



EMPLOYMENT TRIBUNALS

Claimant: Mrs C James

Respondent: Cardiff Council

Heard at: Cardiff

On: 20 and 21 September 2022

Before: Employment Judge Ward

Representation:

Claimant: In person

Respondent: Mr Evans (counsel)

JUDGMENT

1. The claimant did not hold a philosophical belief.
2. The claim for discrimination on the grounds of philosophical belief is dismissed.
3. The claimant was disabled from March 2021 with anxiety and depression.

REASONS

The issues and applicable law

1. Further to the case management orders made on 1 December 2021 the preliminary matters to be determined were:
 - (a) Did the Claimant hold a protected characteristic of a philosophical belief of the right to protest under section 10 of the Equality Act 2010? In particular, applying, *Grainger Plc and others v Nicholson [2010] 2 All E.R. 253* the questions for the Tribunal are:
 - Is the belief genuinely held;

- Is the belief a belief and not an opinion or a viewpoint based on the present state of information available;
- Is it a belief as to a weighty and substantial aspect of human life and behaviour; Has the belief attained a certain level of cogency, seriousness, cohesion and importance;
- Is the belief worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others?

(b) Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the alleged discrimination? The questions for the Tribunal are:

- Did she have a physical or mental impairment
- Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
- If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
- Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
- Were the effects of the impairment long-term? The Tribunal will decide: did they last at least 12 months, or were they likely to last at least 12 months? if not, were they likely to recur?

The evidence

2. The Tribunal heard evidence from the claimant. A bundle of 400 pages was submitted. The statement for the Respondents witness was in the bundle but was not referred to as his evidence was unable to assist the Tribunal with the evidence related to the two preliminary matters.

The relevant facts

3. The claimant was employed by the Respondent as a teaching assistant at Oakfield Primary School. Her claims for discrimination can only proceed to a full hearing if she had the protected characteristics of philosophical belief and or disability.

Philosophical belief

4. The claimant explained that she had a belief in the right to protest which was of high importance to her. She had protested on animal rights demonstrations as a teenager and had attended another protest in August 2020. She explained that just because she had not been to a protest for some time did not mean that she didn't take an interest. She took action and protested in August 2020

because the Coronavirus Act issues were close to her heart. She did not comment generally on social media. The claimant clearly views the right, as enshrined in the Human Rights Act 1998 Art 11, as a fundamental freedom which must be protected and demonstrates her belief by listening to everyone's views and debating issues.

Disability

5. The claimant explained that she had four conditions namely; asthma, underactive thyroid, type 2 diabetes, anxiety and depression. These are all physical or mental impairments that she had been diagnosed with prior to the alleged discrimination.
6. I will turn first to the question of credibility raised by the respondent. I accept the reasons the claimant gave for not identifying herself as disabled when she applied for the permanent role at the school. The claimant did not appreciate at the time she would be so defined, but did appreciate that she had long term medical conditions that required monitoring that she did note to Occupational Health (p224). She did not however identify herself as disabled and said when she applied for the permanent post in late 2019 and pre September 2020 that her health had been the best it had been. Her conditions were well under control and not affecting her day to day activities substantially.
7. The next question to consider is whether the claimant's impairments had a substantial adverse effect on the claimant ability to carry out day to day activities at the time of the alleged discrimination. That was agreed by the parties as between 1 September 2020 and July 2021. I shall deal with each impairment in turn.
8. Asthma- there was little evidence in the claimant's statement about how this impairment affects her day to day activities and no further detail was provided in answers to questions. I understand that her health conditions are linked and exacerbate each other. The claimant was not on medication at the relevant period but is now using a preventative inhaler.
9. Underactive Thyroid- the day to day impact of this condition, for which the claimant takes daily medication is fatigue. The example given was not being able to be physically with her children. Medication does help but doesn't take away the fatigue. She referred to the inability to do anything else after a days work but did not give any specific detail or when this might occur with medication or without.
10. Type 2 Diabetes – the effect is set out in paragraph 4 in the claimant's statement, effects include increased thirst, sensitive skin fatigue and her ability to fight infections. However there was no further detail. The claimant has ongoing medication.

11. Anxiety and depression – the claimant explained how she self manages her mental health and that it is a continuum she had experienced since a teenager. As to the effects she explained trouble leaving the house, panic attacks and the avoidance of doing things, like using the telephone or meeting friends. These can be controlled but were made worse after the situation at work after 1 September 2020.
12. The GP letter (p345) confirms that in March 2021 the claimant had anxiety again and this has continued to date which is evidenced in the GP records (p198) as well. The Occupation health referral following the covid risk assessment in late February 2021 (p263) detailed how the claimant was starting to be affected; avoiding situations and describes anxiety and panic attacks. These effects have last more than 12 months and I should say that the evidence of the claimant smiling at the protest does not detract from the effects or in any way mean that her symptoms are fictional.
13. The claimants evidence was that all her conditions have different effects and affect each other. The difference in the severity of the particular impairment and the particular effect was difficult to ascertain.

Conclusions

Philosophical belief

14. One of the protected characteristics covered by the Equality Act is religion or belief and for these purposes belief means a philosophical belief. The principles that govern whether a particular belief is a philosophical one and therefore protected is set out in the Employment Appeal Tribunals decision of *Grainger Plc and others v Nicholson [2010] 2 All E.R. 253*. This provides a criteria to be applied to a very modest threshold.
15. The starting point is to determine what exactly is the relevant belief? The claimant confirmed this is the right to protest. This can only qualify for protection if it is in accordance with the 5 principles is the *Grainger* case set out in paragraph 1 (a) above which I shall now consider.
16. In relation to - Is the belief genuinely held; I am of the view that the claimant does believe in the right to protest and that this is genuine.
17. The second question - Is the belief a belief and not an opinion or a viewpoint based on the present state of information available; I struggle more with. The claimant is clearly holds the belief as part of her basic human rights and is supports the value the right to protest has in society. But is it more than a viewpoint? For it to be a belief it must affect how a person lives their life or

perception of the world. Although it does not have to govern the entirety of their life. I heard no evidence that the claimant actually lived according to the precepts of such a belief. I must be satisfied that the claimant actually adheres to the belief and that that adherence forms something more than a view. I heard no evidence of how she lives her life differently. As the belief had no impact on the claimant's everyday life other than listening and debating. I cannot agree that holding a value in the right to protest is a belief amounting to a philosophical one in this case. I appreciate that she holds the right to protest dear to her heart but to be a belief it needs to be more than that. Her protest in August 2020 was a reaction to the pandemic and actions of the government. As I have found the claimant's belief to be a viewpoint. I have not therefore had to consider the remaining elements of the Grainiger test.

18. As a result, I do not find that the claimant held a protected characteristic of a philosophical belief.

Disability

19. For the Asthma there was no evidence of any substantial adverse effect, her condition was well controlled without medication.
20. For the underactive thyroid there was insufficient evidence of a substantial adverse effect on day to day activities. I appreciate that fatigue and inability to do anything after a days work might be significant but this was a general statement and not one pertaining to the time of the alleged discrimination. It lacked the detail required and was too vague. I did consider the effect without medication but there was insufficient detail for me to make any finding.
21. For type 2 diabetes again there was insufficient detail of the substantial adverse effects. Fatigue was mentioned and discussed about for reasons given above in paragraph 17 there was not enough evidence to make a finding that there was a substantial adverse effect on her ability to undertake day to day activities. I did consider the effect without medication but there was again insufficient detail for me to make any finding.
22. Anxiety and depression the examples given are substantial adverse effects and have lasted 12 months. The claimant was disabled with anxiety and depression for March 2021. On balance I find that it is the anxiety and depression that causes the substantial adverse effect though the other conditions are exacerbated.

Employment Judge Ward
Dated:26 September 2022

REASONS SENT TO THE PARTIES ON 27 September 2022
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche