 to 6.30 pm; Thurs 8.30 to 6.30 pm; Fri 9.30 to 8pm; Sat 10am to 10.30pm and Sun 8.30am to 9.30 am. This evidenced a total disregard for the Claimant’s needs – this was a 10 day stretch without a day off working long hours into the evening each night.
- 4.8. Towards the end of May Ms Lewis noticed the change in the claimant’s health and was concerned the claimant was struggling.
- 4.9. By June 2018 the Second Respondent’s business was growing and new carers were taken on. The Tribunal accept that the Second Respondent accommodated requests from new carers about their working hours (eg to meet childcare arrangements) and prioritised these ahead of giving the Claimant the 2 or 3 days of work and 1 day rest pattern that the Claimant desperately needed.
- 4.10. On 27th June 2018 the Claimant attended her probationary review with Ms Lewis and she was signed off probation on that day. It was again discussed that the Claimant needed to work approximately 36 hours per week

with 2 or 3 days work then a day off. In fact, the Claimant's workload became heavier as she was supporting a client that needed a carer to look after him overnight; she was having to cover shifts where she was staying overnight as well as care visits during the day.

4.11. At the end of July 2018 Mr Foley and Ms Lewis had a meeting with the claimant at which they noted her health was deteriorating and suggested she reduce her hours to 10 to 15 per week. The claimant reluctantly agreed to this but explained that what she really needed was the work pattern that had been discussed as reasonable adjustments and being able to work in the office more. The evidence shows that far from reducing her hours, the Claimant's hours continued to be long and she continued to do overnight shifts and only have 1 day off in 7 days continuing into August 2018 – she was often working 7, 8 or 9 day stretches before having a day off

4.12. The Claimant had booked 2 days annual leave at the end of August – she had 25th 26th and 27th August 2018 off work; she had worked every day of the previous 9 days. Whilst she was on leave Mr Foley sent the Claimant messages about the Sarah the Carer project. When she explained she was on holiday, he responded with a query about a client.

4.13. The Sarah the Carer project had been intended to be a piece of work the claimant could undertake to regularize her hours and a means of reducing her care hours. But the claimant didn't have any let up in her care hours – she had worked 50 hours at client visits in the week Mr Foley was chasing about the Sarah the Carer project.

4.14. On 6th September 2018 the Claimant reached a crisis point with her mental health and resigned from her position with the Second Respondent.

Equality Act 2010 section 15: Discrimination arising from disability

5. The Tribunal accepted the Second Respondent had promoted the Claimant to the role of Senior Carer in June 2018 and had announced this to other carers.
6. By the end of August 2018, Mr Foley and the Second Respondent had decided to backpedal on the promotion of the Claimant to the position of Senior Carer. We found that renegeing on this promotion was an act of unfavourable treatment.
7. When we considered Mr Foley's reason for renegeing on this promotion, we accepted that he had in mind the fact that the Claimant was unable to work on each occasion requested by the Respondent without becoming unwell. The Tribunal accepted that one of the consequences of her disability was that the Claimant was unable to work on each occasion requested by the Respondents without becoming unwell. The Tribunal accepted Mr Foley and the Second

Respondent had treated the Claimant unfavourably, namely they had reneged on the Claimant's promotion, because of something arising from her disability, namely her not being able to work each occasion requested without becoming unwell. The Respondent was not able to demonstrate this treatment was a proportionate means of achieving a legitimate aim.

8. The Tribunal also accepted that, as a result of experiencing an ongoing flare up in symptoms with her disability (which was aggravated by already having worked 50 hours in that week), in August 2018, the Claimant was unable to conclude a written piece of work as quickly as Mr Foley wanted it to be completed.
9. We accepted that, because the Claimant was unable to conclude this work quickly, Mr Foley and the Second Respondent subjected the Claimant to further acts of unfavourable treatment, namely, Mr Foley repeatedly chased the Claimant for this work by telephone and email, even when the Claimant was on a day's leave. We accepted that being pressured to complete work is an act of unfavourable treatment, particularly when you are being subjected to pressure during holiday leave. The Respondents were not able to demonstrate this treatment was a proportionate means of achieving a legitimate aim.