



EMPLOYMENT TRIBUNALS

Claimant

Ozgul Coban

v

Respondents

(1) Manes Partners Limited
(2) Alper Ozceylan

Heard at: Cambridge

On: 24 – 27 April 2023

Before: Employment Judge Freshwater, Ms Blunden and Ms Knapton

Appearances

For the Claimant: Mr Aggrey-Orleans (Counsel)

For the Respondent: Mr Joshi (Tribunal Advocate)

RESERVED JUDGMENT

1. The claimant's claim for direct discrimination under section 13 of the Equality Act 2010 is well founded and succeeds against both the first and second respondent.
2. The claimant's claim for discrimination arising out of disability under section 15 of the Equality Act 2010 is well founded and succeeds against both the first and second respondent.
3. The claimant's claim for harassment under section 26 of the Equality Act 2010 is not well founded in respect of either respondent and is dismissed.
4. Remedy will be determined at a hearing on 17 August 2023.

REASONS

Introduction

1. The claimant is Mrs Ozgul Coban. The first respondent is Manes Partners Limited (an accountancy firm). The second respondent is Mr Alper Ozceylan (the director of the first respondent).
2. The claimant was employed by the first respondent in an administration and management role. Her employment commenced on 1 September 2021.
3. The claimant's employment came to an end in November 2021. There is a dispute between the parties as to whether she resigned or was dismissed.

Claim and issues

4. The claimant claimed discrimination on the grounds of disability contrary to sections 13, 15 and 26 of the Equality Act 2010 against both respondents. The issues agreed between the parties are set out below (as taken from the bundle.)

Disability – S.6 Equality Act 2010

5. Was the claimant at the material time disabled within the definition set out in Section 6, Equality Act 2010?
6. Did the claimant have a physical impairment, namely Crohn’s Disease?
7. If so, did the physical impairment have a substantial adverse effect on the claimant’s ability to carry out her normal day-to-day activities?
8. If so, was that effect long term?
9. In particular, when did it start?
10. Had the impairment lasted for at least 12 months or was the impairment likely to last 12 months?
11. If the impairment ceased to have a substantial adverse effect on claimant’s ability to carry out normal day-to-day activities, is it to be treated as continuing to have that effect? In particular was that adverse effect likely to recur, and if so, when?

Direct Disability Discrimination - S.13 of the Equality Act 2010

12. What acts of less favourable treatment does the claimant allege had been carried out by the first and/or second respondent?
- (i) On 8/11/2021, the second respondent stating that he had a business to run and that if the claimant was going to be “on and off” they needed to chart a different path.
- (ii) On 8/11/2021, the second respondent dismissing the claimant by stating “we can part ways at the end of the month”.
13. In so far as the alleged acts of less favourable treatment are proven or admitted, in the absence of a non-discriminatory explanation from both respondents, could the Tribunal find they amount to less favourable treatment because of disability?
14. The claimant relies on a hypothetical comparator.
15. If so, has either respondent proven that it did not discriminate against the claimant?

Discrimination arising from disability - S.15 of the Equality Act 2010

16. What unfavourable treatment does the claimant allege was carried out by the respondents towards her? The claimant relies upon the following alleged act of unfavourable treatment:
- (i) Her dismissal on 8/11/2021.

(ii) On 8/11/2021, the second respondent stating that if the claimant was going to be “on and off”, they needed to talk about charting a different path.

(iii) On 8/11/2021, the second respondent mooting the possibility of part time employment.

17. Was the unfavourable treatment done because of ‘something arising in consequence’ of the claimant’s disability, namely the claimant’s absence due to Infliximab treatment?

18. Did the claimant’s absence arise in consequence of her disability, namely Crohn’s disease?

19. If so, can the respondents show that such treatment was a proportionate means of achieving a legitimate aim? The respondents rely on the following legitimate aims:

(i) To ensure the optimal and efficient deployment of its staffing resources; and/or

(ii) To ensure that staff were working the contractual hours that they were able to discharge.

20. Did either or both of the respondents have knowledge of the claimant’s disability?

21. If not, should the respondents have reasonably known that the claimant was disabled? If so, by what date?

Disability harassment - S.26 of the Equality Act 2010

22. Did either or both of the respondents engage in unwanted conduct?

(i) On 14/09/2021, the second respondent disclosing to Ozgur Demir that the claimant suffered from Crohn’s disease.

(ii) On 8/11/2021, the second respondent stating that he had a business to run and that if the claimant was going to be “on and off” they needed to chart a different path.

(iii) On 8/11/2021, the second respondent mooting the possibility of part-time employment.

(iv) On 8/11/2021, the second respondent dismissed the claimant by saying “we can part ways at the end of the month”.

(v) On 8/11/2021, the second respondent stating to the claimant that he expected her to “make up” the days she did not attend by working day and night at the weekend.

(vi) On 10/11/2021, the first and/or second respondent asking the claimant to request her payslip from her employer.

(vii) On 10/11/2021, the respondent saying to the claimant:” I know you are not really good with e-mailing, obeying global data protection policies etc.

that is why I felt the necessary to inform you that employees should not know and share their payroll information, salary information to each other”.

23. If so, were any of the alleged acts unwanted conduct?
24. If so, did that conduct related to the claimant's disability?
25. If so, did the conduct have the purpose of violating the claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating and offensive environment for her?
26. If so, did it have that effect? The Employment Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for conduct to have had that effect.

Hearing and procedure

27. The hearing took place remotely by CVP. It took four days from 24 to 27 April 2023.
28. The tribunal was referred to: an electronic bundle that was 453 pages long; four witness statements; two translations of some text messages in the bundle, and a table setting out the agreement between the parties about some of the translated messages.
29. The tribunal heard evidence from the claimant, Mrs Oznur Demir, the second respondent and Mrs Duygu Ozden.

The law

30. Section 6 of the Equality Act 2010 states:

“(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—

(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

(5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

(6) Schedule 1 (disability: supplementary provision) has effect.”

31. Section 13 of the Equality Act 2010 relates to direct discrimination, including discrimination on the grounds of disability. In so far as is relevant it says:

“(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

32. Section 15 of the Equality Act 2020 relates to discrimination arising out of disability. That says:

“(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

33. In [Secretary of State for Justice and anor v Dunn EAT 0234/16](#) the EAT set out the following four factors that must be made out in order for the claimant to succeed in claim under section 15 of the Equality Act 2010:

there must be unfavourable treatment;
there must be something that arises in consequence of the claimant's disability;
the unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability; and
the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

34. Section 26 of the Equality Act 2010 deals with harassment.

“(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.”

Findings of fact

35. Overall, we found the claimant to be credible and consistent in her evidence to us. We found the second respondent to be evasive when questioned. For example, he seemed to be unable to focus on the questions being asked of him on occasion.
36. The claimant has Crohn's disease. She was diagnosed in 2005 as a teenager. In 2011 she had surgery, and since then has been on medication to manage her condition (see page 287 in the bundle). She has been receiving regular Infliximab treatments for many years. Her evidence is that if she were to stop that treatment, within 2-3 months she would have “excruciating ulcers throughout [her] intestines throat and mouth. [She] would start to lose weight. [Her white blood cell count would drop significantly...”
37. A letter from Dr Maxwell (see page 266 in the bundle) who has treated the claimant states that the claimant is “reasonably well in the moment”. We believe the claimant when she says that. We accept her evidence that she can be feeling reasonably well one day and extremely unwell the following day. At page 287 in the bundle of documents, a specialist nurse states that the condition can be very erratic.
38. Aside from the need to attend regular medical appointments, and take medication, Crohn's disease has an adverse effect on different aspects of the claimant's life. At home, she finds it difficult to complete household tasks due to being in pain; she is forgetful about bills and shopping. Her husband deals with all household activities. The medication she takes for Crohn's disease makes her drowsy, so cooking meals is difficult. She suffers from bladder and bowel incontinence. The claimant has to adapt her diet and routine because of her impairment. She needs time off work when she is unwell. This is a fraction of the evidence provided to us; but it is sufficient for us to find that the claimant's impairment has a substantial adverse effect on her ability to carry out day-to-day activities.
39. We find that both the first and second respondent did have knowledge of the fact that the claimant has Crohn's disease. We found the claimant's evidence to be credible and believe that she told the second respondent about it during her job interviews on 21 July 2021 and 4 August 2021. During the second interview, another employee was present. In our view, given the regularity of the claimant's Infliximab treatment, it is very likely that she would have told her employer before she started work which supports her evidence to the tribunal.
40. In September 2021 (before the 13th) the second respondent told Miss Oznur Demir that the claimant suffered from Crohn's disease and that her illness

was like cancer. He was in Turkey at the time. The claimant and Miss Demir were consistent in their evidence on this point, and we believe them.

41. We were provided with different translations of text messages between the claimant and second respondent. This is because the conversations were in Turkish. The parties could not agree if any of the translations were entirely accurate. We did not find that there was a material difference in impact of the translations. This is because we reached the same conclusion for whichever translation was used. Therefore, we have used the version in the bundle for this judgment. They are as follows:

[08/11/2021, 15:13:17] Ozgul Coban: Hello Alper, how are you? How is Alya? I have treatment at the hospital tomorrow, I wanted to let you know if I can't come. NS

[08/11/2021, 17:44:57] Alper Ozceylan: Get well soon Özgül

[08/11/2021, 17:48:33] Alper Ozceylan: Ozgulcum, I feel sorry for your illness, I wish I could do something... Of course, the illness is not in your hands, but I have a business to run.

[08/11/2021, 17:49:26] Alper Ozceylan: We've been together for 8 weeks, you left 8 days sick. Of course, this is not in your hands, but I also have to "rely" to someone who has continuity in the office.

[08/11/2021, 17:51:29] Alper Ozceylan: Of course, I show endless understanding, but our work should not be interrupted. I put a lot of effort into this work, my friends are also making a lot of effort. If we're going to continue to be "on-and-off" Boyle, maybe let's talk about charting a different path.

[08/11/2021, 18:09:00] Ozgul Coban: In short, I think you want me to leave the job

[08/11/2021, 18:09:09] Ozgul Coban: As you wish

[08/11/2021, 18:09:46] Alper Ozceylan: If I wanted you to quit your job, I would have said it directly.

[08/11/2021, 18:10:19] Alper Ozceylan: I meant maybe we would consider being part-time or something. But if you say so, well, we can part ways at the end of this month.

[08/11/2021, 18:10:22] Alper Ozceylan: this*

[08/11/2021, 18:14:59] Ozgul Coban: Ok, if you want it that way, I'll see if there is another

[08/11/2021, 18:15:18] Alper Ozceylan: Ok, whatever you want.

[08/11/2021, 18:15:24] Ozgul Coban: If you need references at work, would you help me?

[08/11/2021, 18:16:56] Alper Ozceylan: Of course I will support you until the end

[08/11/2021, 18:17:13] Alper Ozceylan: whatever is needed, always..

[08/11/2021, 18:18:06] Ozgul Coban: Thank you

[08/11/2021, 18:23:58] Ozgul Coban: Let me clarify this, it's not 8 days, it's all written here

[08/11/2021, 18:27:44] Alper Ozceylan: ok, not 8 but 7, or 6.5. This is a little detail, doesn't change the essence.

42. The first respondent had no sickness absence policy or procedures to deal with attendance management. This was the evidence of the second respondent.
43. The claimant was not provided with a written statement of the terms and conditions of her employment at any point.

Conclusions

Disability

44. The claimant meets the definition of a disabled person under section 6 of the Equality Act 2010. Crohn's disease is a physical impairment. It has a substantial and long-term adverse effect on the claimant's ability to carry out day to day activities.

Direct discrimination

45. The second respondent did not dismiss the claimant. He made no effort to stop her from resigning, and he may well have been relieved that she did, but we are satisfied that he did not dismiss her by saying they could part ways at the end of the month. This was clearly said in response to the claimant's message that it would be best if she found another job. We therefore do not find that this allegation of unfavourable treatment has been proven.
46. However, we are satisfied that the allegation of unfavorable treatment relating to the message about charting a different path is proven. The claimant was faced with the prospect of an unidentified change to the way she would be expected to work. A tribunal could find that, in the absence of a non-discriminatory explanation from the respondents, that it amounts to unfavourable treatment due to discrimination. The claimant relied on a hypothetical comparator.
47. Neither respondent has proved that it did not discriminate against the claimant. The second respondent made very little effort to speak to the claimant about her condition, or to keep her when she said she wanted to leave. He made no effort to discuss with her if any measures could be put in place that might enable her to carry on working full time. Nobody else employed by the first respondent did so either. No investigation took place into the claimant's condition and there was no formal discussion about the needs of the business.

48. We find that the employer has treated that person less favourably than it treated or would treat others, and the difference in treatment is because of the claimant's disability.
49. We are therefore satisfied that both respondents directly discriminated against the claimant on the grounds of disability under section 13 of the Equality Act 2010.

Discrimination arising out of disability

50. As set out in paragraph 44 above, we do not find that the claimant was dismissed. We do not repeat those findings here.
51. We are satisfied that the text messages on 8 November 2021 about charting a different path and mooted part time employment were unfavourable treatment by both respondents towards the claimant. They put the claimant at a disadvantage because she was faced with a change to her working arrangements, without any formal discussion or consideration of what allowances or adjustments could be made. Indeed, surprisingly, there was no policy or procedure in place about any of this. The claimant had never received a written contract of employment or any document setting out the terms and conditions under which she was employed. The unfavourable treatment occurred because of the claimant's absence from work to have Infliximab treatment. Her absence was due to her disability.
52. The respondents have not shown that this treatment was a proportionate means of achieving a legitimate aim. The legitimate aims put forward were (i) to ensure the optimal and efficient deployment of staffing resources and/or (ii) to ensure that staff were working their contractual hours. These aims do relate to important issues that the respondents needed to address. However, there was no real attempt to discuss the impact of the claimant's condition or effort to put in place measures which might enable her to work her hours and ensure optimal and efficient deployment of staff. For example, the claimant had requested a laptop to work from home. The second respondent, in cross-examination, said that he would not want her using a laptop in her probationary period or for her to use public wi-fi. This is despite no suggestion that the claimant would have used a laptop other than on a private wi-fi network. Less discriminatory measures could have been put in place in the first instance, for example an investigation into what was happening and serious consideration of enabling the claimant to work from home. The treatment was therefore not proportionate.
53. Both respondents had knowledge of the claimant's disability (see our findings in para 38 above).
54. Discrimination arising out of disability is proven against both respondents.

Disability harassment

55. We are satisfied that each of the alleged incidents took place. However, in respect of the disclosure on 14 September 2019 to Miss Demir (that the claimant had Crohn's disease), we do not find that this was part of the unwanted conduct towards the claimant. We find that it was perfectly

- reasonable for Miss Demir to be told about the claimant's illness. Miss Demir was her line manager and responsible for supervising the claimant.
56. However, the other incidents amount to an unwanted course of conduct towards the claimant as a result of her disability.
57. We do not find that the conduct had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment towards her. In our view, the second respondent had a very poor understanding of the claimant's illness. As we have highlighted, he made very little effort to investigate or think about how the claimant could be supported at work. We have also taken into account the unusual nature of the text message conversations between the claimant and the second respondent. It seems that they had a friendly relationship before things went wrong between them, and that the second respondent continued this informality when he should not have done so. He certainly could have been far more sensitive in how he dealt with the claimant, but we do not think he intended to harass her.
58. We have considered whether the conduct had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment towards her. Taking into account all the circumstances of the case, we do not think that the conduct did have that effect. As she said in her evidence, she is sensitive about the impact her condition has on her life. This is understandable. However, the claimant's response in the messages at the time was measured. She did not express any upset. She asked for a reference. The messages read more of a falling out rather than anything stronger. At most they are unwise and insensitive, and we do not think that it is reasonable to say the conduct had the effect of harassment.
59. Disability harassment is therefore not proven.

Employment Judge Freshwater

Date: 16 July 2023

Sent to the parties on: 21 July 2023

For the Tribunal Office