



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE BALOGUN

MEMBERS: Ms D Sanderson-Estcourt
Ms G Mitchell

BETWEEN:

Miss S Gates

Claimant

And

Faversham Laundry Limited T/A Faversham Linen Services

Respondent

ON: 1 August 2022

Appearances:

For the Claimant: No attendance

For the Respondents: Mr T Fuller, Consultant

JUDGMENT

The claim of disability discrimination fails and is dismissed

REASONS

1. By a claim form presented on 30 April 2018, the claimant brought a complaint of disability discrimination arising out of her dismissal as a Laundry Operative with effective from 28 November 2017. A claim of unfair dismissal was struck out at an earlier hearing due to the claimant not having sufficient qualifying service.
2. The claimant did not attend the hearing. On 4 July 2022, she applied for a postponement of the hearing on the basis that she was not ready and needed to find a barrister. That application was refused on 14 July 2022 by Employment Judge Ferguson. On Friday, 29 July, the Regional Employment Judge confirmed that the hearing was going ahead today, in Croydon, as previously advised. Today, the claimant has written stating that she cannot come to Croydon due to health reasons and wants the matter transferred back to Ashford. I refused that request and the claimant was told that if she did not attend, the hearing would take place in her absence. The claimant did not attend. Although the Tribunal had the option of striking the claim out pursuant to Rule 47 of the Tribunal Procedural Rules 2013, we decided that the better approach was to hear the matter in the claimant's absence, which we duly did.
3. The respondent attended and gave evidence through Emma Knox, Director and Richard Cope, Managing Director. The claimant did not provide a witness statement, despite being ordered to do so by 8 December 2020. We have therefore treated her particulars of claim as her statement of case. We were also provided with a bundle of documents.

Issues

4. The claimant has severe osteoarthritis in her left hip and knee and the respondent concedes that she is disabled within the meaning of the Equality Act 2010 (EqA) as a result of these conditions. The claims are brought under sections 15 and 20/21 EqA and the issues are set out in the case management order of 4 October 2019.

The Law

5. Section 20 EqA provides that where a person (A) applies a provision, criterion or practice (PCP) which puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled it is the duty of (A) to take such steps as it is reasonable to have to take to avoid the disadvantage.
6. Section 21 EqA provides that a failure to comply with a section 20 duty constitutes discrimination against a disabled person.
7. Section 15 of the Equality Act 2010 (EQA) provides that 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
- b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

Findings of Fact

- 8. The sworn evidence of the respondent's two witnesses was unchallenged and largely supported by contemporaneous documents. We therefore accept the factual chronology in their statements which we adopt as our findings.

Submissions

- 9. The respondent's representative has provided us with written submissions, which we have taken into account.

Conclusions

- 10. Based on our findings, the submissions and the relevant law, we have reached the following conclusions:

Failure to make reasonable adjustments

- 11. We find that the respondent applied the following PCP:

- a. that the role of laundry operative could not be carried out whilst using a walking stick
- b. That the role had to be done standing up

- 12. The respondent accepts, and we agree, that this would have put the claimant at a substantial disadvantage because of her mobility difficulties caused by her disability.

- 13. The claimant proposed a number of potential adjustments and we deal with these below:

Not being allowed to work with a walking stick

- 14. We accept Ms Knox's evidence that these would not be reasonable adjustments for the reasons set out in paragraphs 67-69 of her statement.

Leaning on structure in the Factory

15. We accept Ms Knox's evidence that this would not be a reasonable adjustment for the reasons set out at paragraphs 59-62 of her statement.

Sitting

16. We accept Ms Knox's evidence that this would not have been a reasonable adjustment for the reasons set out at paragraph 64 of her statement.
17. There were no alternative roles available for the claimant and we are therefore satisfied that no reasonable adjustments could have been made that would have enabled he to return to work.
18. The section 20 claim fails.

Section 15 claim

19. The unfavourable treatment was the dismissal.
20. The "something arising" was the claimant's absence and this was in consequence of her disability.
21. The respondent's legitimate aim was the protection of the health and safety of the claimant and the workforce in general. We accept that this is an appropriate legitimate aim.
22. Turning to the issue of proportionality, we must ask ourselves whether the treatment of the Claimant was reasonably necessary to achieve the stated aims. Allonby v Accrington & Rossendale College and others [2001] EWCA 529. Put another way, could the aims reasonably have been achieved by a less discriminatory route and do the Respondent's aims outweigh the discriminatory impact of the treatment. That involves a balancing of the reasonable needs of the business against the effects of the respondent's actions on the claimant.
23. The impact of the unfavourable treatment on the claimant was that she lost her job and source of income in circumstances where it would have been difficult for her to find alternative employment given her health issues. However, by the time of her dismissal, the claimant had been absent from work for over 8 months and the consensus was that there was no prospect of her being fit to carry out her role without adjustments for the foreseeable future. We are satisfied from the evidence that allowing the claimant to return with the adjustments she proposed would have presented a health and safety risk to her and others. The respondent has a statutory duty to take care of the health and safety of its employees in the workplace and we are satisfied that this outweighs the need for the claimant to be employed.

24. The respondent referred the claimant to occupational health on a number of occasions. It also carried out a work place assessment and sought guidance from the Shaw Trust, a charitable organisation that assists disabled and disadvantaged people into employment. All of this was done in an attempt to explore ways of retaining the claimant in employment. However, in the absence of any suitable adjustments and with little prospect of the claimant being fit to return to work (her condition was worsening) we are satisfied that dismissal was proportionate.

25. The section 15 claim fails.

Judgment

26. The unanimous judgment of the tribunal is that all claims fail and are dismissed.

Employment Judge Balogun
Date: 1 August 2022