EMPLOYMENT TRIBUNALS

Claimant: Mrs K Weight

Respondent: Cherish UK Ltd

Heard at: Manchester **On: 13 and 14 September 2022**

Before: Employment Judge Serr, Ms Radcliffe, Mr Stemp

Representation
Claimant: Mrs Weight, in person
Respondent: Ms Watson, manager of the Respondent

JUDGMENT having been sent to the parties on 16 September 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS ON LIABILITY

The Issues

1. The Claimant brings a claim for disability discrimination and unlawful deduction of wages ("the wages claim").

2. The issues were previously identified at a Preliminary Hearing before Employment Judge McDonald on 5/8/21 which the Tribunal had sight of. The Tribunal will return to those issues. The original hearing was listed for four days to determine all matters. It was later reduced to three and then two. The parties were not legally represented at any point. Perhaps understandably given the emphasis the Claimant had placed on it, but mistakenly in the Tribunal's view, the focus for both parties in preparing the hearing was the wages claim. The Tribunal was presented with a bundle of over 650 pages, the vast majority of which seemed to relate to the wages claim.

3. The wages claim itself was for a modest amount of less than £2000 but on discussion with the parties it became clear that it would require substantial amounts of time to untangle it as it related to an alleged mismatch between the hours the claimant said she worked, and the respondent recorded time on its payroll system. The Tribunal determined with agreement of the parties to 'park' the wages claim as it was wholly separate from the discrimination claim, to hear

evidence and submissions purely on liability for the discrimination claim and then remedy on the discrimination claim if appropriate. The parties were encouraged to continue to talk with a view to narrowing the wages claim or if possible, resolving it. If not, it would be adjudicated on after the discrimination claim had been determined. In fact, the Tribunal concluded the discrimination claim including remedy in the two days allotted. There was insufficient time to adjudicate on the wages claim which was the subject of further case management orders.

4. As indicated the issues were previously identified in a case management order. They are, so far as relevant, as follows:

1.Time limits

1.1Were the discrimination claims made within the time limit in section 123 of the Equality Act 2010?

The Tribunal will decide:

1.1.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

1.1.2 If not, was there conduct extending over a period?

1.1.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1Why were the complaints not made to the Tribunal in time?

1.1.4.2In any event, is it just and equitable in all the circumstances to extend time?

2.Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

2.1The respondent accepts that it knew that the claimant had the disability.

2.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

2.2.1PCP1: That the claimant carry out the full duties of the office care coordinator role from the office rather than from home?

2.2.2 PCP2: That for at least some of the time when carrying out the office care coordinator role, the claimant be required to be responsible for the "on-call phone"

2.2.3 PCP3: Requiring support workers providing care in the community and working night shifts to take on additional calls in the morning and before they began their night shifts?

2.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that her disability made her very tired so that she needed time to rest, to take breaks and to work fewer hours?

2.4 Did the respondent know, or could it reasonably have been expected to know, that the claimant was likely to be placed at the disadvantage?

2.5 Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The claimant says that the following adjustments to the PCP would have been reasonable:

2.5.1 In relation to PCP1, allowing the claimant to work from home on Wednesday, Thursday and Friday

2.5.2 In relation to PCP2 not requiring the claimant to be responsible for the on-call phone;

2.5.3 In relation to PCP3: Allowing the claimant to work the night shifts only without taking on any additional calls in the morning or before she began that night shift.

2.6 By what date should the respondent reasonably have taken those steps?

3.Remedy for discrimination

3.1Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

3.2What financial losses has the discrimination caused the claimant?

3.3Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

3.4If not, for what period of loss should the claimant be compensated?

3.5What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

3.6Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

3.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

3.8 Should interest be awarded? How much?

5. The Tribunal makes three observations in respect of the issues identified at the Preliminary Hearing. Firstly, it was accepted (as it had to be) that the claimant

was at all material times a disabled person because of the condition of cancer pursuant to Equality Act 2010 Schedule 1 Part 1 Paragraph 6 (1). Secondly the respondent accepted that it knew of this condition. These matters were rightfully not identified as issues to be determined.

6. Thirdly, in relation to PCP 1 the claimant did not identify as a reasonable adjustment being permitted to work from home every Wednesday Thursday and Friday (as the issues as drafted may have suggested). Rather, as will be seen the claimant sought a short period of home working of approximately four days in total following a return from surgery to see how she would cope.

The Facts

7. The Tribunal heard from the claimant and for the respondent Karen Davenport, branch manager and Ryan Watson Operations Director. The company was represented by Ms Watson a senior manager. While the bundle ran to some 650 pages, the Tribunal indicated it would only read the witness statements of the witnesses who gave evidence and those documents its attention was brought to. In fact, there was very little relevant documentation to assist it.

8. The Parties were not professionally represented and struggled with some of the concepts governing a claim for disability discrimination. The Tribunal assisted both parties as far permitted, considering the overriding objective and Chapter One of the Equal Treatment Bench Book 'Litigants in Person and Lay Representatives'.

9. The Tribunal made the following findings of fact.

10. The respondent provides care services to vulnerable service users in their own homes to assist them with daily living requirements. Some of this care is acutely sensitive being end of life care. The operation requires some services to be provided during the day and all night. The respondent has 4 branches. The Group however which the respondent is a part of has over 600 staff. The HR and payroll function of the respondent is shared with the other group companies. The claimant's branch was in Rochdale and had 60 staff. Its manager was Karen Davenport.

11. The Tribunal was told that the Respondent is a family business that has grown significantly over a short period of time through acquisition and organic growth. This pace of this growth has meant that its policies and procedures may not have been all they perhaps could have been at the material time. Since this time the HR function has been strengthened.

12. The claimant was employed from March 2019 as a support worker. The contract was contained in the bundle. The claimant was a hardworking and diligent employee who undertook her role with the seriousness it undoubtedly deserved. This entailed travelling to clients' homes before usually returning to her home or occasionally the office. Relevant information was inputted via an app. She worked mainly night shifts 10pm-7am between 3-4 days a week.

13. On 9/7/20 the claimant applied for and was ultimately successful at securing the care coordinator role with the respondent. At the time of applying for this role the claimant was undertaking tests in respect of a possible cancer diagnosis. The respondent was aware of this.

14. The care coordinator role contract was also contained in the bundle. This was a largely office based role the purpose of which was to allocate staff to clients' packages. It involved speaking with district nurses, social workers, families and other relevant stakeholders in furtherance of service users requirements.

15. The role was 9am-5pm, 5 days a week. In addition, the claimant was to have the on-call phone every other week. This entailed manning a mobile phone after hours to deal with queries from support workers involving changing shifts/rotas and appointments. Most queries were between 5pm-9pm but the phone could occasionally ring at night. The claimant would have a company laptop and access to the system at home to deal with these queries. The on-call rota was alternated with Karen Davenport who had undertaken it exclusively prior to the claimant's appointment.

16. While the role was predominantly office based the claimant would for approximately 25% of the time be required to attend at service users' homes, for spot checks to set up a package for a new client or effect a change in services.

17. The claimant was diagnosed with thyroid cancer and was booked in for a surgical procedure on 8 September. This was occurring during the height of the pandemic, and she was required to shield for two weeks in advance of the procedure.

18. An email dated 19/8 evidences a request for the claimant to work from home during this period. It states she would be "doing referrals, diverting the phone when busy, speaking to service users to check all care is given, like spot checks but over the phone". This was authorised by Karen Davenport who accepted in evidence that it was a practical measure for that period. In the end the claimant could only manage 2 ½ days before succumbing to illness related to the cancer. She was then signed off sick.

19. The claimant's operation occurred as planned (in fact she had two operations in September). She then had a period of recuperation. By the end of September, the claimant was looking to return to work. It seems there were discussions and text messages between the claimant and Karen Davenport related to this return. The Tribunal saw no text messages and neither party could recall with any precision the content of the phone calls.

20. The Tribunal did have an exchange of emails related to the return dated 1 and 2 October 2010 between the claimant and Mr Ryan Watson to which Ms Davenport was copied in. That exchange in the Tribunal's view is so significant to the case it justifies quoting in full.

21. The message dated 1/10/20 timed at 13:33 from Ryan Watson to the claimant cc in Karen Davenport had subject 'sick note' and stated

    I met with Karen yesterday and she has informed me your sick note was due to end on 30th of September 2020. And that you had sent an e-mail with multiple issues on the 28th, firstly I would like to address your request to work from home following the sick note running out. I appreciate this is a difficult time for you but after considering the points raised we will not be able to accommodate this requests.

The reason for this is as a new employee to an office type role we cannot viably monitor your work. Secondly all of our office staff are required to assist the service to provide emergency cover and at this moment we are having to cover the office thusly directly affecting our office budget.

You will need to meet with Karen to complete a return to work so that we can assist with a phased return.

Thank You.

22. The reply from the claimant was on 2/10/20 at 16:26 subject Re: Sick Note cc Karen Davenport and stated

Hi Ryan,

My request to work from home was for four days to see how I'd cope with hours 9-5 PM as at present I fall asleep a lot during the day but I wouldn't have known if being busy would avoid this feeling or make it worse. I didn't feel I was requesting something unreasonable and if I asked my doctor for return to work certificate I could have conditions added which as an employer you would need to follow. They are many things in place that meant you could monitor my work computer software, phone app for me answering calls and emails, so I was thinking very short term couldn't see the issue.

I was rushing to return to work to help out as I'd realise Kathryn was no longer working in the office. I'm really struggling with tiredness and anxiety and feeling I've not got Cherish support makes this harder, as Karen will tell you I like things to work well, I worry and always want to do my best and help anyway I can, I always try to give it 100%.

My doctor has given me another sick note while I adjust medication in hope this helps, I'm reducing one of medications I take and on Monday can stop this altogether and double up on another medication I take but these changes will take a week or so to feel any benefits.

If I do feel up to returning to work before the sick note runs out then I will request a fit note.

I will keep Karen informed weekly.

Just one last note- before applying for this job role I asked Karen if I should apply as she knew I was having operation and being tested for cancer, I've always been honest and upfront and was told 100% to apply.

23. It is probable that Mr Watson learned of the home working request from Ms Davenport. How she learned of the request is a matter of conjecture. There is a reference to “an email with multiple issues sent on 28th.” There are emails dated 28/9/20 to Jacquie Shaw the accounts clerk at pp161 and 167 of the bundle raising pay issues. The Tribunal has had no sight of any email requesting a reasonable adjustment in respect of the claimant’s condition other than the email dated 2/10. On balance doing the best it can with the evidence it has the

Tribunal concludes that the request for home working was made verbally to Ms Davenport.

24. The Tribunal notes that the decision to reject the request for home working was taken prior to any minuted face to face return to work (RTW) meeting where the respondent could have fully explored the claimant's requirements and tested it against its own. It was done without any reference to an Occupational Health assessment or evidence sought from her consultant or GP as to her capabilities or prognosis. Most importantly it was taken on an erroneous basis. In his evidence Mr Watson said he believed the request was for a permanent change to 4 days a week out of 5 from home. The Tribunal finds that the claimant never requested a permanent change at any time. Had a RTW been conducted in advance with the claimant and noted this would have been clear. In any event the Tribunal is completely satisfied that the email of 2 October 2020 makes it quite clear that the adjustment she sought was a temporary period of home working, initially for the first 4 days of her return to assist with the fatigue and anxiety caused by her condition, her surgical procedure and its aftermath.

25. Following the 2 October email, the claimant went off sick and her plans for a return were put on hold. The Tribunal accepts that the continued absence from this date was at least in part because of the refusal to be able to work from home and on balance with home working she would have returned to work as she intended to.

26. The claimant was signed off sick from 30/9-30/10/20. During this period the claimant decided she wanted to return to the support worker role. Her principal reason was that she would be able to work only 3 nights a week and she considered the role less physically and mentally draining than care co-ordinator. The assertion it was less physically draining was slightly surprising to the Tribunal and somewhat counter intuitive. That said the Tribunal accepts there were several operative factors such as the absence of any on call element, the fact that she only worked 3 nights a week and the difference in duties which explains why she genuinely held that view and was entitled to do so.

27. The claimant began her first shift on 31/10/20. She does not appear to have been issued with a new contract of employment.

28. The shifts were between 9-10 hours. Again, there was no minuted RTW and no Occupational Health assessment undertaken prior to the new role being undertaken. The Tribunal accepts that the claimant indicated verbally that she only wanted to undertake those shifts and not to do supper calls and morning calls (also referred as teas and beds) which seems to consist of a small period of support to service users before and/or after the regular shift. It seems the claimant was asked to do these extra shifts on occasion and undertook them. The Tribunal had no cogent evidence about how frequently these were undertaken or the context of the request. The Tribunal finds, and it was not disputed, that teas and beds could have been refused by the claimant if she did not want to do them.

29. In late November the claimant went off sick again. She did not return back to work and resigned with effect from 18/1/21.

30. The early conciliation certificate period ran from 25/11/20 to 8/1/21. The claimant issued a claim to the Tribunal on 11/1/21. As Employment Judge

McDonald identified this was a claim for disability discrimination and arrears of pay. She was asked to provide more details of her disability discrimination claim, instead she filed a second claim numbered 2402254/2021 including details of the disability claim on 4/3/21. It was confirmed this was a duplicate of the first claim 2401016/2021 and so was dismissed by order dated 5/8/21.

The Law

31. The Equality Act 2010 states as follows so far as is relevant:

s.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.

s. 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.

s.39 (5) a duty to make reasonable adjustments applies to any employer.

s.212 "Substantial" means more than minor or trivial

s.123Time limits
(1)Proceedings on a complaint within section 120 may not be brought after the end of—
(a)the period of 3 months starting with the date of the act to which the complaint relates, or
(b)such other period as the employment tribunal thinks just and equitable.
(3)For the purposes of this section—
(a)conduct extending over a period is to be treated as done at the end of the period;
(b)failure to do something is to be treated as occurring when the person in question decided on it.
(4)In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

32. A failure to make a reasonable adjustment involves considering:

i. the provision, criteria or practice applied by or on behalf of an employer;
ii. the identity of non-disabled comparators (where appropriate); and

iii. the nature and extent of the substantial disadvantage suffered by the claimant. *Environment Agency v Rowan* [2008] IRLR 20,

> "the nature and extent of the disadvantage, the employer's knowledge of it and the reasonableness of the proposed adjustment necessarily run together. An employer cannot … make an objective assessment of the reasonableness of proposed adjustments unless he appreciates the nature and extent of the substantial disadvantage imposed upon the employee by the PCP'. *Newham Sixth Form College v Sanders* [2014] EWCA Civ 734.

33. Provision, criterion or practice is a concept which is not to be approached in too restrictive a manner. The protective nature of the legislation means a liberal, rather than an overly technical approach should be adopted.

34. The adjustment contended for need not remove entirely the disadvantage. The Act says that the adjustment should avoid the PCP having the effect of placing the disabled person at a substantial disadvantage. When considering whether an adjustment is reasonable it is sufficient for a tribunal to find that there would be 'a prospect' of the adjustment avoiding the disadvantage—there does not have to be a 'good' or 'real' prospect of that occurring.

35. The test of 'reasonableness', imports an objective standard and it is not necessarily met by an employer showing that he personally believed that the making of the adjustment would be too disruptive or costly. Ultimately it is for the Tribunal to determine what is or is not reasonable taking into account all necessary factors. While not a definitive list some of the factors which may be taken into account are set out at paragraph 6.28 of the Equality and Human Rights Commission Code of Practice on Employment 2011 ("the code").

- whether taking any particular steps would be effective in preventing the substantial disadvantage;
- the practicability of the step;
- the financial and other costs of making the adjustment and the extent of any disruption caused;
- the extent of the employer's financial or other resources;
- the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
- the type and size of the employer.

36. Paragraph 6.32 of the code headed 'adjustments in practice' states

> It is a good starting point for an employer to conduct a proper assessment, in consultation with the disabled person concerned, of what reasonable adjustments may be required. Any necessary adjustments should be implemented in a timely fashion, and it may also be necessary for an employer to make more than one adjustment. It is advisable to agree any proposed adjustment with the disabled worker in question before they are made.

37. A tribunal must consider when time begins for time limitation periods. In reasonable adjustment cases that will involve determining whether or not there has been an actual decision not to comply in which case that will fix the date see - *Kingston upon Hull City Council v Matuszowicz* (2009) ICR 1170 CA.

Conclusions

38. The Tribunal turns to applying the facts it has found to the law in question using the framework of the identified issues.

PCP 1

39. Did the respondent have a PCP of carrying out the full duties of the office care co-ordinator role from the office rather than from home? The answer is clear it did, and such was made clear in the email of 1/10/20 from Ryan Watson.

40. Did the PCP put the claimant at a substantial disadvantage compared to someone without cancer in that her disability made her fatigued? The Tribunal is satisfied it did. The Tribunal accepts that office based working would have a disparate impact on the claimant because of this fatigue. It entailed a commute, an inability to regulate work pattern of any kind, and a need to negotiate office premises.

41. Did the respondent know or could have been expected to know that the claimant was likely to be placed at a substantial disadvantage by the requirement for office based working? The Tribunal finds it could for 2 reasons. It was told explicitly in the email from the claimant on 2/10/20. Further, the Tribunal finds it would have been clear had an Occupational Health assessment or medical evidence been obtained and a RTW undertaken as it ought to have done.

42. Did the respondent fail in its duty to take such steps as would have been reasonable to avoid the disadvantage by allowing the claimant to work from home? For the reasons given the Tribunal accepts that the adjustment contended for initially was 4 days in total not 3 as identified in the issues. It may have ultimately required more but was not a permanent change to 3 or 4 days every week.

43. The Tribunal is so satisfied that the respondent failed to make a reasonable adjustment. This was a modest, temporary measure for a loyal and hardworking employee who had been subject to serious surgical intervention and a serious condition. The respondent had offered her this previously without issue. There was no evidence that home working for a short period of time was impractical or would unduly affect the claimant's business needs. Mr Watson in evidence accepted as much but asserted it could not be done permanently. It was not being asked for permanently and this erroneous assumption was based on a failure to properly communicate with the claimant and adequately scrutinise the email of 2/10. It is no answer to say that following that email the claimant went off sick. The duty to keep in touch and undertake adjustments remained. It is of some surprise to the Tribunal that there was no follow up to the email of 2/10 when she had given explicit examples of how her work could be monitored and confirmed it was a "very short term" measure.

PCP 2/PCP3

44. The Tribunal can address PCP 2 and 3 briefly. The Tribunal is not of the view that the claimant has established that she was required to be on the on-call phone or take on the additional shifts. In respect of PCP2 there is no cogent evidence that not being on the on-call phone was asked for in advance of a return in October. It is not mentioned in the exchange of 1 and 2 October at all or in any other document that was drawn to the Tribunal's attention. Mr Watson indicated that had it been requested it would not have been an issue for the respondent and would have been granted which the Tribunal accepts.

45. In respect of PCP 3 the Tribunal has no evidence about the frequency or context of a request to undertake teas and beds. It is in any event satisfied that it was entirely voluntary in nature and could have been refused without detriment to the claimant. Accordingly, it is not a PCP placing the claimant at a substantial disadvantage.

Time Limits

46. The Tribunal is satisfied that time runs from 1/10/20 the date of decision. Allowing for early conciliation the last day to issue the claim would be 13/2/21. The claim is therefore in time. Even if the Tribunal is wrong and the claim was in fact deemed to be issued in March 2021 the Tribunal would have no hesitation in extending time under the just and equitable principle. The claimant was unrepresented, suffering a serious medical condition and the delay was very short with no obvious prejudice to the respondent.

47. Accordingly, the claimants claim on liability succeeds to the extent identified.

REASONS ON REMEDY

48. The Tribunal found that the respondent failed to make a reasonable adjustment in that it failed to permit the claimant to homework for a period following surgical procedures for cancer.

49. The claimant was briefly recalled into the witness box to give evidence about the impact on the respondents decision on her. The Tribunal also considered her witness statement and the schedule of loss she provided. The Respondent gave no live evidence in respect of remedy but did make submissions through Ms Watson.

The Legal Principles

50. The Tribunal reminded itself of the relevant legal principles in respect of assessing an award.

(i) S.124 Equality Act 2010 states so far as is relevant:

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).
(2) The tribunal may—

(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
(b) order the respondent to pay compensation to the complainant;
(c) make an appropriate recommendation.

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect [on the complainant] of any matter to which the proceedings relate …
(6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court or the sheriff under section 119.
(7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation …, the tribunal may—

(a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid;
(b) if no such order was made, make one.

(ii) Compensation can include an award of injury to feelings. Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award- *Prison Service v Johnson* [1997] IRLR 162.

(iii) There must be some evidence to justify an injury to feelings award, albeit the threshold for what constitutes sufficient evidence is a low one.

(iv) The bands of compensation for injury to feelings was identified in *Vento v Chief Constable of West Yorkshire (No.2)* (2002) EWCA Civ. 1871 as uprated by the Presidential Guidance: Vento Bands (2017) Third Addendum. Lower Band £900-£9000; middle band £9 000-£27 000; upper band £27 000-£45 000.

(v) Interest on discrimination awards is governed by the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. Where an award is made the Tribunal must consider awarding interest but has a discretion whether to make any award. For injury to feelings awards interest is in principle calculated over the period between the discriminatory act and the award (Regulation 6(1)(a)); for financial loss compensation the period is between the mid-point date and the award (Regulation 6(1)(b)). However, a different approach to the relevant periods can be used in order to avoid serious injustice (Regulation 6(3). The current rate of interest is 8%.

Injury to Feelings

51. Having heard from the claimant and read her witness statement the Tribunal was satisfied she had suffered injury to feelings caused by the respondent's discriminatory act. She was visibly upset on recollecting the events in question. While the Tribunal was careful not to ascribe any suffering caused by the claimant's cancer to the respondent, it did conclude that the decision not to allow her to work from home and its consequence had a detrimental emotional impact on the claimant.

52. The Tribunal noted the context of the discriminatory act was an incredibly difficult time for the claimant personally and health wise. She had been diagnosed with cancer, was unsure of the extent it had metastasised, had had surgery and was subject to the additional restrictions caused by the pandemic.

53. The failure to allow her to home work resulted in her not returning to work in October 2020 to a job she enjoyed and would have alleviated some of the anxiety caused by the medical condition. Going onto SSP caused her and her family additional financial worries

54. While reminding itself that an award is compensatory not punitive there is evidence of poor practice bearing in mind the size and resources of the employer such as a lack of an occupational health assessment or the obtaining of medical evidence and a documented RTW which did impact on the hurt feelings of the claimant. That said, this was a one-off act, there was no deliberate intent to discriminate, and the Tribunal accepts what it was told by Ms Watson that in other respects such as time off for medical appointments she had been supported by the respondent.

55. By November the claimant had moved into a new role and the impact of the discriminatory treatment had lessened.

56. Having considered the impact on the claimant the Tribunal considered that the appropriate award for injury to feelings was £5 000 being the middle of the lower bracket under the third addendum.

Pecuniary Loss

57. The Tribunal also is of the view that an award in the sum of £862 for net loss of earnings for the month of October 2020 based on the claimant's calculations was appropriate. The Tribunal was of the view that had a reasonable adjustment been put in place in respect of home working the Claimant would have been in receipt of full pay rather than SSP for that month. The tribunal makes no further award for pecuniary loss beyond this point. Any diminution in pay beyond October was caused by the claimant's decision to move back into the support worker role.

Interest

58. The award made by the Tribunal is £5 862. Interest at 8% is to be awarded for the period of 12 months being £469. While the period between the

discriminatory act and award is longer- being 1 October 2020 to 13 September 2022, the Tribunal was of the view that allowing for all of that period would allow serious injustice given delays in listing that neither party was responsible for. The Tribunal concluded that 12 months was a reasonable period for which to compensate the claimant.

Recommendations

59. The Tribunal was told and accepts that the Respondent has taken significant steps to improve its procedures since the date of these events, most significantly by the introduction of a full time HR manager. The claimant is no longer employed with the respondent. No recommendations were put forward by the claimant and it declined to make any recommendations.

Employment Judge Serr

Date 6 October 2022

REASONS SENT TO THE PARTIES ON

17 October 2022

FOR THE TRIBUNAL OFFICE