



# EMPLOYMENT TRIBUNALS

Claimant: Miss E Forte

Respondent: Cherry Lane Retail Centres Limited

HELD by CVP ON: 2 November 2021

BEFORE: Employment Judge Shulman Members: Mr M Taj Mrs  
L J Anderson-Co

## REPRESENTATION:

Claimant: In person (who was supported by her father) Respondent: Miss  
K Burchell, Human Resources

# JUDGMENT

The claimant's claim of direct discrimination – age is hereby dismissed.

# REASONS

## 1. Claim

1.1. Direct discrimination – age.

## 2. Issues

The issues in this case are set out at paragraph 42.1 of the record of a preliminary hearing dated 29 June 2021.

3. The law

The Tribunal has to have regard to the following provisions of the law:

- 3.1. Section 23(1) Equality Act 2010 - On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case.
- 3.2. Paragraph 3.2.3 EHRC Employment Code - The circumstances of the claimant and the comparators need not be identical in every way. What matters is that the circumstances relevant to the claimant's treatment are the same or nearly the same for the claimant and the comparator(s).

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant was employed as a temporary Christmas assistant from 12 October 2020 until her dismissal on 17 December 2020, working at Tickhill Garden Centre, which is owned and operated by the respondent. At the time of her dismissal the claimant was 24 years of age.
- 4.2. Almost immediately the claimant worked on the tills in the garden centre, where she remained until the termination of her employment.
- 4.3. The claimant enjoyed her work and the respondent was satisfied with her and the claimant wanted to stay on permanently on the expiry of her temporary assignment.
- 4.4. Towards the end of the claimant's eight weeks' employment (which went on to become 10 weeks) the claimant told her supervisor, Suzanne, that she liked working with the respondent and Suzanne said she would speak to the store manager, Philip Perkins, who gave evidence before us. We find that the claimant heard no more about this matter, either from Suzanne or Mr Perkins.
- 4.5. The claimant's temporary contract was (as we have indicated) extended for two weeks. On 11 December 2020 the claimant was on leave, as she was on 14 and 15 December 2020. Unbeknown to the claimant, on 14 December 2020 Mr Perkins was given permission to recruit 2 permanent staff and he decided, after a team meeting on 17 December 2020, that those permanent staff should be Lorraine Laycock (Lorraine) and Jill Daniels (Jill), in relation to whom we will set out the respondent's reasoning below.
- 4.6. The claimant came back to work on 16 December 2020, but Mr Perkins was not in on that date. He had to tell the claimant that her temporary contract was coming to an end on 17 December 2020. On that date the claimant finished her shift at 4.00pm and she approached Mr Perkins about what was happening with her contract and he told her that this was her last day.

- 4.7. The claimant was understandably upset and the result was that she presented a claim form on 20 April 2021. The claimant made a claim for age discrimination and also at that time claims for sex discrimination, unfair dismissal, no notice pay and no holiday. For one reason or another all the claims except the claim for age discrimination have fallen by the wayside. Whilst there are features of unfairness towards the claimant our task is to concentrate on whether this was or was not a matter of age discrimination.
- 4.8. In her claim form the claimant stated that the respondent systematically took young people on, offering temporary contracts, then removing those people at the end of a period. At some point, and the claimant is not sure when, she discovered that Lorraine and Jill were taken on but the claimant was of the view that she was certainly as good as one (Jill) and probably better than the other (Lorraine).
- 4.9. Therefore, the claimant has chosen her comparators in this case as Lorraine and Jill.
- 4.10. The claimant told us that she worked on the pier at Weston-Super-Mare, where she was a food and beverage supervisor. She did stock checks, customer service and accounts. We find that she did this for three years. The claimant did during this time occasionally work in other shops on the pier. Then the claimant worked at No 1 Sandwich Bar in Weston-SuperMare for five years, on the till, serving customers, cleaning, stocktaking and doing accounts. She worked at the same time as one of her jobs for Forte Financial doing administration.
- 4.11. So far as Jill Daniels was concerned she worked for Wilko for almost forty years in merchandising and product planning.
- 4.12. Lorraine Laycock worked for Debenhams for 30 years as a senior sales advisor, specialising in merchandising across all departments, with a vast experience of stock control, visual merchandising, customer service, sales and checkout operation.
- 4.13. The claimant, whilst not being critical of Jill, says her supervisor, Suzanne, was critical of Lorraine's ability in that she was slow. In this regard we prefer the evidence of Mr Perkins, who we find could not have selected Lorraine with such shortcomings. Mr Perkins' supervisors, Adrian Petch and Joanne Davies, respectively spoke highly of Jill and Lorraine, who they supervised.
- 4.14. As we have found, Jill and Lorraine were kept on after a team meeting on 17 December 2020 and Mr Perkins told us that the deciding factor was high level skills in merchandising. Mr Perkins decided it was Jill and Lorraine and not sadly the claimant who had those skills.
5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. We accept the claimant's age group of 20 to 25 compared with people in the age group 60 to 65.
- 5.2. We accept the claimant was dismissed on 17 December 2020.
- 5.3. Was the claimant treated worse than someone else was treated? There must be no material difference between their circumstances and the claimant's. The claimant says she was treated worse than Jill and Lorraine, who were recruited at the same time as the claimant and who were retained in employment and not dismissed when she was.
- 5.4. The key is in the words "material difference". These words can be found in section 23(1) Equality Act 2010 and we apply paragraph 3.2.3 of EHRC Employment Code (see above), so that the circumstances of the claimant and the comparators need not be identical in every way.
- 5.5. But it seems to us that this difference is about skills and Mr Perkins applied that test in deciding to keep Jill and Lorraine and not unfortunately the claimant.
- 5.6. If there was any unfavourable treatment we find that it did not relate to age.
- 5.7. In all the circumstances the claimant's claim is dismissed.

J Shulman

Employment Judge Shulman

17 November 2021

Date\_\_\_\_\_

JUDGMENT SENT TO THE PARTIES ON

25 November 2021

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