



Case Number: 3313852/2020

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss J Joseph

and

Respondent

Sodexo Limited

Held by CVP on 8 November 2021

Representation

Claimant:

In Person

Respondent:

Mr J Platts-Mills,
Counsel

Employment Judge Kurrein

Statement on behalf of the Senior President of Tribunals

This has been a remote hearing that has not objected to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 101 pages, the contents of which I have recorded.

JUDGMENT

- 1 At all material times the Claimant was a disabled person within the provisions of the Equality Act 2010 by reason of her dyslexia.
- 2 In all the circumstances of the case it is not just an equitable to grant the Claimant's application to amend her claim.

REASONS

- 1 On 19 November 2020 the Claimant presented a claim to the Tribunal alleging she had been unfairly dismissed and discriminated against because of her race and/or disability. She had been employed by the Respondent as a catering tutor from 1 May 2019 to 14 August 2020.

- 2 On 8 January 2021 the Respondent presented a response in which it disputed those claims.
- 3 A preliminary hearing took place on three August 2021 before EJ Eeley. A direction was given that a further preliminary hearing should take place to determine,
1. "Whether the Claimant was disabled within the meaning of the Equality Act 2010 at the relevant time.
 2. Whether the Claimant should be given permission to amend her claim to add a claim for breach of the duty to make reasonable adjustments in relation to providing Dragon Dictation software on a laptop rather than the office computer. "
- 4 Those are the matters that have come before me today.
- 5 I have heard the evidence of the Claimant and taken into account the documents to which I was referred in a bundle prepared for the hearing. I also had regard to the submissions made on behalf of each of the parties.
- 6 Unfortunately that bundle did not comply with the Presidential Guidance on In Person and Remote Hearings in a number of respects. At the conclusion of the hearing the Respondent's Counsel indicated that he would ensure I was in receipt of a bundle that did comply with those requirements within the next few days. Unfortunately it was some two months before that bundle was provided. That is the reason for the delay in this judgement.
- 7 I make the following findings of fact.

Disability

- 8 The Claimant was born on 9 September 1958. I accepted her evidence that she struggled at school and that at that time no attempt was made to diagnose if her difficulties arose from any impairment.
- 9 The Claimant was diagnosed with dyslexia when she started attending the University of North London in 1998. She was seen by Sharon McCabe, MSc, a Psychologist, who gave the following summary,

"The pattern of strengths and weaknesses exhibited in Jennifer's work and in her performance in the WAIS-R subtests appears to be that which is usually associated with Specific Learning Difficulties of a dyslexic nature; these are most obviously manifested in underachievement in reading, writing and spelling. Although her difficulties are primarily of an auditory processing type, she also exhibits some visual processing difficulties.

Jennifer has an above average level of non-verbal reasoning ability (as evidenced in her scores on the Picture Completion, Picture Arrangement and Object Assembly subtests of the WAIS-R) which she finds difficult to reproduce in her written work. She will experience difficulties expressing, in writing, her understanding of subject. She will also have difficulties with spelling which affect, not only her ability to produce pieces of written work, but also her ability to take notes in lectures. With her writing she has particular problems with sentence structure and with punctuation and

spelling. These problems are such that reading her written work is extremely difficult, even for Jennifer herself. This makes proof reading almost impossible. Using a computer facilitates an increase in comprehension, but her difficulties with grammar and particularly spelling mean that she will inevitably miss many errors. When she is able to identify an error she is unlikely to be able to correct it without assistance.”

- 10 As a consequence of that report adjustments were put in place so that the Claimant would be given an extra 25% time allowance in respect of her exams.
- 11 The University was also advised that she should be provided with additional software and a tape recorder to assist her, and given special consideration for spelling and written expression on all assessed work.
- 12 Similar adjustments were made for the Claimant in 2002, she was studying psychology, and in 2005, by which time she was studying at the University of Westminster for a PGCE for secondary education.
- 13 I find as a fact that throughout her employment with the Respondent:-
- 13.1 the Claimant had dyslexia, an impairment within the Equality Act 2010;
- 13.2 it had a long term effect, from childhood to the present day.
- 14 The principal issue before me has been whether or not that impairment had a substantial adverse effect on the Claimant’s ability to perform normal day-to-day activities.
- 15 I accept the general principle that I should concentrate on what the Claimant cannot do rather than what she can do. Against that background I do not accept that I should concentrate on the Claimant’s above average non-verbal abilities.
- 16 The Claimant had submitted a disability impact statement which, unfortunately, was not as complete or detailed as one would have wished. It was that lack of detail that appears to have led to the Respondent taking issue with the extent to which the Claimant’s dyslexia affected her ordinary day-to-day activities.
- 17 It seemed to me that the principal line taken by the Respondent was that, as the Claimant had been able to successfully engage in further and higher education, and her role as a Catering Tutor did not involve the need to write essays, make notes or give presentations, she failed to qualify as a person whose impairment had substantial adverse effect on her.
- 18 The Claimant did not accept that that was the case. As part of her duties with the Respondent she was responsible for the oversight of the food service, teaching cookery, supervising inmates and ensuring security was maintained. She accepts that she was provided with a desktop computer, but it is her case it was unsuitable because it was located in a small office through which staff had to pass to access the toilet. She was frequently interrupted, would lose her train of thought and it would take her much longer to perform her tasks than other people. She often found herself working late. It takes much longer for her to write things down, and she found herself unable to complete her duties. This would make her nervous which would negatively impact on her condition.

- 19 It is now accepted that the word “substantial” should be interpreted as meaning more than minor.
- 20 On the basis of the above findings the Claimant has satisfied me, on the balance of probabilities, that the effects on her of her dyslexia are “substantial”. She may have to read instructions several times to properly understand them. She cannot rely on her writing skills to communicate accurately what she means. She will not always have available to her assistance, whether personal mechanical or digital, to support her and obviate the difficulties she faces.

Amendment

- 21 In considering this aspect of the hearing I have had regard to the decisions in Chandhok v. Tirkey [2015] IRLR 195 and Selkent Bus Co Ltd v Moore [1996] ICR 836.
- 22 It is apparent from the original claim that no claim alleging a reasonable adjustment of the nature now sought to be made was set out, even impliedly. It is not in dispute that the Claimant was provided with dictation software for the desktop computer in her location.
- 23 The amendment sought is not a “relabelling” exercise: none of the necessary facts to sustain such a claim are set out in the original ET1.
- 24 I also take the view that granting such an amendment would require the Respondent to make more wide-ranging enquiries, and possibly call further witnesses, then it would have anticipated on the basis of the original claim.
- 25 There is a further, in my view, greater difficulty: such a claim would be very substantially out of time. Bearing in mind the decision in Matuszowicz v. Kingston upon Hull [2009] IRLR 288 such a claim is likely to have arisen and been actionable from shortly after the date the Claimant started work. The requested amendment, however, was not made until over two years later, at the preliminary hearing.
- 26 For the purposes of considering the application I take the view that I should take the delay as only extending to the date of application, rather than the date of hearing, because to do otherwise would be to prejudice the Claimant because of delays in the system.
- 27 Unfortunately, the Claimant has failed to give any evidence as to why, in all the circumstances of the case, it might be just and equitable to extend time in her favour.
- 28 In all the circumstances of the case I find that it would not be just and equitable to grant the Claimant the amendment sought.

Employment Judge Kurrein
Date: 2 February 2022

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Sent to the parties and
entered in the Register on
3 February 2022
For the Tribunal

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