



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MRS C MCGILL

AND

Respondent
LLOYD'S PHARMACY LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 11TH / 12^H / 13TH APRIL 2022

EMPLOYMENT JUDGE MR P CADNEY

**MEMBERS: MS L B SIMMONDS
 MS J MILLER**

APPEARANCES:-

FOR THE CLAIMANT:- MR D MCGILL (HUSBAND)

FOR THE RESPONDENT:- MS G REZAIE (COUNSEL)

JUDGMENT

The unanimous judgment of the tribunal is that:-

The claimant's claims of:-

- i) Disability discrimination - The failure to make reasonable adjustments (s20 Equality Act 2010);
- ii) Disability Discrimination - Harassment (s26 Equality Act 2010);

Are not well founded and are dismissed

The Judgment set out above has previously been promulgated and is set out for completeness sake. The reasons below follow a written request from the claimant.

Reasons

1. By this claim the claimant brings a claim of disability discrimination in the failure to make reasonable adjustments (s20 Equality Act 2010) and harassment (s26 Equality Act 2010) the details of which are set out later in the judgment.
2. The case first came before EJ Midgely who made case management orders and listed the case for a preliminary hearing to determine whether the claimant was a disabled person and whether the claims were brought out of time, and if so whether time should be extended. EJ Lowe determined that:
 - a) The claimant was a disabled person within the meaning of s6 Equality Act 2010 by reason of dyslexia;
 - b) The claim was submitted out of time;
 - c) That it was just and equitable to extend time.
3. As a result the only issues before us are the underlying claims themselves.
4. We have heard evidence from the claimant herself, and she tendered a witness statement of Helen Ryan. On behalf of the respondent we heard evidence from Ms Karina Hall, Ms Kyra Moore, Ms Michelle Briggs, and Mr Matthew Courtney-Smith; and a witness statement from Mr Ian King was tendered.

Facts

5. The respondent operates a nationwide network of community pharmacies. The claimant was employed as a Health Care Assistant (HCA); and in a typical pharmacy there would in addition to the HCAs be Health Care Partners (HCP) who assisted at the dispensary in addition to their shop floor duties; a Dispenser who assists pharmacists in dispensing medicines; a Pharmacy Manager; and a Responsible Pharmacist (the latter two roles may in practice be combined). The claimant was employed from 2013 as an HCA at the Brislington branch. She was dismissed by reason of redundancy in November 2020 following the closure of the branch and there is no claim arising from that.
6. Her evidence is that throughout her employment she needed assistance from colleagues in reading and writing due to her dyslexia, for example in understanding upgrades to standard operating procedures (SOP), but colleagues did assist her and there is no complaint relating to any events prior to 2018 or any assertion that any more formal adjustments were required in relation to her role as an HCA.

7. The events with which we are concerned began in 2018. The claimant wished to obtain promotion to become an HCP which would require her to assist in dispensing medicines. In order to do so she would need to obtain the General Pharmaceutical Council (GPhC) qualification, in the claimant's case a Level 2 qualification. It involves several modules each of which concludes with a multiple choice examination which is held in branch. The final module is the dispensing module which is the most technically complex. The claimant's evidence is that formal adjustments would be needed to allow her to train for and take at least the dispensing module and examination. Her evidence is that for some period of time she asked her then line manager Mr Vowles if she could go on the course but he never arranged for her to do so or made any arrangements for the assessment of any adjustments. In the end she herself arranged for Access to Work to attend to make an assessment. This took place on 10th August 2018 and it recommended that the claimant be provided with ClaroRead Standard v7 software, two half day training sessions, and a C pen reader.
8. We have no evidence as to events between then and January 2019 save for an email dated 6th December 2018 in which the respondent indicates that it is having technical difficulties in organising these solutions. They were then ordered on 11th January 2019 for next day delivery. On 28th May 2019 Mr Medlock of the respondent's IT department contacted Claro Software to ask a number of technical questions about the software, one of which was whether they had completed "an application level vulnerability assessment on the software". They replied the same day saying that they had not. As a result the respondent's IT department could not approve the software being used. When this decision was taken is not at all clear, but it is referred to in an email from Mr Philip Lawton dated 2nd January 2020, and appears to have been taken at some point in the summer of 2019. Prior to that a representative of Hands Free Computing Software had attended on two occasions to provide training to the claimant but on each occasion was unable to do so. The second appears to have been on or about 15th July 2019 when she noted that the software had not been activated with the license key; the desktop had no audio output; there was no headset; and the ClaroRead installed voice was unsuitable.
9. In August 2019 Ms Karina Hall became the cluster manager for ten pharmacies including the Brislington branch. In around November 2019 the claimant approached her and informed her of her desire to do a dispensing course and of the Access to Work recommendations. She later informed her that she was dyslexic and had never been able to read or write.
10. Ms Hall's evidence which we accept was that she made enquiries and was informed that no adjustments were at that point in place. She attempted to provide the C pen but was informed by the IT department that it was not compatible for use with headphones and that if used without headphones, given that it converted text to voice, would potentially breach patient confidentiality which meant the C pen could not be used.
11. In December 2019 or early January 2020 the claimant and Ms Hall held a meeting at which Ms Kyra Moore was also present. It is comments allegedly made at this meeting which form the basis of the harassment claim. Our specific findings in relation to those matters will be set out when we consider that claim below. Ms Hall's evidence is that she explained to the claimant that the dispensing course consisted of five modules and that

any adjustments would have to be in place for the fifth, the module on dispensing which was technically the most difficult. The claimant had previously declined a referral to Occupational Health, and Ms Hall stated that there were other ways the respondent could support her including arranging shifts to accommodate any adult literacy college courses she wished to attend; and that she could arrange for overtime to be paid for another colleague to assist her in branch. Ms Moore's evidence essentially supports Ms Hall's account .

12. The claimant's account is that during the meeting she became upset and left the room, and as she did so she heard Ms Hall and Ms Moore start to laugh; and on her return Ms Hall told her "I should learn to read and write by myself."
13. A referral to Occupational Health was arranged for 2nd April 2020 but the claimant could not attend as she was unwell.
14. On 28th May 2020 the claimant lodged a grievance. She complained about the delay of two and a half years since she first raised the issues with Lee Vowles; that nothing had been done about activating the software; and that Ms Hall had suggested she required further assessment which she found upsetting.
15. The grievance was heard by Ms Briggs. There are no allegations relating to the grievance or the grievance appeal and we can deal with them relatively briefly. The grievance hearing was held on 19th June 2020 and lasted for some four hours. The claimant was accompanied by a colleague Ms Ellie Dash.
16. After the meeting Ms Briggs undertook further investigations and the claimant attended an Occupational Health referral on 13th July 2020. It recommended a further referral to Access to Work and that a specific risk assessment in relation to the difficulties in calculating and interpreting prescriptions be carried out. This was overtaken by events as on 21st July the closure of the store was announced on 21st July 2020 which resulted in the claimant's dismissal in November 2020.
17. Somewhat curiously the claimant received two separate and different letters setting out the result of the grievances. The second sent on 12th August is a fuller and more detailed. Ms Briggs identified seven issues and upheld six of them. The only one that was not upheld was the allegation of disability discrimination which Ms Briggs concluded she could not uphold as there had been no formal diagnosis of dyslexia and so at that point they could not conclude that the claimant was disabled. In addition although she accepted the claimant's account of the meeting with Ms Hall none of the allegations had been put to Ms Hall as she was on the same management level as Ms Briggs, who referred it to Ms Hall's line manager to deal with.
18. The claimant appealed and the appeal was heard Mr Courtney-Smith. He agreed that the claimant should receive a formal apology for receiving two different outcome letters; that he would meet Ms Hall to discuss the claimant's concerns and would recommend organising a meeting with the claimant's GP, Access to Work, or the British Dyslexia Association to arrange for a formal assessment.

19. Although we have dealt with the grievance and appeal briefly as they do not centrally concern this case they were clearly undertaken with considerable thoroughness and thought.

Conclusions

Failure to Make Reasonable Adjustments

20. The law in relation to the failure to make reasonable adjustments is set out below:

20 Duty to make adjustments

(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.

(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.

21. At the first case management hearing the following elements of the claims were identified.

22. PCPS – There are two PCPS:-

- i) A practice or policy of that HCAs were required to read text and complete forms both on computers and on paper;
- ii) A policy that that employees were required to undertake an online test and complete forms to pass the dispensing verification course.

23. The respondent accepts that the first is a PCP it applied, but submits that even on the claimant's evidence the proposed adjustments were not necessary to allow her to perform her existing role the role of an HCA; but would have been necessary to allow her to train for and to function as an HCP. Whilst it accepts that the PCP placed her at a disadvantage the ad hoc assistance being given to her by her colleagues was sufficient to avoid the disadvantage in relation to the HCA role.

24. In respect of the second it submits that it is not a PCP it applies, but is in fact a regulatory requirement imposed by the GPhC. If this is correct then whether or not it is a PCP there is no possibility that the respondent itself could make any adjustments to the requirement or arrangements for sitting the exam which only the qualification body itself (the GPhC) could do.

25. It is not in dispute that if either is a PCP applied by the respondent then it placed the claimant at a substantial disadvantage by reason of her dyslexia.
26. The reasonable adjustments contended for are:
- i) Providing the adjustments recommended by Access to Work in August 2018;
 - ii) To permit the claimant to use the C pen and text reading software when undertaking the dispensing verification course and exam.
27. The respondent contends neither are adjustments which it is objectively reasonable for them, or in fact possible for them to make. In his witness statement Mr King has set out the regulatory regime and requirements to which the respondent is subject. Although he has not given evidence there has been no challenge to it and we accept it. Put simply due to the respondent holding and maintaining confidential medical records its IT systems must be secure. As a consequence any external software used must comply with, and not compromise, its security requirements. By way of example the respondent does not permit the use of Zoom on its systems but does permit the use of Microsoft Teams, as the latter meets its security requirements but the former does not. As set out above the respondents IT department determined that the ClaroRead software did not meet its security requirements and that to permit its use would potentially breach its data confidentiality obligations; and as a result it was not possible to install it. Of necessity if it could not be installed it could not be used. In addition the C pen was not compatible with headphone use, and if used in branch to convert patient details, or records or prescriptions to voice would again risk patient confidentiality. As a result even though this software had been identified by Access to Work as useful for someone with dyslexia, in the specific circumstances of the respondent, it could not permit it to be installed or used. Whilst it may have taken an extremely long time to obtain the recommended items and identify that they could not be used, and failed completely to inform the claimant of this; for the reasons set out above it could not at any stage have installed the software or allowed the claimant to use the C pen without breaching its regulatory data protection obligations, or the requirement of patient confidentiality.
28. In relation to the second adjustment, they could not permit the claimant to use the software and C pen for examinations any more than they could in her work for the same reasons set out above; and in any event they had no authority, and it was simply not open to them or within their gift, to make any adjustments to the course requirements, or the test itself, or the conditions under which the test was taken as that could only be done by the GPhC.
29. We are extremely sympathetic to the claimant, particularly in relation to the delays in obtaining the items, in discovering that they could not be installed or used; and the complete failure to communicate this. However, we accept all of that evidence and the respondents submissions as set out above. It follows that in our judgement the even if the PCPs were both PCPs, that the adjustments contended for are not ones that objectively it was reasonable to require the respondent to make; and that this claim must be dismissed..

Harassment

30. The law in relation to harassment (insofar as it is relevant to this case) is set out below:

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

31. The allegation of harassment identified in the first case management hearing was:- *“Did Karina Hall say to the claimant on a number of occasions in approximately April 2020 that she should better herself by learning to read and write”*.

32. Before dealing with the specific allegations we should say that we have considerable sympathy for the situation that both the claimant and Ms Hall found themselves in by November 2019. Nobody disputes that the claimant was very anxious to progress by going on the dispensing course and that from at least early 2018 she had raised this. She had herself arranged for Access to Work to attend and make recommendations, which they had by August 2018. Those recommendations were never implemented for the reasons set out above but the claimant was never informed of this or the reason why until Ms Hall became the cluster manager almost two years after the process first began; and only to discover that effectively the process would need to begin again with a referral to Occupational Health being suggested. The claimant's anger and frustration at the situation is wholly understandable and justified.

33. Equally however, it is difficult not to have considerable sympathy for the situation Ms Hall found herself in. She had been informed that implementing the recommended adjustments was not possible and it followed automatically that starting again was the only available option. She did take hold of the situation and did discuss the options available to the claimant and practical ways in which she could assist her. Having heard Ms Hall's evidence we have no doubt that she was genuinely trying to do everything she could to help the claimant but was bearing the brunt of the claimant's frustration at the previous delays and failure to keep her informed, for which Ms Hall was not responsible.

34. In relation to the specific allegation, there is in fact no evidence before us of any such conversation in or around April 2020. Even on the claimant's evidence there is only one allegation of any such comment which relates to the meeting in December 2019 / January 2020. The difficulty for the claimant is that in the grievance meeting she specifically denied that any such comment had been made directly to her but alleged that she had been told by Ellie Dash that a similar comment had been made to her. There are therefore three different factual versions of those events; firstly that the comments had been made to the claimant directly in April 2020 on several occasions, secondly that they had been made to Ellie Dash, not her, and thirdly that they had been made on one occasion in the meeting. Before we can make any finding as to the allegation of harassment we have to make precise findings of fact as to what was said and the context of the conversation. Given the disparity in the claimant's accounts we are not satisfied that we can accept her evidence on the balance of probabilities and prefer the account of Ms Hall and Ms Moore.
35. Clearly however, even on their accounts, there was some discussion of the claimant attending adult literacy classes. For completeness sake and even though we have not upheld the claimant's factual allegations which would be sufficient in and of itself to dispose of the claim, we have gone on to consider the claim on the basis of the respondent's factual account of the meeting which we accept. In determining whether that amounts to harassment we are required to take into account (s26(4) above) the perception of the claimant, the other circumstances of the case; and whether it is reasonable for the conduct to have the proscribed effect. For the reasons set out above we accept that the whole conversation consisted of exploring ways in which to assist the claimant; and in those circumstances in our judgement it would not satisfy the last of those tests, that it is reasonable for the conduct to have the proscribed effect.
36. It follows that this claim must also be dismissed.

EMPLOYMENT JUDGE

Dated: 5th May 2022

**Judgment and reasons entered into
Register and copies sent to the
parties on 25 May 2022
By Mr J McCormick**

for Secretary of the Tribunals