



EMPLOYMENT TRIBUNALS

Claimant: Mr B Belfedal

Respondent: World of Books Limited

Heard at: In person at Midlands West Employment Tribunal (day 1 and 2) and by CVP (day 3)

On: 26 – 28 July 2023

Before: Employment Judge Platt, Mrs I Fox and Mr A Moosa

Representation:

Claimant: in person

Respondent: Mr Wayman, Counsel

JUDGMENT having been sent to the parties on 4 August 2023 (attached as an Appendix) 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

Introduction

1. The Claim is a claim of direct sex discrimination and turns on one issue as set out by in the Preliminary Hearing conducted by EJ Perry and in the agreed list of issues. Did the Respondent treat the Claimant in one or more of the following ways: allocate the task of “cardboard/bailing”, “feeding” and “support” which the Claimant alleges is more laborious or tiring only to men and not women?

Procedure

2. Most of first morning on the first day of the hearing was spent dealing with procedural matters.
3. The Claimant attended the hearing having exchanged witness statements with the Respondent for two witnesses Mr Mirreh and Mr Oyiase but not having exchanged a witness statement in respect of his own evidence. He stated that it was his intention to give evidence and it was noted that it had been explained to him at previous Preliminary Hearings (on 14 September

2022 and 28 March 2023) where Case Management Orders had been made for witness statements to be exchanged by the parties. The Respondent stated that they had also set it out in correspondence with the Claimant. Despite this the Claimant did not provide a witness statement to the Tribunal. It is clear the Claimant understood what a witness statement is given that he provided two for the other witnesses who gave evidence to the Tribunal. The Respondent noted its concerns about this but did not make any specific application to the Tribunal about how the Tribunal should deal with this matter.

4. The Claimant stated that he was relying on the agreed chronology (page 81 – 83 of the bundle), the transcript of a grievance meeting (pages 152 - 168 and 170 – 186 of the bundle), a transcript of a meeting with Sarah Dobson (page 112–115 of the bundle) and an email he had sent to the Respondent's representative on 25 October 2022 as his primary evidence. The Tribunal proposed to the parties to take those items as the Claimant's evidence given that the alternative was that the Claimant did not give evidence or the hearing was potentially postponed and time wasted. The Claimant is a litigant in person and as the claim was focused on one discrete issue and many agreed facts this was considered a proportionate way of dealing with the matter in the absence of an application from the Respondent. The Respondent agreed with the approach and the Tribunal decided to allow the Claimant to treat these documents as his evidence. The Respondent's representative confirmed they had prepared cross examination on the basis of the Claimant relying on the chronology. In accordance with the overriding objective, particularly dealing with matters proportionately, the Tribunal decided to proceed on this basis. The alternative would have been not to hear from Claimant at all which we did not consider helpful to the parties or Tribunal.
5. The Claimant made an application to the Tribunal for the hearing to be recorded. He stated this was because he wanted matters to be transparent and that he had a general concern about bias based on his previous experience of dealing with Preliminary Hearings. However, he did not assert any particular concerns about bias in relation to the panel hearing the claim. The Respondent objected to the application on the basis that there was no good reason for it and that the Claimant thinks things are biased where he does not succeed. The Claimant provided a document in support of his application which was handed up to the Tribunal and a copy was provided to Respondent. The document was actually an email with attachments dated 24 May 2023 addressed to the EAT, the Tribunal and the Respondent's representative copied to the SRA regarding an appeal. It did not directly relate to the recording of the hearing but indicated the Claimant's dissatisfaction with West Midlands Employment Tribunal and previous Judges who case managed his claim.
6. The Tribunal considered the application and concluded that there were no particular circumstances that had been put forward to warrant the recording of the hearing. It was noted that the cost of transcribing a three-day hearing would be significant and there was no justification for incurring it. There is no practice of routinely recording hearings in Employment Tribunals currently and we do not generally have facilities for it. It can occasionally be accommodated, for example as a reasonable adjustment.

7. The Tribunal explained that: the panel were fresh to this case and had no prior involvement in it; it is open public hearing; there are professional representatives present; a number of other observers present; and that the Judge would take a detailed note. The Tribunal explained to the Claimant that they take their obligations seriously and are here to deliver a fair hearing over three days in order to consider his claim properly. The Claimant indicated he was satisfied that the Tribunal would consider his claim diligently.
8. It was explained to all parties at the hearing that it was not permitted to record the hearing on any device without the permission of the Tribunal, that no permission had been given and that record the hearing without permission was a serious matter with criminal penalties attached. The Claimant was asked to confirm he understood this: he confirmed he did and that he was not recording the hearing.
9. During the course of the hearing the Claimant provided a document showing calendar entries showing green and orange shifts during 2021 and 2022. The Claimant also handed up a handwritten illustration of the site in relation to a question the Tribunal had asked regarding the lay out of the site. The Claimant also provided a copy of an email dated 26 October 2022 with attachments. The attachment was a transcript of a conversation that had been recorded by the Claimant between him and Sarah Dobson, Team Leader. This had already been included in the bundle at pages 112 – 115.
10. The Tribunal was provided with a bundle of 484 pages. Pages 300 onwards is a print-out of shift logs for the period October 2021 – Feb 2022. It was explained that the Tribunal would not read every page of the bundle and that the parties should highlight key documents. The Claimant highlighted: pages 112-115, 187, 191, 146, 222, 224 – 226 and 262, 297, 298 – 299. The Respondent directed the Tribunal to read the pleadings, witness statements, pages 77 – 81 and confirmed that it would refer to parts of the document at page 300 onwards.
11. The Tribunal took an hour to read once the procedural matters above had been determined. The Tribunal heard from three witnesses for the Claimant: the Claimant, Mr Mirreh and Mr Oyiase. The Tribunal heard from two witnesses for the Respondent: Mr Grobecki (Team Leader) and Mr Henry (Operations Manager). The Claimant's witnesses were not available on the afternoon of day one for childcare reasons so the Tribunal finished early so that they could give evidence on morning of day two, the Respondent having objected to giving its evidence before the Claimant had finished his.
12. The Tribunal heard oral submissions from both parties at the conclusion of the hearing.
13. The Claim is subject to a deposit order made by EJ Choudry on 28 April 2023 shown at pages 84-85 of bundle.
14. The Judgment of the Employment Tribunal was given by CVP following the agreement of all parties at the conclusion of evidence and submissions on

day two of the hearing. The rest of the claim was heard in person at Midlands West Tribunal - Birmingham City Centre Tower.

Claims/issues

15. The issues the Tribunal needed to decide are set out at page 57 of the Bundle at the Preliminary Hearing before EJ Perry:
16. Did the Respondent treat the Claimant in one or more of the following ways:
 - a. Allocated the task of “cardboarding/bailing”, “feeding” and “support” which the Claimant alleges is more laborious and tiring to only men and not women.
 - b. If so, was that treatment harassment?
 - c. If not, was the Claimant treated by the Respondent less favourably than it treated or would have treated the comparators? A hypothetical comparator was relied on by the Claimant (as he had not provided a witness statement for an actual comparator as per the Case Management Orders made by EJ Perry). An appropriate hypothetical comparator would be a warehouse operative working in Ziffit (the department the Claimant worked in) who was a woman.
 - d. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic – i.e. that the Claimant is male?
 - e. If so, what is the Respondent’s explanation? Does it prove a non-discriminatory reason for any proven treatment?

Findings of fact

17. There are a number of agreed facts as referred to at page 77 of bundle. These are accepted by the Tribunal. The Claimant was employed as a Warehouse Operative. He began as agency staff from 24 August 2021 and became permanent on 20 December 2021 until he left employment on 2 June 2022. His decision to leave does not form part of the claim. There are male and female Warehouse Operatives employed by the Respondent and everyone is initially trained to do scanning in the Ziffit department where the Claimant worked. Scanning consists of: opening a box, scanning barcodes of books and CDs and DVDs, typing into a PC and moving items along to be collected. Scanning is carried out by male and female members of staff.
18. Some Warehouse Operatives are trained to do Support Duties – not everyone is. Support Duties consist of flattening cardboard, bailing, feeding using the pump truck and lifting totes. The usual ratio is to have 13 staff members Scanning and 3 staff members on Support during a normal shift.
19. The pay is the same for those doing Scanning and Support. The Claimant was trained to do both tasks.
20. On 21 or 22 January 2022 the Claimant complained to Mr Grobecki that he did not want to do Support duties and he was moved off them onto Scanning for that shift.

21. On 28 January 2022 the Claimant complained to Sarah Dobson that he felt he was always asked to do Support and that females were not asked to do it. The Claimant raised a grievance on 31 January 2022 about this.
22. The Claimant requested CCTV footage before and during the grievance hearing which took place on 14 and 23 February 2022. The request was denied. The Claimant attended grievance meetings on 14 and 23 February 2022. The grievance outcome was provided verbally on 23 February and confirmed in writing on 28 February 2022. The grievance manager (Mr Henry) did not uphold the complaint. The Claimant did not appeal. The Claimant covertly recorded discussions with managers and HR, in particular a conversation with Sarah Dobson on 28 January 2022 and the grievance meetings, despite being told it was not permitted to record the latter.
23. There are a number of disputed facts recorded and shown at page 78 of the bundle. The Tribunal made the following findings in relation to those disputed facts.
 - a. *Only male members of staff are trained on support tasks:*

The evidence of Mr Oyiase was that at least one trainer is female and he had been trained by a female trainer in relation to Support Duties. Mr Grobecki's evidence was that everyone is trained on the Scanning and staff volunteer to be trained on Support. He said he usually tried to have 5/6 staff on Support Duties on each shift. The Tribunal accepted the Respondent's evidence that it is not accurate to say that only male members of staff are trained to do Support work. Anyone that wanted to be trained would be trained. Training was offered to anyone who wanted it not just male members of staff.
 - b. *That Sarah Dobson said she would meet with the Claimant to discuss his complaint:*

The Claimant's evidence was that he had spoken to Sarah Dobson on 28 January 2022 about his concerns but she did nothing about it and he therefore put in a grievance. Page 117 of the bundle shows an email dated 31 January 2022 where it is stated that he had spoken with Sarah Dobson and she ignored his complaint. He therefore wrote to HR to take out a formal grievance. Sarah Dobson did not give evidence and has left the company. The transcript shown at page 115 of the bundle states that Sarah Dobson said "there are no trainers to train them" in response to a question from the Claimant about why females were not trained. Nothing turns on the fact Sarah Dobson did not deal with the Claimant's complaint although the Claimant was undoubtedly frustrated by this at the time.
 - c. *Sarah Dobson lied during grievance interview:*

The note of Sarah Dobson's evidence in the investigation is at page 148 of the bundle. The Tribunal found no evidence to suggest that she lied. The Tribunal did not hear from her but could conclude based on the evidence before it that she lied. Nothing turns on it in any event: the Claimant raised a grievance and it was dealt with. The Tribunal notes that if the Claimant was unhappy with the outcome he could have appealed. He may have felt there was no point as he stated in his evidence but he cannot have known that if he did not try.
 - d. *HR and management have lied and covered up what has occurred and discussed during grievance meeting:*

We cannot find based on the evidence before us that HR have lied and there is a management cover up. These are serious allegations that not substantiated.

e. *Only male workers do support work:*

The Tribunal does not find that only male workers do Support work. Mr Grobecki and Mr Oyiase both gave evidence to the Tribunal which corroborated each other's that all Warehouse Operatives in Ziffit are asked to do Support work at the beginning of each shift. Work is allocated to those who come forward. The witnesses agreed that female members of staff did not generally volunteer. We find that everyone was asked and were allocated work based on who came forward. We accept Mr Oyiase's evidence that it could be problematic to push people to volunteer for the Support work and he expressed that he was worried about asking females who did not volunteer to do it. However, we accept his evidence that he was never told *not* to ask females but that the majority of the time females did not come forward. The grievance outcome letter on page 256-259 of the bundle states that seven females have undertaken support work during the last 12 months. Mr Henry's witness evidence stated the same and we accept that evidence from Mr Henry. Mr Oyiase's evidence was that a female had trained him in Support work. We accept the veracity of the emails put forward by the Respondent at pages 278 - 289 of the bundle from female staff describing the Support duties they did. Although not contemporaneous we do not find that they are untruthful or fabricated. We conclude that females do Support work albeit not as regularly as male members of staff. They are not prevented from doing it, are asking to volunteer both to be trained and to do the work. A female called Jolanta did Support work for two months before joining the Police. We accept Mr Grobeski's evidence that the Scanning and Support roles both have a physical aspect to them and that the Respondent provides support to employees to reduce manual handling.

24. The Tribunal made other relevant findings of fact. The Tribunal notes that the Claimant usually worked four-hour shifts, sometimes in morning and sometimes in evening. Sometimes he did overtime. The Claimant does not accept that he may not have been aware of what happened when he was not at work and relied on his colleagues including Mr Mirreh and Mr Oyiase who both said that they never observed females doing Support work themselves. The Tribunal finds that even though they may not have personally seen it, this does not mean that it did not occur.

25. The Claimant says that some Support tasks are easier than others and what he is really complaining about are cardboarding and other physical tasks that he never saw women doing. The Tribunal accepts that some aspects of Support work are likely more physically demanding than others.

26. The Claimant's evidence was that he had never seen women doing these activities and that Sarah Dobson told him that females were not trained to do the activities. The relevant transcript (at pages 112-115 of the bundle) states that Sarah Dobson answered to the Claimant when he said that women who had been there for two years were not doing Support work and he had only been there for 3-4 months but was doing it. She answered "because there are no trainer to train them". The natural meaning of this

appears to be that she expressed a view that she did not think there were enough trainers available to train everyone. Sarah Dobson has left the employment of the Respondent and did not give evidence.

27. The Claimant raised a grievance on 31 January 2022. The Claimant asked for CCTV footage because he felt it would demonstrate that females were not doing the Support tasks. The Claimant requested CCTV on 3 February 2022. Mr Henry asked for the CCTV extracts on 22 February 2022. On 23 February 2022 the request for CCTV was refused by Mr Tucker (the Respondent's Head of Security). When the request was made it appears that there was a misunderstanding about why the request was being made and an assumption that it was being requested to monitor the performance of staff. The Respondent has a policy on use of CCTV (CCTV Operating Procedures) which state that CCTV is used for health and safety and prevention of crime, not to monitor performance. However, short extracts of CCTV were requested in order to investigate the Claimant's grievance and the basis for not providing it appears to have been founded on a misunderstanding. It was a matter of considerable concern to the Claimant that this had not been provided and he repeatedly stated that things may have turned out differently if it had been.
28. The grievance outcome was given on 28 February 2023 (pages 256 - 259 of the bundle). The Claimant disagreed with the grievance outcome but did not appeal: he stated that he believed it was pointless to appeal.
29. We find based on the Claimant's evidence that he volunteered to undertake the Support training early on in his role. We find that when he wanted to be taken off Support work he was removed from it. The Claimant accepted in evidence that when he stated that he did not want to undertake the Support work he was taken off it and did Scanning work instead.
30. After his grievance he only did Support work on a couple of occasions on an ad hoc basis and his evidence was that he did not mind that. He did not mind the work as such but wanted males and females to be treated equally. Mr Mirreh in his evidence also said that when he wanted to be taken off Support work he was removed from the work. We find that the Respondent asks all Warehouse Operatives in Ziffit to undertake Support work training and those who come forward are provided with that training. We accept Mr Grobecki's evidence in this regard. Mr Grobeski and Mr Oyiase gave consistent evidence that everyone was asked at the start of the shift. Mr Grobecki's evidence, which the Tribunal accepted, is that if no one came forward on Ziffit to do the Support work on any given shift then they would speak to other team leaders who would provide someone from a different department.

Law

31. The relevant law is set out in the Equality Act 2010 (EqA). Section 13 of EqA sets out the provisions dealing with direct discrimination:
 - (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 26 of EqA sets out the provisions that deal with harassment. Section 39(2) of EqA states that an employer must not discriminate against employees: in the terms of employment; in the provision of opportunities for promotion, training or other benefits; by dismissing them; or by subjecting them to any other detriment. The meaning of “detriment” is that the treatment has got to be such that an employee reasonably understood that they had been disadvantaged – as set out in *Shamoon v Royal Ulster Constabulary* [2003] UKHL 11.
33. Section 136 of EqA deals sets out the provisions on the burden of proof:
- (2) *If there are facts from which the [tribunal] could decide, in the absence of any other explanation, that a person (a) contravened the provision concerned, the [tribunal] must hold that the contravention occurred.*
- (3) *But section (2) does not apply if A shows that A did not contravene that provision.*
34. In the case of *Igen v Wong* [2005] EWCA Civ 142 the Court of Appeal set out guidelines on the application of the burden of proof provisions. There are two stages to the burden of proof: (1) primary facts and (2) the employer’s explanation.
35. There must be primary facts from which a Tribunal could decide in the absence of any other explanation that discrimination took place. As set out in *Madarassy v Nomura International plc* [2007] EWCA Civ 33, primary facts are sufficient to shift the burden if “a reasonable tribunal could properly conclude” on the balance of probabilities that there has been discrimination. The burden is on the Claimant and it is not enough to show a protected characteristic and a difference in treatment – something more is required - *Madarassy v Nomura International plc* [2007] EWCA Civ 33. Unfair or unreasonable treatment on its own is not enough – *Glasgow City Council v Zafar* [1998] IRLR 36, HL
36. At Stage 2 if first part of the test is met the burden falls to the employer to explain. The Tribunal must consider whether the employer has proved on the balance of probabilities that the treatment was not for a proscribed reason? Following the guidance in *Igen v Wong* the employer must prove that the less favourable treatment was in no sense whatsoever because of the protected characteristic and tribunals can expect cogent evidence from an employer for this burden to be discharged.

Conclusions

37. The Claimant was allocated cardboard, bailing, feeding and support tasks. He was trained to undertake Scanning and Support and he put himself forward for both types of work. The Tribunal accepts the Claimant’s position that he found the Support work more laborious and tiring than the Scanning work.
38. In terms of the section 26 complaint none of the treatment experienced by the Claimant meets the definition of harassment. The Tribunal understands that the claim has never been one of harassment and the Claimant did not

put forward his claim as a complaint of harassment. This had been included in the list of issues for completeness.

39. Therefore, the Tribunal goes on to ask itself if the Claimant was treated less favourably than a hypothetical comparator under section 13 of EqA. An appropriate hypothetical comparator being someone in the same position as the Claimant who is not a man, i.e. a female Warehouse Operative in the Ziffit department.
40. The Tribunal concludes that the Claimant was not treated less favourably than a female Warehouse Operative in Ziffit. Female members of staff were offered training in Support work and were asked at the beginning of each shift to come forward to undertake support roles. The Claimant was asked this question and could refuse if he did not want to do the work, as female staff could. When the Claimant did refuse, he was given other work to do.
41. Applying the provisions of the burden of proof the Tribunal concludes that the Claimant has not provided primary facts from which the Tribunal could conclude that there is a difference in treatment because of the Claimant's male gender. The Respondent provided evidence, which was accepted by the Tribunal, that all Warehouse Operatives are offered training in Support Work, are offered Support work and that some females do undertake this work.
42. The Tribunal does not conclude the Respondent only allocated Support work to men not women. Males and females were offered training to do the work. Each day males and females were asked to put themselves forward for the tasks they wanted to do that day including Support work. We conclude that generally speaking fewer females did put themselves forward. We conclude that a small number did.
43. We conclude that when the Claimant stated that he did not want to do the Support work he was not made to do it. He was given other work to do. We note that the Claimant has operated under some assumptions based on what he has seen and what his colleagues have reported to him. However, the Claimant and his witnesses cannot have known everything that was happening across the warehouse. The Respondent has provided some evidence that females were doing some of the Support work. We therefore conclude that the Claimant has not proved primary facts from which the Tribunal could reasonably conclude that discrimination took place because he is male.
44. If the Tribunal is wrong about the application of the first stage of the burden of proof provisions, the Respondent has in any event proved a non-discriminatory reason, namely that Support work and training were allocated to Warehouse Operatives based on who came forward to do it. If the Claimant had said that he did not want to do the work he would not have been required to do it. The Claimant could only point to one occasion with Sarah Dobson when he asked to be taken off Support Work and he was told to carry on with the work which is what prompted his grievance.
45. Females can make exactly the same complaint and they would be removed from the Support work. We cannot find that the Claimant was treated less favourably because he is male. Both males and females are treated the

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same: if they want to do the work then they do it and if they do not want to do the work, then they are not required to do it.

46. Accordingly, the Claimant's complaint of direct sex discrimination fails and is dismissed. The complaint of harassment fails and is dismissed. No issue of remedy arises.

Employment Judge Platt

Date: 3 August 2023