



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107639/2020

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Hearing Held by Cloud Video Platform (CVP) on 17 and 18 February 2022

Employment Judge A Strain

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Members – J Burnett and J Anderson

Ms L McPherson

Claimant
In Person

South Lanarkshire Council

Respondent
Represented by:
Mr S O'Neil -
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

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- (1) the Claimant's claim of unfair dismissal is unsuccessful and is dismissed; and
- (2) the Claimant's claims of disability discrimination under sections 13, 15 and 20 of the **Equality Act 2010 (EA 2010)** are unsuccessful and are dismissed.

Background

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1. The Claimant represented herself. She asserted claims of Unfair Dismissal and Disability Discrimination under sections 13, 15 and 20 of the **Equality Act 2010 (EA 2010)**. The Claimant sought a Basic Award, Compensatory Award and damages for injury to feelings as detailed in her schedule of loss.

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2. The Respondent was represented by Mr O'Neil, Solicitor.
3. The Parties had lodged a Bundle of Documents with the Tribunal for the purposes of the Hearing. Additional documents were lodged by the Respondent and added to the bundle at the commencement of the Hearing.
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4. Disability status was agreed between the Parties in respect of the conditions of depression, stress and anxiety and underactive thyroid. The Respondent accepted that it knew or ought reasonably to have known that the Claimant had the protected characteristic of disability from 8 March 2018 in respect of depression, stress and anxiety and from 25 June 2019 in respect of underactive thyroid.
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5. The Tribunal heard evidence from the Claimant, Gail Robertson (Personnel Adviser), Elizabeth Taylor (Personnel Officer), Caroline Murray (Personnel Officer) and Susanne Mason (Care Home Manager) for the Respondent. Witness Statements had been lodged and exchanged in advance.
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Findings in Fact

6. Having heard the evidence and considered the documentary evidence before it the Tribunal made the following findings in fact:
 - 20 a. The Claimant was employed by the Respondent from 2002 until the termination of her employment on 7 October 2020. She worked as a Homeless Support Officer and then as an Accommodation Officer within Housing and Technical Services until 20 January 2020 at Lindsay House.
 - 25 b. Following a management restructure at Lindsay House the Claimant considers that she was subject to bullying and intimidation by the new management, in particular by Claire Morton during 2018 to 2019. The Claimant believed that she had no option other than to leave that work environment for the sake of her mental health.

January 2020

- 5 c. The Claimant applied for and commenced a new post from 20 January 2020 as a Social Care Worker within Social Work Resources at Meldrum Gardens Residential Care Home until the termination of her employment.
- 10 d. The Claimant considered the move to Social Care Worker to be a demotion in status and salary. Her salary decreased to £22,500 per year. She struggled with the main duties of the post being the care of the elderly and the provision of end of life care for elderly residents due to her mental health issues. She felt overwhelmed and unsupported.

May 2020

- 15 e. The Claimant contacted and spoke with Gail Robertson (Personnel Adviser) with the Respondent in or around mid May 2020. During that conversation she informed Ms Robertson about her personal life and health struggles, indicating that she was feeling suicidal. Ms Robertson attempted to provide as much support as she could. The Claimant told her about how she felt about her experience during her later time at Lindsay House, where she worked as an accommodation officer. Ms Robertson explained and encouraged her to make a complaint either under the Respondent's Dignity at Work or Grievance Procedures, if she felt strong enough to do so (pages 242-243). Ms Robertson also advised her to seek guidance and support from her Trade Union representative.
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- 25 f. During this discussion the Claimant informed Ms Robertson that she had made a mistake in applying for the role at Meldrum Gardens. She had not appreciated the nature of the job in practice but had no complaints about her colleagues.

- g. The Claimant also asked Ms Robertson if she could return to her role at Lindsay House.
- h. Ms Robertson spoke with the Service Manager at Lindsay House and ascertained that there were no posts available.
- 5 i. Ms Robertson encouraged the Claimant to make contact with her current line manager to inform her how she was feeling and so that any appropriate supports could be considered (Pages 240-241).
- j. Ms Robertson assisted the Claimant with seeking alternative employment by providing details of the Respondent's Learn on Line modules (Page 240).
- 10 k. Ms Robertson explained the Respondent's Maximising Attendance Policy (Pages 159-180) which provides guidance for managers and employees on managing absence from work, both in relation to long term and short term persistent absences, and gives information on the supports available to assist employees in returning to work or improving their attendance and capability procedures. She also explained the Respondent's Switch 2 Policy and Procedures which the Respondent would follow if the Claimant was unable to return to her role within Meldrum House.
- 15 l. Ms Robertson had a further phone conversation with the Claimant where she asked if she could just be sacked. Ms Robertson explained that there was a process for employees in her position which seeks to support and rehabilitate them back into to the workplace and that any termination would be a last resort decision for the Respondent to make. Ms Robertson also had correspondence with the Claimant's trade union representative on this issue dated 16th September 2020 (Pages 238-239)
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Dignity at Work Complaint

- m. The Claimant raised a Dignity at Work complaint regarding her treatment at Lindsay House on June 2020. She attended a fact
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finding interview with Lianne Bain (Personnel Officer) along with her trade union representative Ian Doig on 9 June 2020 (Pages 27-45).

- 5 n. The Claimant received notification of the outcome of her Dignity at Work Complaint on 26 January 2021 (Pages 98-101). The complaint against Claire Morton was upheld in part. It was found that Claire Morton's behaviour was at times inappropriate in relation to the way she interacted and communicated with the Claimant and she made inappropriate comments.

Occupational Health Reports

- 10 o. On 16 July 2020 the Claimant attended for an Occupational Health Assessment. An Occupational Health Report was produced (Pages 46-47) which confirmed she was unfit for work and suffering from depression. The Report also stated that *"it may be difficult for her to rehabilitate to the new post that she is in due to her strong antipathy*
- 15 *towards this kind of work. She is therefore certainly more likely to be able to accommodate duties more consistent with her previous kind of task and it may be necessary for you to explore such things with her."*
- 20 p. The Claimant was absent from work from 10 April 2020 until the termination of her employment.

July 2020

- 25 q. Ms Elizabeth Taylor (Personnel Officer) with the Respondent contacted the Claimant as she qualified to be considered under the Respondent's Switch 2 Policy (Pages 193-203). Ms Taylor's responsibilities included delivering the Switch 2 process for the Respondent. This included considering vacancies for employees who require alternative employment either as a result of ill health or disability or those who's job is removed through service review or restructure.

- r. The Claimant qualified to be considered under Switch 2 after the Occupational Health Report of 16 July 2020 identified her as being unlikely to return to her substantive post as a result of her health.
- s. The Claimant informed Ms Taylor that she was applying for posts internally and separate from the Switch 2 Policy. She stated that she did not want to return to her substantive role.
- t. In or around 22 July 2020 the Claimant applied for a post as a Homeless Support Officer.
- u. The posts the Claimant applied for are detailed in (Pages 244-245).
- v. The Claimant did not tick the box in any of her job applications to indicate she was “disabled”. Had she done so she would have been guaranteed an interview by the Respondent.

August 2020

- w. The Claimant was contacted by the Respondent for an update on her health on 10 August 2020. The Claimant advised that she was suffering from depression, anxiety and stress and had been signed off by her GP. She was notified that due to the period of her absence she would be moving onto half pay with effect from 11 August 2020.
- x. The Claimant attended an Attendance Support Meeting with her line manager Susanne Mason on 26 August 2020. At this meeting the Claimant stated she was incapable of carrying out her substantive role. The Claimant agreed to a phased return to work as a Housekeeper at Meldrum House commencing 7 September 2020 (Pages 91-92).
- y. To assist Ms Taylor to identify suitable alternative vacancies she contacted the Claimant’s line manager on 27 August 2020 requesting that they email to her a copy of the Employee Profile Form. This is the form in which the employee states their experience, skills and qualifications which is then used to compare the information provided

with the requirements of the role. Ms Taylor also requested this directly from the Claimant in a telephone call around this time and by email of 27 August 2020 (Page 58). Ms Taylor also asked the Claimant to complete a stress risk assessment questionnaire regarding her job at Meldrum House to assist the Respondent to make any reasonable adjustment to her substantive post.

z. Ms Taylor considered the Claimant's suitability for roles of Housing Officer and School Support Assistant. She received advice from the service that the Claimant would need a high level of IT skills for both posts.

aa. Ms Taylor asked the Claimant to complete Learn-On-Line courses provided by the Respondent whilst she was at home in order to enhance her IT skills. The Claimant did not do so.

September 2020

bb. On 4 September 2020 the Claimant applied for the post of Residential Worker but was unsuccessful after shortlet as she did not have required practice qualifications.

cc. On 17 September 2020 the Claimant was informed that her application for the post of Homeless Support Officer had been unsuccessful after shortlet.

dd. Between 14 and 21 September Ms Taylor discussed with the Claimant various vacancies in facilities management, including catering, cleaning and janitorial. Ms Taylor verbally offered her the post of janitor because it was the highest paid of the vacancies. The Claimant informed Ms Taylor around this time that she was intending to leave the Respondent's employment through the capability process. The Claimant refused the offer.

ee. The list of vacancies within the Respondent at this time and the posts Ms Taylor considered her for are highlighted red in the bundle of documents (Pages 215-218).

ff. Ms Taylor met with the Respondent's Personnel Manager once a week to discuss vacancies and eligible employees under Switch 2.

gg. The Claimant's eligibility was hampered due to her failure to complete the IT on-line courses and the Employee Profile Form.

5 hh. In or around 10 September 2020 the Claimant instructed her trade union representative, Ian Doig, to pursue incapability termination of her employment (Page 228). Mr Doig made contact with the Respondent and advised them accordingly, by email of 15 September 2020 (Page 238-9). At that time the Respondent were not
10 considering engaging the capability process or terminating the Claimant's employment and replied by email of 16 September 2020 advising that the Respondent would need to conclude all processes before moving to any termination (Page 238).

15 ii. The Claimant by email of 16 September 2020 (Page 69) to Ms Robertson requested the Respondent to progress the incapacity process so that she could have "closure".

jj. At the Claimant's request the Respondent commenced the incapacity process and the Claimant's line manager, Susanne Mason, prepared a Report dated 24 September 2020 (Pages 71 – 97).

20 *October 2020*

kk. By letter of 5 October 2020 from the Respondent to the Claimant (Page 207-208) the Claimant was informed that an incapability hearing had been fixed for 7 October 2020.

25 ll. The Claimant attended the Incapability Hearing along with her trade union representative Mr Doig. The hearing was convened by Ms Louise Mercer who was supported by Ms Caroline Murray (Personnel Officer). Ms Murray also took notes (Pages 209-212). Ms Mercer was satisfied that appropriate supports had been offered to the Claimant, which included referrals to Occupational Health and offers of

alternative posts. The Claimant declined the alternative posts and intimated that she was unfit to return to work in any capacity.

5 mm. The role the Claimant was employed in significantly affected her mental health causing her to be absent. The Claimant was supported under the Respondent's Maximising Attendance Policy during the period from February to August 2020 by her line manager Ms Mason who held several telephone discussions with her, supporting her in the attempt to provide what she could to help the Claimant back to work. Ms Mason offered to move her into a different care home which would provide more support from colleagues who would be available during the shift and which would make it less isolating for her. Ms Mason also reached agreement with the Claimant for her to return to work on a phased part-time basis into a temporary house-keeping role. The Claimant thanked Ms Mason for all of her help and support during the process (Page 211).

10 nn. During the Capability hearing Ms Murray asked if the Claimant would be willing to accept a role as a care worker on day duties given that she intimated that the night shift role was unsuitable for her due to working in isolation, however she refused adding that she could not see herself returning in any capacity or in the foreseeable future. As she was not assessed as being permanently unfit to work she was not eligible for ill health retiral (page.211).

15 oo. The Claimant intimated that her head was not in the right place and she was unable to return to work in any capacity. The Claimant wanted to leave and she advised that she was "done" and now needed to focus on her personal circumstances.

20 pp. The Claimant was advised that her employment was being terminated on the grounds of incapability with effect from 7 October 2020.

25 qq. The Claimant was advised at the conclusion of the hearing of the right to appeal the outcome of the hearing (Page 212) but did not do so.

rr. The outcome of the hearing was confirmed in writing to the Claimant by letter of 7 October 2020 (Page 213-214).

The Relevant Law

7. The claimant asserts unfair dismissal.

5 *Unfair Dismissal*

8. Section 94 of the Employment Rights Act 1996 (“the ERA”) provides for the right of an employee not to be unfairly dismissed by his employer.

Section 98(1) provides the following:-

10 *“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –*

(a) the reason (or, if more than one, the principal reasons) for the dismissal, and

15 *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify dismissal of an employee holding the position which the employee held.*

(2) A reason falls within this subsection if it –

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

20 *(b) relates to the conduct of an employee,*

(c) is that the employee was redundant, or

25 *(d) or is that the employee could not continue to work in the position which he held without contravention (either on his part or on the part of his employer) of a duty or restriction imposed by or under an enactment.*

(4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*

5 (a) *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

(b) *shall be determined in accordance with equity and the substantial merits of the case.”*

10 9. In terms of Section 98(1) it is for the employer to establish the reason for dismissal. In the event the employer establishes there was a potentially fair reason for dismissal, the Tribunal then has to go on to consider the fairness of the dismissal under Section 98(4).

15 10. The Tribunal should first examine the facts known to the employer at the time of the dismissal and ignore facts discovered later. The onus of proof is on the employer.

11. The Tribunal must then ask whether in all the circumstances the employer acted reasonably in treating that reason as a sufficient reason for dismissing the employee. The onus of proof is no longer on the employer at this stage.
20 The matter is at large for determination by the Tribunal under section 98(4).

12. The Tribunal must also consider whether the respondent carried out a fair procedure taking into account the terms of the ACAS Code of Practice. In that regard, any procedural issues identified by the Tribunal should be considered alongside the other issues arising in the claim, including the reason for
25 dismissal (***Taylor v OCS Group Ltd [2006] EWCA Civ 702, paragraph 48***).

Disability Discrimination

Direct Discrimination

13. Section 13 of EA 2010 provides:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Unfavourable Treatment

5 14. Section 15 of EA 2010 provides:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

10 (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Unfavourable treatment can include dismissal.

15 *Failure to make reasonable adjustments*

15. Section 20 of the EA 2010 provides:

20 Duty to make adjustments

20 (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

25 (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

15 16. Section 21 of the EA 2010 provides:

21 Failure to comply with duty

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Compensation

17. Section 124(2)(b) of EA 2010 makes provision for the Tribunal to award compensation where it finds there has been a contravention of sections 13, 15 and 20.

18. An award in discrimination cases can include:

5 *i. Financial Loss*

Such as past and future loss of earnings.

ii. Injury to Feelings

A Tribunal may make an award of compensation for injury to feelings in a discrimination case. The guidelines for awarding compensation for injury to feelings are set out in the case of ***Vento v Chief Constable of West***
10 ***Yorkshire Police [2003] IRLR 102 CA (updated by Simmons v Castle***
[2012] EWCA Civ 1039.

Factors a Tribunal will take into account when assessing the level of an award for injury to feelings is the impact of the discriminatory behaviour on the individual affected rather than the seriousness of the conduct of the employer
15 or the individual responsible for the discrimination.

Submissions

19. Both Parties made oral submissions at the conclusion of the case and referred to the Schedule of Loss.

20 *The Claimant*

20. The Claimant submitted that she had no wish to leave her employment but she was left with no other option. The Respondent had not done enough to support her and hadn't taken her mental health or Occupational Health Report into account. The Respondent steered her towards incapacity. She felt the Respondent took a lazy approach. She
25 could have been working from home doing housing and homelessness posts. She asserted that she had not been appointed or properly been

considered for the posts she applied for and that this constituted less favorable treatment under section 13 of the EA 2010.

21. The Claimant asserted that the unfavourable treatment in terms of section 15 of the EA 2010 was the treatment of her absences which arose from her disability.

22. The Claimant asserted that the Respondent had failed to make reasonable adjustments as their Managing Attendance at Work Policy placed her at a substantial disadvantage compared with employees who did not share her disability.

10 *The Respondent*

23. The Respondent submitted that the Claimant had been fairly dismissed for a fair reason – capability. The dismissal was at her request, not the Respondent's. A fair procedure had been adopted and the Claimant had failed to appeal.

15 24. In so far as the section 13 claim was concerned the Claimant asserted that she had not been appointed or properly been considered for the posts she applied for. This was the less favourable treatment relied upon. There was no evidence of this and in any event there were legitimate reasons why she had not been appointed.

20 25. In respect of the section 15 claim the Claimant asserted that the unfavourable treatment was the treatment of her absences which arose from her disability. The application of the Managing Attendance at Work Policy to the absences was neutral. It was not unfavourable nor was it detrimental treatment. The steps taken by the Respondent had been supportive of the Claimant. In any event the dismissal on capability grounds had been at the request of the Claimant.

25 26. In so far as the duty to make reasonable adjustments was concerned the PCP relied upon was that the Respondent's Managing Attendance at Work Policy placed her at a substantial disadvantage in comparison with employees who did not share her disability. The Policy made provision

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for disabled employees and disability related absence (Page 172). The Respondent had, in any event, made reasonable adjustment to support the Claimant and facilitate her return to work. The Claimant was asked to complete on-line training and failed to do so, she was asked to complete an Employee Profile Form to assist with redeployment and did not do so.
5 The Respondent placed her on the Switch 2 programme which was a reasonable adjustment. The Respondent considered the Occupational Health Report when evaluating the posts that were suitable for the Claimant. The Claimant had requested a capability hearing – it was not
10 at the Respondent's insistence.

27. The Tribunal then considered the various claims advanced.

Unfair Dismissal

Reason for dismissal

15 28. The Tribunal considered the evidence in order to determine the reason, or principal reason for dismissal, at the point when that Claimant was dismissed.

29. The Respondent had clearly followed their Managing Attendance at Work Policy and, at the Claimant's request, followed their capability process.

20 30. On the basis of the evidence given by the Claimant and the Respondent's witnesses the Tribunal accepted and found that the reason, or principal reason, for the termination of her employment was the Claimant's capability. This was undertaken at the Claimant's request and the Respondent had followed a clear and transparent process which included a fact finding investigation report in advance of the capability hearing.

25 31. The Claimant was given a fair hearing and the opportunity to consider alternatives at the hearing. She did not wish to do so. The Claimant wished to draw a line under this and leave the Respondent's employment. She was represented by her trade union representative and did not appeal the decision to dismiss.

32. The Respondent was left with the position whereby the Claimant was clearly indicating she could not see herself returning to work in any capacity or in the foreseeable future.

33. In the circumstances the tribunal conclude that the dismissal was fair.

5 *Was the Claimant discriminated against because of her disability (Section 13)?*

34. The Tribunal found no evidence to support the assertion that the Claimant's applications for alternative posts should have succeeded or were not properly considered. The Respondent's witnesses gave evidence with regard to the posts applied for and the reasons that the Claimant was unsuccessful. The reasons were understandable and reasonable. They did not in any way relate to her disability, rather they related to her qualifications and experience. With regard to the last point, the Respondent had given the Claimant every opportunity to develop her skills with on-line training at home (which she did not avail herself of) and also asked her repeatedly to complete the Employee Profile Form, but she failed to do so. To that extent, the Claimant hindered the Respondent's and her own attempts to secure alternate employment.

35. A comparator who did not share the Claimant's disability would have been treated in this way.

36. The Tribunal conclude that the Claimant was not treated less favourably because of her disability.

Unfavourable Treatment (section 15)

37. The Tribunal considered whether the Claimant had suffered unfavourable treatment because of something arising in consequence of her disability. The Claimant asserted that she had been dismissed because of her absence from work which arose as a consequence of her disability. This was unfavourable treatment. The Tribunal did not accept this. The Respondent had engaged their Managing Attendance at Work Policy and also their Switch 2 Policy to try and facilitate alternate employment for her.

38. The Switch 2 Policy had been engaged to assist the Claimant due to her disability and the Managing Attendance at Work Policy had clear guidelines for the Respondent to adopt in support of employees with a disability.
- 5 39. The Respondent was doing everything it possibly could to support the Claimant and facilitate a return to work. The Tribunal preferred and accepted the evidence of the Respondent's witnesses on this point.
40. The Respondent was not at the stage of even considering dismissal for capability reasons. The Claimant requested this and even then it was only
10 reluctantly engaged by the Respondent. In advance of and at the Capability Hearing the Claimant was offered alternate roles. The Claimant did not wish to be considered for these roles and clearly intimated to the Respondent that she could not see herself returning in any capacity or in the foreseeable future.
- 15 41. The Tribunal consider that the conduct and actions of the Claimant largely made her the author of her own misfortune. She did not take any steps to assist with a return to work or redeployment such as completing on-line training or returning the Employee Profile Form. She clearly and unequivocally indicated to the Respondent she wished to leave their
20 employment.
42. The Tribunal find that the Claimant was not treated unfavourably and the section 15 claim is unsuccessful..

Failure to make reasonable adjustments (Section 20)

- 25 43. The Tribunal considered the assertion by the Claimant that the PCP was the Respondent's Maximising Attendance at Work Policy which put her at a substantial disadvantage compared to non-disabled employees as she was likely to have, and did have, more absences due to her disability.
44. The Tribunal did not accept this assertion by the Claimant. The Respondent's Maximising Attendance at Work Policy had specific
30 provisions that were engaged when it was recognised an employee was

disabled. Furthermore, the Respondent's utilised their Switch 2 Policy to facilitate the Claimant's return to work in alternate roles in light of the fact she was disabled. The Respondent's policies and actions were supportive of the Claimant and in recognition of the fact she was disabled.

5 45. The Tribunal did not accept the Claimant was in any way disadvantaged in the application of these Policies to her.

46. The assertion that the treatment of her absences was the substantial disadvantage is misconceived. It is undermined by the Claimant's own evidence that she wished the capability process to be engaged and to
10 leave the Respondent's employment. It is somewhat counter intuitive to suggest that it was the Respondent's application of their policies that caused a substantial disadvantage when she had requested the Respondent progress the termination of her employment on capability grounds even though they were not considering it.

15 47. Even if the Policy did operate in the way asserted (which is not accepted) the Respondent did make any reasonable adjustments required.

48. The reasonable adjustments asserted by the Claimant were:

a. She could have worked from home completing essential on-line training in relation to the position of care worker and further on-line
20 training. The Respondent offered on-line training from home to the Claimant and she failed to complete it.

b. The Respondent failed to adequately respond to the recommendations of the OH Report. There was clear evidence that the Respondent considered and acted upon the recommendations in
25 the OH Report and offered suitable alternate vacancies.

c. The Respondent failed to take into account her experience and qualifications when finding her suitable alternate positions as she was not asked for her CV or list of experience. Once again this assertion was contrary to the evidence and counter intuitive. The Claimant
30 failed to complete and return the Employee Profile Form which would

have provided all the information on her qualifications and experience.

5 d. The assertion that the Claimant was disadvantaged due to her Covid shielding does not constitute a reasonable adjustment. The Claimant does not assert what adjustment the Respondent should reasonably have made.

49. The claim in respect of a failure to make reasonable adjustments is unsuccessful.

Employment Judge: Alan Strain
Date of Judgment: 23 March 2022
Entered in register: 20 April 2022
and copied to parties