



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 20, 21 and 22 July 2022

Claimant: Ms C Woolfrey

Respondents: (1) Reed Specialist Recruitment Ltd
(2) Ms N Hewitt
(3) Mr M Jones
(4) Ms L Goodger
(5) Ms C Huckle

Before: Employment Judge Mr J S Burns
Members Mr F Benson and Mr P Secher

Representation
Claimant: In person
Respondents: Mr A Ross (Counsel)

JUDGMENT

The claims are dismissed.

REASONS

1. The unfair dismissal claim had been previously struck out for lack of service.
2. The remaining claims (harassment related to disability and discrimination arising from disability) and issues were identified in paragraphs 13 to 14 of a record of a case management discussion held on 23/2/22. For ease of reference these are set out in a Schedule below.
3. That the Claimant was disabled at the relevant times by chronic anxiety was conceded by the Respondents.
4. The documents were in three bundles namely a core bundle of 288 pages, an additional bundle of 114 pages and a missing pages bundle of bundle of 49 pages. The missing pages bundle, which had been served by the First Respondent on the Claimant as a supplementary bundle earlier this month, consisted of uncontroversial documents such as a previous case management order, the Claimant's employment contract, her employment application documents and text messages referred to already in witness statements. The Claimant objected, but we decided to admit the missing pages bundle as it contained relevant material most of which would or should have been familiar to the Claimant anyway, and which we considered it was reasonable to expect the Claimant to be able to deal with.
5. We received a note on the law from Mr Ross, and written final submissions from each side.

6. We heard evidence from the Claimant and then from the Respondents Ms C Huckle (Regional MD); Ms N Hewitt, (Consultant) Ms L Goodger (a regional manager and the Claimant's ex - line manager) and Mr Jones (a regional director).
7. As an adjustment for the Claimant's disability, we had numerous breaks during the hearing and generally tried to facilitate the Claimant's participation and reduce the impact of the proceedings on her. She was emotional at times, but managed to engage fully in the process and read out lengthy final submissions at the end.
8. In final submissions she expressed herself satisfied with the Tribunal's conduct of the hearing.
9. The Claimant made an application for her name to be anonymised. Having regard to Rule 50 and to the content of these reasons, we see no justification for that.

Credibility

10. During the recruitment process the Claimant provided false information to the First Respondent about her previous employment with a third party HRGO, and suppressed the fact that she had been employed by another company namely Core Atlantic Ltd for part of the time she said she had worked for HRGO. We find that these misrepresentations must have been deliberate on her part.
11. When asked in cross-examination whether she had brought a Tribunal claim before, her first response was to deny this. It was only when the name of the former employer (Core Atlantic) was put to her that she agreed she had brought a Tribunal claim, through solicitors.
12. During recruitment in her New Starter Form submitted on 5 May 2021, the Claimant failed to answer truthfully the question put to her about days' work lost through illness in the last two years and the reasons for that. She not only had days' work lost to illness, but months, as shown by her medical records. Her explanation for this failure was rambling and incomprehensible.
13. The Claimant's job offer and contract were subject to receipt of satisfactory references. The First Respondent, which trades as a recruitment agency, reserved the right to terminate employment on receipt of an unsatisfactory reference. Satisfactory references were never received, notwithstanding the fact that the Claimant worked for First Respondent for 4.5 months. Despite repeated chasing, the Claimant failed to comply. This matter was being discussed in August 2021. As of 13 September 2021, the screening team had still been unable to obtain references and requested alternative proof of periods of employment. The Claimant said in cross-examination that she had received the email but had not replied. She did not provide the information requested. We infer that the Claimant had not been honest about her employment history and so could not comply.
14. These matters reflect badly on the Claimant's credibility.

15. Generally, we regarded the Respondents as more reliable witnesses than the Claimant and we prefer their version of events where it differs from that of the Claimant.

Findings of fact

Disability

16. In June 2019 the Claimant's partner had a cycling accident and suffered a brain haemorrhage which caused anger and impulse control issues on his part which in turn had a negative impact on the Claimant.
17. In May 2020 the Claimant reported to her doctor that she was drinking 7 bottles of wine per week, and the doctor diagnosed her as suffering from "a mixed anxiety and depressive disorder".
18. In September 2020, the Claimant reported to medical professionals and the police, that she thought her drink might have been spiked during a night out. This aggravated her mental health condition.
19. The Claimant has referred additionally to suffering "panic attacks". There is little or no medical evidence to support this apart from a very short letter from her GP dated 17/9/21 (the same date that the Claimant applied for ACAS EC) which appears to have been procured by the Claimant for purposes of this litigation.
20. It is true that the Claimant did state to the First Respondent's HR in an email dated 8/7/21 "*I am in a panic and this is causing me a lot of stress*" but that was in connection with her suffering bad effects from a Covid vaccination. The Claimant has also attempted to attribute her behaviour on 26 and 27 August 2021 to "panic attacks" but there are other, in our view more credible, explanations for this.
21. We do not find it proved that the Claimant's disability caused panic attacks.
22. That the Claimant was disabled at the relevant times by chronic anxiety is conceded and we have dealt with the matter on that basis.

Respondent's knowledge of disability

23. When being recruited by the First Respondent, the Claimant answered questions in writing stating that she did not have a disability, was not on medication and had not been on sick leave in the last two years. At no time during employment did she tell the Respondents that she had been diagnosed with anxiety.
24. During employment she confirmed in writing that she did not need counselling.
25. The Claimant told colleagues at work during 2021 about the fact that her partner had had an accident, and that she thought her drink might have been spiked the previous September. She also referred at work to other problems in her life such as alleged spider-infestations of one of her homes, allergies etc. However, it does not follow from this that her colleagues knew or should have known that she was disabled by mental ill-health as a result of any of these matters.

26. When dismissing the Claimant in early September 2021 Ms Goodger was aware that the Claimant had been behaving oddly on the night of 26/8/21 but thought this was likely to be the result of illegal drug abuse by the Claimant. The Claimant had also appeared unwell on the morning of 27/8/21 but this Ms Goodger attributed to the fact that the Claimant was still recovering from the night before and had a sleepless night trying to get access to her boyfriend's flat, her keys to which she had lost.
27. When dealing with the Claimant's grievance later on in September 2021, Mr Jones, having discussed the matter in detail with the Claimant and asked her about disability, concluded that the events of 26/27 August 2021 were "a one off" and he "couldn't see a pattern of mental ill-health".
28. We find that the letter from the GP dated 17/9/21 was not sent to the Respondents at the time and was disclosed by the Claimant only in 2022.
29. We find that the Respondents did not know and could not be expected reasonably to know that the Claimant was disabled at the relevant times.

The Claimant's employment and events leading up to termination

30. The Claimant was employed by the First Respondent between 19 April 2021 and 8 September 2021 as a Business Manager in Business Support at its Bury Street offices.
31. Under her contract she had to serve a 9-month probation before being confirmed in her position.
32. In various meetings during the months preceding the Claimant's dismissal, Ms Lynsey Goodger, Regional Manager and Collette Huckle, Regional Managing Director, spoke to the Claimant about their various concerns regarding the Claimant's conduct and performance. These included the Claimant arriving at the office late or being late logging into the IT system when working from home, leaving the office early, failing to attend the office when expected, failing to action tasks when requested, talking loudly across the office, and friction with other team members.
33. The Claimant was unproductive, placing only one permanent employee with a client, and that placement being abortive from the client's point of view and leading to complaints from the client against the Claimant. The Claimant failed to earn enough for the First Respondent to cover her own salary.
34. Ms Huckle's management of the Claimant was efficient and supportive. Ms Goodger's may have been less so and she also does not appear to have kept adequate records of her dealings with the Claimant.
35. The Claimant was on friendly terms with a colleague Ms N Hewitt. The two saw each other

as friends and went to lunch together regularly throughout the Claimant's employment. After the Claimant was dismissed, but not before, she made a passing reference in her subsequent grievance to Ms Hewitt having made a few "*spiteful comments*", but did not elaborate and she failed to make any specific complaints during the grievance about the allegations she now makes against Ms Hewitt.

36. The first allegation now made is that Ms Hewitt, in or around June 2021 said words to the effect that "*You don't have to watch Eastenders or soaps, having [the Claimant] here in the office is like watching a live drama*"; We reject the Claimant's evidence about this. We accept Ms Hewitt's version that she did on occasion state that her own (Ms Hewitt's) personal life was like a soap opera.
37. The second allegation is that on 20 July 2021, when the Claimant fell over a scooter in the office, Ms Hewitt laughed and said "*Of course it would be you that fell*" and subsequently said (when the Claimant told somebody she had had a fall), "*No! you didn't fall over, did you? (We haven't heard that story before much, have we?)*".
38. We do not find this to have occurred. It is notable that when the "falling over a scooter" incident was discussed and investigated at the grievance stage, the Claimant failed to complain about Ms Hewitt at all and instead stated that Ms Hewitt had assisted her in finding and using the first-aid box. In addition, in a text sent on 20 July 2021 to her sister the Claimant wrote "*Of course claire would be the one to fall over a skooter (sic) But that's you lot taking the piss x*". This appears to be a reference to the Claimant's family rather than Ms Hewitt saying or thinking that the Claimant would be the one to fall over.
39. The third allegation is that on 5 August 2021, Ms Hewitt said words to the effect "*Just slip a little something in there, like Rohypnol, it's nothing*". We can see that this incident took place at about 16.13 because at that time the Claimant sent a text to a work colleague which reads in part "*Did you hear that convo...She is such a bitch sometimes Nikke*"
40. It is clear that something said by Ms Hewitt had upset the Claimant, but we prefer Ms Hewitt's version, which is that she had been commenting on mixing collagen powder (which she took to aid healthy skin and hair) and not Rohypnol, into coffee. However, the Claimant took this as a comment on drink-spiking aimed at her and reciprocated with a joke of her own about a mother mistreating her child (which latter joke may well have been aimed at Ms Hewitt, who tragically had been bereaved of a young child).
41. We do not find that this spat was reported (as the Claimant claimed) to Ms Goodger. We do not find that Ms Goodger said about this "*You are all adults, you should just be able to work out how to just get on*".
42. In any event it appears that, despite the spat, the Claimant and Ms Hewitt remained friends, and continued going out to lunch together.

43. On 26 August 2021, at a drinks party arranged by the First Respondent for its employees, the Claimant behaved oddly. The Claimant had been drinking Prosecco before the event. Miss Huckle noticed that the Claimant was sweating a lot, talking very fast and acting out of character. One minute she was on the dancefloor and the next minute she would be in conversation with people invading their personal space, which was a concern from a Covid19 point of view. There was a large hole in her tights, and she did not seem herself. She interrupted Ms C Harvey (the MD) when the latter was speaking to someone else. Ms Goodger also noticed this behaviour and thought that the Claimant and a man called Dominic, who had been seen retiring to the lavatories together, had been taking illegal drugs. Ms Huckle offered the Claimant a drink of water.
44. After a few hours at the party, the Claimant left in a taxi to her partner's flat. She found on arrival that she had lost her keys and the neighbours had to assist her. A locksmith was called to enable her to get into the flat but this was not until the early hours of the morning.
45. The next day, 27 August 2021, contrary to the instructions of Ms Goodger, (who had texted her telling her to stay at home that day) the Claimant attended the office at 10:30am looking dishevelled ("*shaking and puffy-eyed*" to use the Claimant's own phrase). She appeared unkempt and her clothes were in disarray. Her hair was un-brushed and she was sweating. The Claimant explained that she had had to get the lock changed at her partner's flat. She appeared to be terrified by what the partner would do to her as a consequence.
46. Ms C Harvey (the MD) was at the office and was displeased to see the Claimant arriving late at work in that condition.
47. Ms Goodger asked if she could call anyone such as a friend or family member to support the Claimant. She may have suggested that the Claimant should see a doctor. Ms Goodger said that the Claimant looked "dishevelled" and said she should go home as she was unfit to work. We do not find that she said that the Claimant "was a mess".
48. Ms Goodger then had a conversation with Ms C Harvey and then phoned HR for advice on how to terminate the Claimant's probation and employment.
49. On 1 September 2021, the Claimant was invited to a meeting with Simon Lambert, Area Manager. During that meeting, Ms Goodger informed the Claimant that she had failed her probation on the grounds of her conduct. The Claimant received one weeks' notice of termination.
50. The Claimant complained in writing about what she described as a "mental health dismissal" and alleged bullying by Ms Goodger.
51. Mr M Jones, Senior Regional Director, was appointed to investigate the grievance. On 9 September 2021, Mr Jones and Mr Dean-Andrews met with the Claimant to discuss her grievance in more detail. The Claimant says that the way Mr Jones treated her then made her feel as though she was to blame for the incident the previous year as when she told him she believed her drink had been spiked and this had led to her panic attacks, he repeatedly asked her if she was late for work or had logged in late.
52. We have read the transcript of the meeting (pages 213 CB onwards and in particular page 214, which seemed to be the focus of the Claimant's complaint in this regard) and which transcript we accept as accurate, and we see nothing to support any reasonable complaint against Mr Jones, who conducted the conversation politely and appropriately throughout.

53. On 27 September 2021, following a thorough investigation into the specific issues raised by the Claimant, Mr Jones sent the Claimant a detailed grievance outcome letter. For the reasons set out in that letter, the substantive elements of the Claimant's grievance were not upheld. The Claimant did not appeal the grievance decision.
54. The Claimant says that the outcome of the hearing, sent on 27 September 2021, implied that she had gone out drinking and had brought the situation on herself. This appears to be a reference to the following paragraph in the grievance outcome letter (page 243): '*You explained that you were staying at your partner's flat that evening but when you arrived you realised that you had lost the keys and you were locked out. You told us that you had a panic attack (i) because you were locked out in south London by yourself late at night, and (ii) you were worried about what your partner would say. You explained that you had to get a locksmith out at 1am in the morning (you provided me with an invoice as evidence)*'.
55. Despite the repeated use of the word "you", which was somewhat unavoidable in the circumstances, we see nothing wrong with this paragraph or indeed anything else in the grievance outcome.
56. The Claimant applied for ACAS EC on 17/9/21 and received her certificate the same day. She presented her ET claim on 4/11/21.

Relevant law

Disability Related Discrimination

57. Section 15 provides that a person discriminates against a disabled person if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
58. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.
59. An employer has a defence to a claim under s. 15(2) EqA if it did not know, or could not reasonably be expected to know, that B had a disability.
60. It is for the ET to weigh the reasonable needs of the R's business against the discriminatory effect of the decision to dismiss and to make its own assessment of whether the former outweigh the latter.

Harassment

61. Section 26 provides that a person harasses another where the harasser engages in unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating the others dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for her. In deciding whether conduct has this effect the following must be taken into account : the perception of the other, the other circumstances of the case and whether it is reasonable for conduct to have that effect.

Onus of proof

62. Section 136 provides that if there are facts from which a court could decide, in the absence of any other explanation that a person has contravened a provision under the EA, the court

must hold that the contravention occurred, unless the person shows that he did not contravene the provision.

Conclusions

63. We do not find that any of the alleged events relied on as harassment occurred as described by the Claimant. We have set out above our findings about what did happen in each case. These events were not related to the Claimant's disability and did not have the prescribed harassing purpose or effect.
64. The same matters are relied on under section 15. These events did not arise from panic attacks.
65. We are not satisfied that the Claimant's behaviour on 26/27 August 2021 arose from panic attacks, whether arising from her disability or at all. The cause of her behaviour at the party has a more likely alternative cause, namely the Claimant having consumed an illegal drug. Her late arrival and behaviour at the office on 27/8/21 was caused by her activities at the party the night before, losing her keys, having to call the locksmith, sleeplessness and fear of her boyfriend.
66. While the behaviour on 26 and 27 August coming to the attention of Ms C Harvey (the MD) was the catalyst for the Claimant's probation review meeting on 1 September 2021 and her dismissal, it was not the sole reason. Her previous poor performance and attendance and her failing to conform to the requirements of the role as a team leader were the other causes.
67. We do not find that the dismissal was because of something arising from disability. Alternatively, if it was, we would in any event have found that the dismissal was justified in the circumstances because the Claimant's poor performance and conduct were incompatible with the First Respondent's business objectives.
68. We record for the sake of completeness that even if the Claimant had not been dismissed in early September 2021, we find that she would have been dismissed shortly thereafter in any event as she had failed to produce references and her previous misrepresentations prior to recruitment were coming to light.
69. We record further for the sake of completeness that we have not found any discrimination or harassment and so no question of a continuing act arises. The claims in 13.1.1 and 13.1.2 of the Schedule were brought out of time in any event and in the circumstances - especially the Claimant's failure to raise them in the grievance - we would not have regarded it as just and equitable to extend time to entertain those matters.
70. Hence the claims are dismissed.

J S Burns Employment Judge
London Central
23/7/2022
For Secretary of the Tribunals
Date sent to parties: 15/11/2022

Schedule

Section 26/108 Equality Act 2010: Harassment related to disability

13.1. Did the Respondents engage in unwanted conduct as follows:

13.1.1 The Second Respondent in or around June 2021 saying words to the effect of “*You don’t have to watch Eastenders or soaps, having [the Claimant] here in the office is like watching a live drama*”;

13.1.2 On 20 July 2021, when the Claimant fell over in the office, the Second Respondent laughing and saying, “Of course it would be you that fell” and subsequently saying (when the Claimant told somebody she had had a fall), “*No! you didn’t fall over, did you? (We haven’t heard that story before much, have we?)*”

13.1.3 On 5 August 2021, the Second Respondent saying words to the effect of, “*Just slip a little something in there, like Rohypnol, it’s nothing;*”

13.1.4 The Third Respondent in the hearing on 9 September 2021 and the outcome letter on 27 September 2021 implying that the Claimant had brought the incident of September 2020 on herself and failing to offer sympathy, instead asking her only if she had ever been late for work or logged in late;

13.1.5 The Fourth Respondent telling the Claimant on 5 August 2021 (after the alleged comment by the Second Respondent at 13.1.3 above) “*You are all adults, you should just be able to work out how to just get on*”;

13.1.6 The Fourth Respondent telling the Claimant on 27 August 2021 that she was a “*mess*”, “*dishevelled*” and “*not fit for work*” and saying that while she did not wish to sound insensitive, she “*needed somebody who could do the job*” and that the Claimant “*needed to get to a doctor and get some help*”?

13.2 Was the conduct related to the Claimant’s protected characteristic?

13.3 Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

13.4 If not, did the conduct have the effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

13.5 In considering whether the conduct had that effect, the Tribunal will take into account the Claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Section 15: Discrimination arising from disability

14.1 The allegation of unfavourable treatment as “something arising in consequence of the Claimant’s disability” falling within section 39 Equality Act is any of the conduct at 13.1 above that is not found to constitute disability-related harassment and/or dismissing the Claimant on 1 September 2021 (First and Fourth Respondents). No comparator is needed.

14.2 Does the Claimant prove that the Respondents treated the Claimant as set out in paragraph 13.1 above?

14.3 Did the Respondents treat the Claimant as aforesaid because of the “something arising” in consequence of the disability, namely her panic attacks?

14.4 Do the Respondents show that the treatment was a proportionate means of achieving a legitimate aim? The Respondents contend that they try to run an efficient service and that it was appropriate for the Respondents to take into account the Claimant's performance and conduct, as set out in paragraph 12 of the Grounds of Resistance, (These included the Claimant arriving at the office late or being late logging into the IT system when working from home, leaving the office early, failing to attend the office when expected, failing to action tasks when requested, and friction with other team members) in forming a view about her ongoing suitability for her role.

14.5 Alternatively, have the Respondents shown that they did not know, and could not reasonably have been expected to know, that the Claimant had a disability?

Time limits

The Respondents contend that the matters in paragraphs 13.1.1 and 13.1.2 are out of time.

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