



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss L Frieda

v

Boots Management Services Ltd

Heard at:

Reading

On: 17-20 April 2023

Before:

Employment Judge Gumbiti-Zimuto

Members:

Ms J. Cameron

Ms H.T. Edwards

Appearances:

For the Claimant:

In Person

For the Respondent:

Ms S. Clarke, Counsel

JUDGMENT having been sent to the parties on 23 May 2023 and reasons having been requested by the claimant in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. In a claim for presented on 15 February 2021 the claimant made complaints of unfair dismissal, of race discrimination and sex discrimination and she also ticked the box for other payments.
2. The claimant has withdrawn her claim for unfair dismissal, it was dismissed in the judgement sent to the parties on 13 November 2022.
3. The claimant has not set out her claim in respect of any other payments.
4. The respondent denies the claimant's complaints and defends all the claims.
5. The issues to be decided in this case we set out in a record of a preliminary hearing on 9 September 2022 by Employment Judge Bloom.
6. The parties have provided the tribunal with a list of issues as clarified by EJ Bloom in a separate document.
7. The claimant gave evidence in support of her own case and the respondent relied on the evidence of Mrs Maureen Lee, Mrs Tanya Rudak, Miss Lisa Shady, Mr Andrew Gascoigne, Mrs Sarah Harrold and Miss Elaheh Mokhtari.
8. All the witnesses produced statements which were taken as their evidence

in chief, the respondent also produced a witness statement from Mr Stewart Freestone.

9. We were also presented with a trial bundle which was, by the end of the case, consisting 397 pages of documents. From these documents we made the following findings of fact:
 - 9.1 The claimant is Hungarian. The claimant was employed by the respondent from 16 October 2017. The claimant was employed as a trainee pharmacy adviser. The claimant was initially employed in the respondent's Camberley store. The claimant was enrolled in the respondent's dispenser training programme which contains 4 modules typically completed in 4 months. The programme can take longer depending on individual performance. The programme is regulated by the General Pharmaceutical Council and part of its requirements are that all individuals must complete the programme within 3 years. The programme consists of both the theoretical and practical assessments.
 - 9.2 The claimant passed the theoretical part of the programme whilst she worked at the Camberley store. To complete the programme the claimant must also demonstrate practical competence in the role and be signed off by her tutor. While working at the Camberley store the claimant was assigned a tutor Ms Maureen Lee. Ms Maureen Lee is a pharmacist who has been a tutor to many individuals. During the period of time that the claimant was at Camberley, Maureen Lee had signed off 30 pharmacy advisers, of whom 25 were female and 5 were male. The claimant states that Maureen Lee signed off 2 male colleagues who were part of her cohort of pharmacy advisers and also female pharmacy advisers, all of whom were British.
 - 9.3 The claimant states that the male pharmacy advisers DA and FW were signed off sooner than the female colleagues. The only person not signed off from this cohort was the claimant. This evidence does not appear to the Tribunal to be contested. Maureen Lee explained that the reason that DA and FW were signed off was because they applied the theory learned to their practice and demonstrated that they were competent to work as pharmacy advisers.
 - 9.4 Maureen Lee was the claimant's pharmacy adviser for most of the time that the claimant was working at Camberley. For a brief period the claimant's tutor was Kolly Sattar. Kolly Sattar ceased to be the claimant's tutor after leaving the respondent's employment. However, notwithstanding this the respondent's records continue to detail Kolly Sattar as the claimant's tutor.
 - 9.5 The evidence given by Maureen Lee is that whilst the claimant was able to pass the theoretical components of the programme with very high marks, she did not seem to be able to reflect that knowledge in her day to day working practice, her theory knowledge did not transfer to practical skills.
 - 9.6 Maureen Lee on occasion had concerns about the claimant's

practice. When those situations arose, she gave feedback to the claimant to ensure she was aware of the errors made and to give advice on how the situation should be dealt with. Maureen Lee denies that she was ever rude to the claimant or that she has ever bullied the claimant.

- 9.7 Lisa Shady is employed at Camberley, her role is that of accuracy, pharmacy checking technician. Her job is to carry out the final checks on all prescriptions that are going out to patients. It is also part of Lisa Shady's role to coach trainees, highlight errors and provide support. Lisa Shady gave evidence that she would feed back to the claimant after checking her work pointing out errors with the aim of helping the claimant learn. Lisa Shady states that the claimant would "stand there and laugh in my face" coming across as though she didn't care about her mistakes.
- 9.8 The claimant, similarly, raises a concern making allegations against Lisa Shady accusing her of "shouting at her" and swearing at her on one occasion finding the claimant sat in her seat telling the claimant to "go away from her sitting place" and to "fuck off" telling the claimant she was "shit at the job". The claimant alleges that Lisa Shady made a stabbing motion holding a pen next to the claimant's head. Lisa Shady denies all of this emphatically. She accepts that she may have raised her voice when she was frustrated at having to correct the claimant's errors, but denies shouting at the claimant.
- 9.9 The Tribunal's conclusion is that we are not satisfied that the claimant has proved that she was spoken to as she describes by Lisa Shady.
- 9.10 Tanya Rudak was at the relevant time Store Manager at Camberley. Tanya Rudak was informed about the claimant's performance by Maureen Lee who was concerned about the claimant's ability to work in the pharmacy, deal with customer queries and advise on medication safely. Tanya Rudak denies that the claimant was sent to work on the shop floor as a punishment and also denies that the claimant complained to her that she was being bullied. Tanya Rudak also confirmed evidence from Maureen Lee and Lisa Shady that concerns about how the claimant dealt with people on the telephone had been raised. The issue, she explained, was about following the respondent's SAPs and not about the claimant's accent.
- 9.11 In February 2019 the claimant was placed on a performance improvement plan (PIP). The claimant complains that she was kept on the PIP too long. The respondent however states that the claimant didn't improve her performance so as to bring the PIP to an end. As a result of the failure to meet performance targets, the claimant was due to be moved to stage 3 of the performance management process, however, she was transferred to Farnborough Gate, before that happened.
- 9.12 In May 2019 the claimant contacted the respondents' learning and development department. In her email she complained about her

training, she referenced “that one girl from the workplace who is also on the same training as me....she has already been signed off which is a great news”. She complained that the delay in her training was “unfair and discriminative”. The claimant complained about the tasks she was given to “spend a certain hours on the healthcare counter” being denied the possibility of being put “downstairs”. She said that L and D should “let them know that it’s not time to sign me off from the course and I shouldn’t be unfairly treated”. It is noted that this communication with L and D made no Equality Act complaint.

- 9.13 The claimant sought advice and assistance from the Citizens Advice Bureau, they drafted a letter of grievance for the claimant (P156). There is a dispute of fact between the claimant and the respondent as to whether this letter of grievance was ever submitted to the respondent. The claimant says it was submitted to Maureen Lee and also to Tanya Rudak, both Maureen Lee and Tanya Rudak deny that they were given the grievance by the claimant.
- 9.14 The conclusion of the tribunal is that it was not provided to the respondent by the claimant for the following reasons:
- 9.14.1 Both parties agree that no action was taken in pursuit of the supposed grievance.
- 9.14.2 The claimant never refers to the grievance in the weeks and months following the date it was supposedly given to the respondent.
- 9.14.3 The claimant did not refer to the grievance in her letter to the Chief Executive (P178). In the letter to the Chief Executive she stated that she first raised concerns after leaving the Camberley Store on 13 March 2020.
- 9.14.4 The claimant did not refer to the grievance in correspondence to L and D.
- 9.14.5 The claimant did not refer to the earlier grievance when she raised a grievance in October 2020.
- 9.14.6 The claimant stated in her evidence that she gave the grievance to Maureen Lee and Tanya Rudak personally on 1 October 2019. Both ladies deny that this occurred and in the case of Tanya Rudak, it couldn’t happen on that date as she was on maternity leave.
- 9.14.7 The documentation produced by the claimant, which includes notes or advice she received from the CAB, documentation introduced by the claimant shows that it was not her intention at the time she consulted the CAB to submit the grievance until after 16 October 2019. The claimant did not produce evidence of submitting it then, instead she submitted it on 1 October.

- 9.15 By October 2019 the claimant had still not been signed off the programme because she had not been able to demonstrate consistent ability to follow the required standard of performance.
- 9.16 In December 2019 Andrew Gascoigne was the manager of the Farnborough store. Mason Clinch, the temporary store manager at Camberley, arranged for the claimant's transfer to Farnborough. On agreeing the claimant's transfer Andrew Gascoigne believed that the claimant was "a trainee pharmacy adviser who was close to being signed-off on the programme" but needed a bit more experience working in a customer faced dispensary. Andrew Gascoigne was not told that the claimant was on a PIP. On her transfer the claimant and Andrew Gascoigne discussed the possibility of the claimant being signed-off in about 2 months. On the claimant's transfer to Farnborough the person responsible for the claimant's training, her new tutor, was Sarah Harrold. On the claimant's transfer to Farnborough there were a number of administration issues relating to the claimant including a failure to record Sarah Harrold as the claimant's course tutor. There was also an issue about securing the claimant's discount card.
- 9.17 By January 2020 it had become apparent to Sarah Harrold that the claimant needed much more experience than envisaged before she could be signed-off on the programme. Andrew Gascoigne asked the claimant to go to work at Frimley Green on a temporary basis. Andrew Gascoigne thought this was in the claimant's interest because it would get her time in the dispensary, experience she needed to get signed-off. Other employees from Farnborough were also asked to go to Frimley Green to help out. There was no complaint by the claimant of discrimination at this time.
- 9.18 In March 2020 the claimant returned to the Farnborough Store. It was also about that time that Andrew Gascoigne discovered that the claimant had been on a PIP, also around this time the claimant wrote to the CE. Andrew Gascoigne subsequently dealt with a number of admin issues relating to the claimant including sorting out the claimant's discount card. Following her return from Frimley Green, the claimant began working closely with Sarah Harrold. In the time they worked together, Sarah Harrold became more concerned about the claimant's performance as did Andrew Gascoigne. The claimant, Andrew Gascoigne and Sarah Harrold had a meeting on 22 July 2020, at which they discussed the claimant's progress. The claimant said she should be signed-off. Andrew Gascoigne and Sarah Harrold explained that to be signed-off the claimant had to have the final say from a pharmacist and, that all the pharmacists that had worked with the claimant, raised concerns with how she operates within the pharmacy. It was explained to the claimant, that she needed to pay more attention to detail and dedication to her learning, to be signed-off. It was recognised that the general pharmaceutical council required the programme to be completed within 3 years and the claimant's 3-year anniversary on the course was approaching. The areas that the claimant needed to work on were detailed. It was agreed that

there would be weekly reviews of her progress and training twice per week. It was also agreed that a decision on signing her off would be made in 2 months. This programme was then followed by the claimant and Sarah Harrold until the end of September 2020. The claimant failed to persuade Sarah Harrold and Andrew Gascoigne that she could consistently demonstrate the necessary competencies to be signed-off on the course and so Andrew Gascoigne made the decision to move the claimant from the role of pharmacy adviser to customer advisory role.

- 9.19 The change in role took the claimant out of the pharmacy environment without any change in salary. A trainee pharmacy adviser has the same duties as a customer adviser, save that the trainee pharmacy adviser is also undertaking the dispenser training programme.
 - 9.20 Stewart Freestone became store manager at Farnborough Gate from 2 October 2020. When the claimant was informed that she would not be signed-off as a pharmacy adviser, she appealed the decision, made by Andrew Gascoigne.
 - 9.21 Although there is no appeal against the decision in the procedure, the respondent treated the purported appeal as a grievance. The grievance was considered by Elaheh Mokhtari. The claimant complained in her letter that she had been treated unfairly, that she had been discriminated against and that she had been subjected to bullying.
 - 9.22 The conclusion of Elaheh Mokhtari was that the claimant has been given support from her colleagues who had tried to get her signed-off. Elaheh Mokhtari found the PIP to have been used to help improve the claimant. The claimant's complaint that she had been treated unfairly by being kept on the course too long was not upheld. The claimant's complaints that she had been bullied and discriminated against was not upheld. The claimant's complaint that she had not received her discount card in a reasonable amount of time was upheld. This however was not due to any discrimination.
 - 9.23 The claimant was provided with a written outcome letter by Elaheh Mokhtari in a letter dated 9 October 2020.
10. An employer must not discriminate against an employee by subjecting her to any other detriment. An employer discriminates against an employee if because of her race or sex they treat the employee the less favourably than they treat or would treat others. Race includes colour, nationality, ethnic or national origins. Where the employee seeks to compare her treatment with that of another employee there must be no material difference between the circumstances relating to each case.
 11. If there are facts from which the employment tribunal could decide in the absence of any other explanation that the employer contravened the provision concerned, the employment tribunal must hold that the

contravention occurred. However, this does not apply if the employer shows that it did not contravene the provision.

12. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act or, A believes that B has done or may do a protected act. A protected act includes making an allegation (whether or not expressed) that A or another person has contravened the Equality Act.
13. Direct sex and race discrimination, the issues that we have considered are as follows, was the claimant subjected to the following treatment:
 - 13.1 The failure to be signed-off on the dispenser training programme where the comparators referred to are David and Frank who were signed-off by Maureen Lee.
 - 13.2 Did not receive a name-badge for 3 years.
 - 13.3 Did not receive a company discount card.
14. Direct race discrimination
 - 14.1 Bullying/comments/swearing/excessive workload carried out by Maureen Lee and Lisa Shady.
 - 14.2 Placed on a performance improvement plan.
 - 14.3 If this happened, was this less favourable treatment.
 - 14.4 If so, was the treatment because of her sex and or race.
15. Victimisation
 - 15.1 Did the respondent receive the claimant's purported grievance on 1 October 2019, if so, was it a protected act?
 - 15.2 Was the claimant's grievance raised on 6 October 2020 a protected act?
 - 15.3 Was the claimant subjected to the following treatment:
 - 15.3.1 Placed on a work improvement plan and ignored.
 - 15.3.2 Grievance raised in October 2019 ignored for an unreasonable amount of time.
 - 15.3.3 Not being signed-off the pharmacist dispensing course by Sarah Harrold.
 - 15.3.4 Failure to provide a name-badge.
 - 15.3.5 Failure to provide a discount card.
 - 15.3.6 Ordered to work on the shop floor rather than undertake

duties in the pharmacy.

15.3.7 Inadequate training for the shop floor.

15.4 If so, was this less favourable treatment because she had done a protected act or acts.

16. Time Limits

16.1 The claimant commenced ACAS early conciliation on 13 February 2021 and the certificate was issued on 15 February 2021 and the claim was issued on 15 February 2021, therefore, any acts or omissions which took place before 14 November 2020 are potentially out of time. On the face of it, all of the allegations are potentially time-barred as the last act or omission relied upon took place in October 2020. As such, the issue to be determined is whether or not the claims were brought within such time as the tribunal thinks just and equitable.

Conclusions

17. Was the claimant subjected to the following treatment:

17.1 *Failure to be signed-off from the dispenser training programme.* The comparators referred to are David and Frank who were signed off by Maureen Lee. It is agreed that the claimant was not signed-off by Maureen Lee and Sarah Harrold.

17.2 The issue is whether the claimant was subjected to less favourable treatment because she wasn't signed-off. Maureen Lee worked with the claimant from 2017 until she transferred in 2019 and during most of this period was her supervisor on the trainee pharmacy adviser programme. Maureen Lee's evidence was that trainees are required to complete online modules as part of the programme. The claimant scored very highly when she took the online tests and in some cases scoring between 90% and 100%. However, she did not seem able to reflect that knowledge in her day-to-day working practice, her theoretical knowledge did not transfer to practical skills.

17.3 When the claimant transferred to Farnborough she hadn't been signed-off by Maureen Lee because she did not consider that the claimant was ready to safely work as a dispenser. On her transfer to Farnborough the claimant's tutor was Sarah Harrold. The respondent's admin records were not updated to reflect this however, this has no effect on the claimant's ability to get signed-off, which was dependent on her performance as assessed by Sarah Harrold.

17.4 Sarah Harrold gave evidence that she worked with the claimant when the claimant transferred to the Farnborough store in December 2019 and she was responsible for her supervision. Sarah Harrold stated that trainees are required to complete several

modules online to show that they can apply the relevant knowledge and the claimant passed all of these modules. However, trainees are also required to demonstrate their skills and have their competence assessed by their tutor over a period of time in the pharmacy. The trainees are required to demonstrate the programme learning outcomes, applying dispensary knowledge in a pharmacy setting and delivering patient centred care during every interaction.

- 17.5 As the claimant's tutor, Sarah Harrold monitored her progress and provided support and training. Once a tutor is satisfied that the trainee has met the programme criteria to a sufficient standard, the tutor will complete the final sign-off to allow the trainee to pass the programme. The claimant never passed because Sarah Harrold was not satisfied that the claimant consistently achieved the standard required.
- 17.6 Sarah Harrold and Andrew Gascoigne met with the claimant on 22 July 2020 to discuss the claimant's progress on the course. They set out clear objectives for her to know how she could demonstrate improvement. They continued to hold regular review sessions with the claimant, however, by 30 September Sarah Harrold confirmed that she did not consider that the claimant was capable of working unaided in any Boots store in the pharmacy adviser role.
- 17.7 We also note that there was a significant amount of contemporary evidence that commented on the claimant's performance in the trainee pharmacy adviser role. Various people, some of whom were entirely unconnected and came from different stores (so could not have been aware of the view taken by others of the claimant's performance) assessed the claimant as not performing to the standard required.
- 17.8 There is further evidence relevant to the question whether the claimant was treated less favourably because of a protected characteristic. She compares herself with two women and two men, that is not showing any difference in treatment due to sex. Whilst she alleges that the men were signed-off slightly before the women, this in no way raises a prima facie case. Each individual will progress at their own speed, which the claimant accepted. The claimant has not been able to point to any evidence which shows that Maureen Lee has any form of bias against women. Her evidence is that approximately 25 of the 30 trainees she had signed-off around the time that the claimant was training were female.
- 17.9 There must be no material difference between the comparators. The evidence shows that there were serious concerns with the claimant's performance which led to her being placed on a PIP. There is no suggestion that David and Frank had any issues, therefore, this is a material difference.
- 17.10 As to race, the claimant relies on the fact that 4 other trainees who

were training alongside her were British and were all signed-off. This is insufficient to shift the burden. Maureen Lee gave evidence that around that same time many non-British employees were signed-off. The claimant has not shown that race played a part in the decision not to sign her off.

18. Was the claimant subjected to the following treatment:

18.1 *Did not receive a name-badge for 3 years.* The claimant stated that she did not get a new name-badge when she changed her name in December 2018. This allegation is substantially out-of-time. There is no evidence to suggest that a new name-badge was ever requested. Tanya Rudak denied that the claimant ever raised this with her and it is not raised in her email to the Chief Executive.

18.2 There is nothing to suggest that any request for a new badge was not provided because of anything in any way linked to sex. The claimant accepts that other females did have name-badges and links the issue to her name change. There is nothing to suggest that this was in any way linked to the claimant's race.

19. Was the claimant subjected to the following treatment:

19.1 *Did not receive company discount card.* This relates to the claimant's transfer to Farnborough in December 2019. It is thus out-of-time.

19.2 There is no evidence to suggest that this was in any way linked to sex and or race. Andrew Gascoigne, explained the efforts he went to, to deal with this issue in his evidence. The evidence shows that it was all due to an admin error, initially leading to it being sent to the wrong store and then there was a delay due to Covid-19.

20. Was the claimant subjected to the following treatment:

20.1 *Bullying/comments/swearing/excessive workload carried out by Maureen Lee and Lisa Shady.* There is a simple conflict of evidence between the claimant and the respondent on this issue. The respondent relies a number of points which suggest that the claimant is wrong to allege that there was the type of bullying alleged by the claimant.

20.2 The conclusion of the Tribunal is that for reasons including the matters relied on by the respondent, we do prefer the evidence of Maureen Lee and Lisa Shady. We found them to be clear and consistent in their evidence and, whilst the claimant was certain in the evidence she gave about these issues, we were not persuaded that it was more likely than not that the incidents relied on occurred.

21. Was the claimant subjected to the following treatment:

21.1 *Placed on performance improvement plan.* It is agreed that the claimant was placed on a PIP. The reason that the claimant was

placed on a PIP was because her performance was found wanting. There is contemporary evidence that shows that the claimant's performance was considered below standard required by a number of different employers.

- 21.2 The evidence does not show that the claimant was treated less favourably and, in any event, the evidence shows that the claimant was put on a PIP because of her performance.
22. Victimisation. *Did the respondent receive the claimant's purported grievance on 1 October 2019, if so, was it a protected act?* The Tribunal has come to the conclusion that she did not raise a grievance on 1 October 2019 as already explained above.
23. *Was the claimant's grievance raised on 6 October a protected act?* The respondent says that it was not a protected act. Whilst the claimant uses the word discrimination she does not connect it to any protected characteristics and simply makes a vague allegation of discrimination and incurring bullying. The respondent says that there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the act applies. There is nothing in this grievance which suggests that any of the treatment complained of is on a prohibited ground. We are satisfied that the respondent understood the complaint as a complaint about a matter arising from the Equality Act.
24. We are satisfied that it was a protected act, however, the following alleged treatment could not have been because of the protected act:
- 24.1 Placed on a work improvement plan and ignored.
- 24.2 Grievance raised in 2019 ignored for an unreasonable amount of time.
- 24.3 Not being signed-off the pharmacist dispensing course by Sarah Harrold.
- 24.4 Being sent to Frimley Green.
- 24.5 Failure to provide a name-badge.
- 24.6 Failure to provide a discount card.
25. The listed matters all occurred before the protected act was done.
26. The events which occurred after the protected act and, therefore, might be detriment because of the protected act are the following:
- 26.1 *Ordered to work on the shop floor rather than undertake duties in the pharmacy*. The claimant wrongly alleges that Stewart Freestone sent her to work on the shop floor in October 2020. This was, in fact, the consequence of the decision made by Andrew Gascoigne advising the claimant that she was not being signed-off from her course. She was advised by Andrew Gascoigne that going forwards she would be

a customer adviser. The reason that Andrew Gascoigne made this decision was due to performance and he was unaware of the grievance. Stewart Freestone started in the role after the claimant was already working in the role as a customer adviser.

- 26.2 *Inadequate training for the shop floor.* The respondent disputes that the claimant received inadequate training. Her role had duality and she was carrying out customer adviser tasks from the start of her employment. The claimant's core case flies in the face of an allegation that she had inadequate training for her position, it appears, being that she was competent and should have been signed-off as a pharmacy adviser. The claimant has not identified the training she ought to have had but didn't, and at no stage raised concerns about the lack of training or requested additional training.
27. The conclusion of the tribunal is that the claimant was not subjected to a detriment because she did a protected act.
28. *Time limits.* Had it been necessary to do so we would have considered that. Considering the claimant's claims that are presented out-of-time is just and equitable. All the parties have been able to address all the issues before us with such evidence that they wish to produce in the manner that they chose. The passage of time has not significantly impacted on this. We also note that by their nature the complaints, whilst not acts extending over a period, were matters which had continuing consequences or effect, that were still live issues between the parties at the time that the claims were presented or had been relevantly recently resolved in some way. The respondent relied on the written evidence of Stewart Freestone, he was no longer an employee of the respondent but had the respondent chosen to do so, they could have sought the Tribunal's assistance in securing his attendance at the employment tribunal hearing in person or by some other appropriate means such as by video link.
29. For the reasons set out above, the claimant's complaints of direct sex discrimination, direct race discrimination and victimisation are not well founded and are dismissed.
30. We went on to consider an application for costs made by the respondent. Having heard the respondent's application and the claimant's reply, we decided that this was not an appropriate case for us to make an order for costs against the claimant.

Employment Judge Gumbiti-Zimuto

Date: 22 June 2023

Judgment sent to the parties on
23 June 2023

GDJ