



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000150/2023

Held in Glasgow on 4 and 5 September 2023 and

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Members Meeting on 19 October 2023

Employment Judge: R McPherson

Members: G McKay and J Ward

Ms. Lynn Taylor

Claimant
In Person

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Ms. Ainslie Richards
t/a The Coach House Bar and Restaurant

Respondents
Represented by
Mrs Kaur Singh -
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The unanimous judgment of the Tribunal is that:

1. the claimant's claims in terms of s15 of the Equality Act 2010 (EA 2010) discrimination arising because of disability do not succeed and accordingly are dismissed; and
2. the claimant's claims in terms of ss20 & 21 of the Equality Act 2010 (EA 2010) reasonable adjustments do not succeed and accordingly are dismissed; and
3. In accordance with s198 of the Employment Rights Act 1996 (ERA 1996) the respondent is not ordered to make payment to the claimant in respect of the respondent's failure to provide a written statement of particulars; and
4. The claimant's claims in terms of s13 of the Equality Act 2010 (EA 2010) direct disability discrimination succeeds and the respondent is ordered to pay a total monetary award in the sum of **Two Thousand Nine Hundred and Eight Six Pounds and Eighty Three Pence (£2,986.83)**. The prescribed element of

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this award is **£1,886.83**, with injury to feelings element of the award being **£1,100**, which element is payable immediately to the claimant.

REASONS

Preliminary Procedure

- 5 1. It is considered useful in this case to provide a limited note of the procedural history.
2. The claimant presented her ET1 on **Tuesday 4 April 2023**, following ACAS Early Conciliation (ACAS certificate identifying receipt of EC notification on Tuesday **7 March 2023** and the issue of the ACAS Certificate on **Friday 24**
10 **March 2023**) identifying the respondent as **The Coach House Bar and Restaurant** following commencement of her employment on **Wednesday 1 March 2023** and termination of her employment on **Friday 3 March 2023** with the respondent as a Bar Staff member.
3. An ET3 was subsequently presented on **Tuesday 9 May 2023** with the current
15 representative identified, the ET3 set out in para 2.1 the name of individuals, company or organisation as "*The Coach House Bar and Restaurant*" and in "*Background*" within the Paper Apart set out in 36 paragraphs. In paragraph 3 of the Paper Apart, it sets out that the respondent is a company which operates a bar and restaurant known as the "*Coach House*" and in para 8 that
20 the claimant "*was invited for interview on 8th January by Ms Ainslie Richards, a Director of the Company*". The identity of the company was not provided. The respondent gave notice in para 30 that it was the respondent's position that the claimant's employment was terminated "*not due to her disability but due to capability*". The ET3 did not give notice of any allegation of conduct related to customer complaints generally or of any specific customer
25 complaint.
4. On **Tuesday 23 May 2023**, the respondent provided an updated ET3 Paper Apart, which set out the respondent's position over 47 paragraphs. Paragraph 4 of the updated Paper Apart states that the respondent is a company which
30 operates a bar and restaurant known as the "*Coach House*" and at para 9 that

the claimant “was invited for interview on 8th January by Ms Ainslie Richards, a Director of the Company”. The identity of the company was not provided. The respondent gave notice in para 36 of the updated Paper Apart that it was the respondent’s position that the claimant’s employment was terminated “not
5 due to her disability but due to capability”. The updated ET3 did not give notice of any allegation of conduct related to customer complaints generally or of any specific customer complaint.

5. At (telephone) case management preliminary hearing on **Tuesday 6 June 2023**, the claimant attended by telephone and the respondent was represented by the respondent representative. Orders were issued, including as set out below.
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6. Further, it was identified that the claimant gave notice that she relied upon 5 physical or mental impairments (being Osteoarthritis, Sliding Hernia, Panic Disorder, Anxiety and Fibromyalgia) in respect of her asserted protected characteristic of Disability within section 6 of the Equality Act 2010 at the
15 material time. The Tribunal directed that a full hearing be appointed on **4, 5 and 6 September 2023**.
7. Various Orders were issued, which were sent to the parties on **Monday 12 June 2023** (The June Note and Orders) and, so far as relevant:
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 1. The First Order, directed the respondent representative to write to the Tribunal by 4 pm on 20 June 2023 confirming the respondent’s correct designation in law; that is to say, confirming whether the respondent is a Limited Liability Company, or alternatively is a partnership formed under the law of Scotland or is a sole trader trading as “*The Coach House Bar and Restaurant*” in which case providing the name of the
25 trading individual; and
 2. The Fifth Order included direction to the claimant to confirm by 20 June 2023 whether she gave notice of s 20 & s21 EA 2010 Failure to Make Reasonable Adjustments requiring that the claimant specify the
30 Provision Criterion or Practice she relied upon; and

3. The Seventh Order directed that the claimant write to the respondent representative (copied to the Tribunal) providing.
 - (a) An Impact Statement, that is a Statement setting out, in terms of section 6 of the Equality Act, the adverse impact upon her ability to carry out day-to-day activities which each of the physical and or mental impairments relied upon by her has; and
 - (b) Copies of her General Practitioner's medical records which vouch for her diagnosis, and her treatment for each of the medical conditions relied upon by her and which go to show the adverse impact of each such condition on her ability to carry out day-to-day activities.
4. The Ninth Order included direction that the claimant provide within 21 days details of the steps taken to mitigate her loss, that is to say find alternative employment following upon her dismissal, together with documentary vouching.
5. The Twelfth Order directed parties to liaise regarding the exchange of documents and the respondent representative to compile and provide a Joint Bundle.
8. On **Tuesday 13 June 2023**, the claimant set out, in effect, in response to the Orders of the Tribunal, Notice of her position on comparator for s13 EA 2010 claim and effectively PCP for ss20, 21 EA 2010 claims.
9. On **Monday 26 June 2023** the claimant provided;
 1. A 2-page unsigned statement by the claimant's partner headed Impact Statement dated **Tuesday 6 June 2023** (the **Robert Smith Statement 6 June 2023**), which included a description that the claimant came home at 10.30 am on Friday 3 March "*crying and shaking. She seemed extremely upset ... through the tears and sobbing she explained what had happened... Luckily Laura (her carer at the time) stayed with her that afternoon/evening just to keep an eye on her for which I am*

grateful. What should have been an enjoyable weekend for my 50th birthday turned out to be disastrous to say the least.” ; and

2. A 2-page unsigned statement by the claimant dated **Friday 24 June 2023**, headed **Injuries to Feelings 24 June 2023 (the claimant’s 24 June 2023 Statement)** which included setting out as background that
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“*Firstly this is the 4th time I have been finished because of my disability. And may add the last as I have chosen to take early retirement...*” The claimant set out that her mental health had not been good since the loss of her daughter in 2012, and as background to the events
10 complained of, she had secured “*a job in a bar in a caravan site, they cut down my hours to 5 per week because of my disabilities. I left and won a Tribunal against them*” and in respect of the current matter “*I then got another job on a similar” site “that last 2 days as I wanted short shifts and couldn’t carry trays. I did not pursue this matter as I was dealing with the above...*” The claimant indicated that following an advert on Facebook she explained “*one of my disabilities osteoarthritis. I also told the manager that I had taken the previous directors to court. I was happy I had been honest and was still offered a position as Bar Staff to start on 1 March 2023. I contacted the manager prior to starting to see if I could get my carer some weekend work. She agreed and said we could work together which suited us fine. I did not however mention at that time that Laura Campbell was my carer as it had no bearing.*”
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3. The claimant’s 24 June 2023 Statement further set out what she said
25 was the position since the termination of her employment and described what she suggested was the response of her then carer, Laura Campbell.
4. The claimant’s 24 June 2023 Statement further described that the claimant thereafter “*went home in tears to Robert my fiancé who couldn’t believe it either.*”
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I did not need to tell them I was disabled at interview but I did and to be sacked for that reason I couldn't comprehend. I now have low mood again as I feel I have been kicked in the teeth once to often”.

5 5. The claimant's 24 June 2023 Statement set out that the claimant sought loss of earnings calculated over 34 weeks to the end of the season and in relation to Injury to Feelings “*Taking into account my loss self-esteem and mental statement and the fact that I cannot take any stronger anti-depressants than I am already on. And this had been my last jobs I am now taking early retirement from September 2023.*

10 *I am asking for injury to feeling in band 2” of Vento.*

10. On **Monday 3 July 2023**, the respondent representative sent an email to the Tribunal copied to the claimant, stating that the respondent should be Richards Ventures Ltd, along with an adjusted ET3 inserting the name into box 2.1 and the header of the paper apart and it was presumed that the Tribunal would permit the amendment without formal application, if not, an application would be made.

11. On **Tuesday 11 July 2023**, the Tribunal set out in correspondence to the parties comment including that it was not prepared to grant an amendment automatically as requested by the respondent without explanation, noting that the ET3 response was lodged in the name of the Coach House Bar and Restaurant at a different address to that of the ET1 and requested the claimant's comments.

12. On **Wednesday 12 July 2023**, the claimant intimated that she had not heard of Richard Ventures Ltd, the address was that of a Chartered Accountant firm, and although a contract of employment had been promised by 25 February 2023, it had not been provided.

13. On **Monday 17 July 2023**, the respondent representative sent a letter to the Tribunal, copied to the claimant, stating that it was in response to the First Order describing “*The Respondent was listed as the “Coach House bar and Restaurant”.* However, they are not a sole trade], nor a partnership or a limited

company. The limited company is Richards Ventures Ltd of which there are three Directors; Mrs Doreen Richards, Mrs Steven Williams Richards and Ms Ainslie Richards. This is the justification for the Respondent seeking to change their identity in this case. Richards Ventures Ltd acquired the Coach House and Restaurant in January 2023. It having been under different management prior to this date against whom the claimant brought a Tribunal claim in 2022. As the Claimant has correctly identified, the registered address is that of the Respondent's accountants..."

14. On **Tuesday 18 July 2023**, the claimant set out in an email to the Tribunal which included description that Ms Campbell was her carer from September 2022 to April 2023 and "*cannot give evidence to anything within those dates. She has also been a close friend of 7 years give or take a few fallings out*".
15. On **Wednesday 26 July 2023**, the respondent representative sent an email (the respondent representative email of 26 July 2023) to the Tribunal copied to the claimant, which included description of the respondent's witnesses as
1. Ms Ainslie Richards, Owner and Director of the Coach House Bar and Restaurant.
 2. Ms Alicea Carruthers, Assistant Manager, who was described as present/worked with the claimant.
 3. Ms Stephanie Farish, who was described as being present on the training day and also worked for the respondent.
 4. Ms Laura Campbell, who was described as being the respondent's employee, it being intimated that this witness "*will not be questioned about being the claimant's carer, rather her evidence relates to the Claimant's dismissal.*"
16. On **Tuesday 8 August 2023**, the Tribunal wrote to the parties identifying that it had ordered that the respondent be identified as Ms Ainslie Richards, trading as the Coachhouse Bar and Restaurant. On this date, the claimant also provided an Impact Statement dated 30 July 2023 with a cover email confirming that the claimant would only rely on Osteoarthritis.

17. On **Wednesday 23 August 2023**, the respondent representative sent an email to the Tribunal copied to the claimant, in response to Tribunal correspondence, which included a description that the respondent did not have a copy of the Facebook Job advert.
- 5 18. On **Tuesday 29 August 2023**, the respondent representative issued an email which included confirmation that **Ms. Alicia Carruthers** would no longer be able to attend and that **Ms Angela Carruthers**, upon whom the claimant relied as a comparator, would be attending.
- 10 19. On **Wednesday 30 August 2023**, the claimant set out that she did not agree to the proposed Bundle prepared by the respondent, including that it included messages from the claimant's carer when she was employed as such and there were documents omitted and set out that she would prepare her own Bundle.
- 15 20. On **Thursday 31 August 2023**, at 9.06 pm in an email to the Tribunal, the claimant set out, in response to the respondent's Bundle (called Joint Hearing Bundle), that her *"amendments to ET1 form were missing re email 13.6.23 and my new head of claim to be included section 38 of the employment act. My medical evidence and my impact statement are missing. The respondent's title on the bundle and documents does not state Asline Richards t/a The Coach House Bar and Restaurant."* The claimant criticised the respondent for including an impact statement from the previous tribunal that the respondents sent her and refused to remove it, describing that the respondent *"has not included the outcome of that Tribunal I sent her. She has also included a lot of private screenshots from my ex-carer. In a previous email to the court she has admitted that Laura Campbell never worked with me and denied my dismissal was discussed with her. But she is giving evidence to why I was dismissed. On the 31st July she sent me 6 screenshots of mops, floors, Hoover and fridge plus my incorrect P45 and my wage slip. She seems to think this is acceptable but she was meant to send me her full bundle now*
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- 30 *120 pages by 30th July as per PH order. She has also refused to add her original attachment to her ET3 to the bundle and that is because the second one contradicts it."*

21. At this Final Hearing, the claimant attended in person along with her witness, Robert Smith, who, there being no objection, was permitted to attend with her as her effective carer. The claimant again confirmed that, as she had earlier confirmed in correspondence, of the medical conditions identified in the June Note and Orders, she only relied upon Osteoarthritis.
22. The respondents were represented by Mrs Kaur Singh Solicitor.
23. The witnesses for the respondent (who had been identified in the June Note and Orders) were **Ms Ainsley Richards** (who was identified in the June Note and Orders as the respondent's employee), **Ms Angela Carruthers**, **Ms Stephanie Farrish** (who were identified as working with the claimant in the June Note and Orders and the respondent representatives email of 27 August 2023) and **Ms Laura Campbell** who, the respondent's email of 26 July set out, would not be questioned in relation to her role as carer but rather the dismissal.
24. The Tribunal was provided with a bundle by the respondent representative with a first page headed **Index to Joint Hearing Bundle**, which included the revised ET3 paper apart, part of the claimant grievance dated 13 March 2023, a statement the claimant prepared for her previous Tribunal claim 8000005/2023 and which did not include extract medical records provided by the claimant.
25. The Tribunal was also provided with a bundle of documents provided by the claimant which had the same heading **Index to Joint Hearing Bundle** and replicated some of the other Bundle (including a full copy of the 13 March Grievance) together with additional documents, including the original lodged ET3 paper apart together with the revised ET3 and with documents which the claimant argued she had provided within time to the respondent representative including Medical Evidence from the claimant and further Impact Statement from the claimant dated 30 July 2023 which had been omitted by the respondent. Further, the claimant included an extract of public judgment 8000005/2023.

26. There was no objection to the use of either bundle, although the respondent noted that the provided GP medical records were redacted and did not reflect the complete medical records the claimant had obtained. The extract records extended to 4 pages, including redacted notes, which identified that 121 pages had been provided (by reference to the footer) and covered a period (date range) from 1 June 2013 to 1 June 2023 (that is to several months beyond the date of termination).
27. While the Tribunal notes the respondent's representative position in relation to the provision of redacted medical records, it observes that a decision to omit documentation provided by a party from what was provided as a Joint Index Bundle was not in accordance with the Tribunal's Orders, causing in effect a duplication of Bundles and was not of assistance to the Tribunal.
28. In addition, the claimant provided a document headed Preliminary Issues which described that the Preliminary Issues for the Tribunal, so far, as relevant, were:
1. whether the claimant was disabled (referring to the medical extract pages)
 2. Does the (Tribunal) accept Laura Campbell as a witness (referring to pages of the claimant's prepared Joint Hearing Bundle.
 3. Does the (Tribunal) accept Stephanie Farrish as a witness (referring to pages of the claimant's prepared Joint Hearing Bundle)? From this, the claimant was understood to maintain that Ms Farrish was not a relevant witness as she had not worked with the claimant.
29. From the claimant's responses on 13 June 2023 this Tribunal identified the issues for the Tribunal in respect of the s13, s15 and ss20,21 EA 2010 claims included:
1. **s13 EA 2010 claim:** direct disability discrimination because of the protected characteristic of disability, in respect of which the issues for a Tribunal would be as follows:

- a. The event complained about was the termination of her employment on 3 March 2023, as such the further questions for the Tribunal were:
- b. Was that treatment "*less favourable treatment*", i.e., did the respondent treat the claimant less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant had identified one comparator, a colleague known only to her as Angie. The respondent subsequently identified this individual as Angela Carruthers, who they arranged to attend as a witness.
- c. If so, was this because of the claimant's disability (whether actual or associated) and/or because of the protected characteristic of disability more generally?
2. **s15 EA 2010**: discrimination arising from asserted disability. In respect of this head of claim, the Tribunal at the PH on 6 June 2023 had identified that the claimant argued that the respondent had treated the claimant unfavourably by terminating her employment. Further issues arose as set out below.
3. **ss 20 & 21 EA 2010**, reasonable adjustments (for disability) issues included.
- a. Did the respondent know, or could it reasonably have been expected to know the claimant was a person with a disability?
- b. The claimant had been Ordered to identify the PCP relied upon, that is a "provision, criterion or practice" broadly which may be said to be generally applied by an employer, but which is relied upon in the claimant as putting workers, here with a disability, at a particular disadvantage.

- 5 c. The claimant asserted on 13 June 2023 (albeit in error referring to s13 rather than ss20, 21) that the respondent breached “*their duty to make reasonable adjustments. This is by refusing to get me a mop that squirts and insisting they were buying industrial metal ones. And refusing (to) get an uplift light Hoover because of cost. This would have made these tasks easier*”.
- 10 d. From this the following question for the Tribunal would be whether the alleged PCP, as identified above, put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who were not disabled at any relevant time (the substantial disadvantage relied upon being dismissal).
- 15 e. If so, did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?
- 20 f. If so, were there steps that were not taken that could have been taken by the respondent to avoid the disadvantage? The burden of proof does not lie on the claimant; however, it is helpful to know what steps the claimant alleges should have been taken and what they should be.
- g. If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?

25 **Findings in fact**

30. On **Wednesday 22 February 2017**, Dumfries and Galloway Royal Infirmary Radiology reported that the claimant had “*moderate osteoarthritis*”.
31. On **Tuesday 31 October 2017**, the claimant’s then GP issued a to whom it may concern letter for the DWP in support of the claimant's appeal against a
30 decision not to award Personal Independence Payment, being an additional

benefit to assist with everyday life where that person has an illness, disability or mental health condition. The GP set out in October 2017 that the claimant had, at that time, a long history of low mood and depression dating back as far as 1998, the claimant was, at that time, currently under investigation for a problem with her right shoulder describing constant pain from the shoulder which wakened her at night and movement which was significantly limited. In addition, the GP described that they had seen a significant decline in the claimant's mental health in the preceding couple of months, describing that the claimant had, at that time, seen a psychologist on a regular basis.

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- 10 32. On **Thursday 9 January 2020**, the claimant attended for review with her GP on matters, it being noted that she also had "*chronic pain*".
33. On **Tuesday 20 April 2021**, the claimant's GP noted that she had been seen in A&E with a left shoulder sprain.
- 15 34. In 2022, the Coach House Bar and Restaurant based at Hoddom Castle Caravan Park, Hoddom was operated on a seasonal basis by Hoddom Castle Coach House Limited, which company subsequently went into liquidation. The claimant had been employed by that company, her employment had subsequently ceased with the claimant bringing a claim which is on the public register 8000005/2022 (the previous claim) and which proceeded without
- 20 attendance for that company, which was heard on **16 January 2023**, judgment being dated **17 January 2023**, and which was placed on the public register on **19 January 2023** (the January 2023 judgment). For the January 2023 judgment, that Tribunal set out that the first issue to consider was whether the claimant was a disabled person in terms of the Equality Act 2010,
- 25 and if so, whether she was so disabled at the time of the alleged discrimination, that is prior to the termination of her employment in May 2022. The Tribunal in January 2023, on the available information, was satisfied the physical impairment of osteoarthritis had a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities. It concluded the impairment was long-term. The Tribunal, in that claim, decided the claimant
- 30 was a disabled person in terms of section 6 of the Equality Act and was so at the time of the alleged discrimination in or around May 2022.

35. The claimant's employment with Hoddam Castle Coach House Limited had been for a few months, with her previous employment being as a sales executive rather than in the hospitality sector other than for a short period when she was around 19 years of age.
- 5 36. On **Tuesday 4 October 2022**, the claimant attended her GP for a steroid injection into her left shoulder.
37. On **Wednesday 7 December 2022**, Ms Ainslie Richards along with two others as fellow directors arranged to incorporate the limited company Richards Ventures Ltd, with its registered address at the offices of Chartered
10 Accountants at Tinwald Downs Road, Dumfries DG1 3SJ, for the purpose of operating the Coach House Bar and Restaurant, a seasonal restaurant facility operating at Hoddam Castle Caravan Park. Ms Ainslie Richards had around 14 years of experience in the hospitality industry before this time.
38. In **January 2023** in advance of the company taking over The Coach House
15 Bar and Restaurant, Ms Richards arranged for a recruitment advert to be placed on Facebook. Ms Taylor responded to that advert. The claimant had, by that time, brought a claim against the former operator of The Coach House Bar and Restaurant, which was the claimant's sole other experience in hospitality and lasted for a short period.
- 20 39. Ms. Richards requested that a business provide documentation for the employees. However, that business did not provide the documentation sought. In a group WhatsApp set up for the staff, Ms Richards intimated that she would hand out written contracts on **Saturday 25 February**.
40. On **Thursday 5 January 2023**. at 11.28 the claimant contacted the
25 respondent, Ms Richards via text message, stating "*I worked on the bar for the previous owners. It was not a very pleasant experience. If your still looking for bar staff I am happy to apply. I have Osteoarthritis in my shoulders and I can't lift anything heavy but can do everything else. I would also like 4 to 5 hour shift. Is this ok with you let me know*".

41. Ms Richards believed the reference was arthritis but was unaware of the impact of either condition. Ms Richards responded by text inviting the claimant to *“pop into the Coach House and have a chat with me”* at 9 a.m. on **Sunday 8 January 2023**. That was an interview.
- 5 42. At the interview on **Sunday 8 January 2023**, Ms Richards enquired about lifting and the claimant said she could not lift kegs or trays of glasses and that Ms Richards advised the claimant she would not be required to lift kegs because that was the bar staff role. Ms Richard went through the bar staff roles. These included taking food orders as the bar would operate by table
10 service and as such, the staff would require having information to address issues such as gluten-free options. Neither party explored the claimant’s reference to osteoarthritis, as set out in the claimant’s text message of 5 January 2023. The claimant did not say or describe that she was disabled at this interview. It was the respondent’s intention that all bar staff engaged in
15 basic bar roles would carry out a share of cleaning and mopping (beyond glass cleaning) such cleaning and mopping could be required during the day due to spillages.
43. On **Thursday 19 January 2023**, Ms Richards texted the claimant, *“... I’ll get you and everyone else in before we open but will let you know at a later date
20 when that will be”*. The claimant responded, *“Thank you I won will Carol but I don’t want it to reflect on you.”* This was a reference to the claimant being notified of a successful outcome of her disability discrimination claim against the company which previously operated the Coach House Bar and Restaurant. The claimant did not and had not referenced that the claim she
25 had brought was disability discrimination against the previous operating company. The claimant’s text continued, *“Looking forward to meeting our team plus seeing the campers again.”* this was a reference to the claimant having been invited to training by Ms Richards, which was scheduled to take place on two days.
- 30 44. On **Tuesday 24 January 2023**, the DWP wrote to the claimant confirming that having considered the claimant’s PIP, they would award an enhanced rate of

PIP from **17 August 2022** to **July 2025**, although they could not at that time award PIP for help with the claimant's mobility needs from **17 August 2022**.

45. On **Wednesday 15 February 2023**, the claimant contacted her GP Practice it was noted that the claimant described "*started getting*" osteoarthritis "*in left shoulder and neck*" osteoarthritis.
46. Also on **Wednesday 15 February 2023**, the claimant issued a text to Ms Richards at or around 6.49 pm "*I have a friend, well not really but my adopted child. Her mum died of a heart attack when she was 13. Don't ask me how we connect over FB but her dad lived in Annan. I lost my daughter and we are close now. She can only earn as she is a carer for a relative. She had an 8 year old daughter. So can only work weekends if she could be on the shift with me on the bar that would be great. Or in the cafe on the same shift. But I am going to put her on my fiancée car insurance. If you can help and want to employ her that would be great. If not I understand.*" The claimant elected not to disclose that Ms Campbell was the claimant's carer. Instead, the claimant referred to Ms Campbell as her friend in a message accompanied by emotionally directed comments. The claimant did so to persuade Ms Richards to hire Ms Campbell in anticipation that Ms Campbell would take on cleaning tasks (beyond glass cleaning) which the respondent would allocate and which the claimant had decided she would not wish to carry out, specifically mopping and cleaning and which the claimant considered were not included in Basic Bar work. While Ms Richards initially intimated that she would be looking for someone who would work more hours ultimately, she agreed to swap a shift for a colleague to allow Ms Campbell to work alongside the claimant on Saturday 4 March 2023.
47. On **Wednesday 15 February 2023**, the claimant contacted her GP, and the practice noted a report of *shoulder pain - History - .. called and spoke with Lynn – started getting Osteoarthritis in left shoulder known right shoulder and neck Osteoarthritis – also has a hernia and advised a sliding hernia keeps going under rib cage*. This was the first provided GP attendance entry since 4 October 2022, when the GP recorded the claimant attending surgery for a

steroid injection in the left shoulder and was the last provided GP attendance note.

48. On **Saturday, 25 February 2023**, the claimant attended a meet-the-staff event with team colleagues, for which she was ultimately paid for the required 1-hour attendance element.
49. On **Tuesday 28 February 2023**, the claimant attended a training session for aged over 18 years of age, including training provided by the brewery on how to pour pints, for which she was ultimately paid for the required 1-hour attendance element. In the course of this session, the claimant asked whether she would be given *cigarette breaks* and was told she would not be. The respondent was present for the end of this training element.
50. It is agreed that the claimant was engaged to work; once the Coach House Bar and Restaurant opened its premises, 24 hours per week, her gross weekly income was **£139.50**, which equates to a monthly gross income of **£558.36**. Her net weekly take home was **£110.99**.
51. On **Wednesday 1 March 2023**, the claimant started work. Her shift was 10 am to 4.00 pm, with the claimant leaving at 4.15 pm. This was the first day of the respondent operating the Coach House Bar and Restaurant premises.
52. While the ET3 describes that "*During the course of her shift the Claimant served drinks to the customers and engaged them in conversation*", there was no notice as to the identity of the customers nor the nature or substance of the conversation on this or any day.
53. During this first shift, the claimant carried out her role which included cleaning aspects including washing down shelves under the bar and cleaning glasses. After the conclusion of this first shift, the claimant messaged the respondent "*Thank you so much for today absolutely loved it. Its not just a job and I know I keep bombarding you with ideas but I can sort them out. So no pressure on you.*" The respondent replied by text "*Glad you enjoyed it and yeah I'll not be doing much this month just want everyone to find their feet and then I'll be looking at different things to do xx*".

54. On **Thursday 2 March 2023**

1. the claimant started work at 10 am with the end of her shift being scheduled for 4.00 pm. On this day, the claimant, as part of her role as bar staff, was directed by the respondent and a colleague Ms Carruthers to mop 2 of the bars and the main kitchen in particular to vacuum and mop the floor, and further on a one-off basis, clean out an upright glass fronted drinks-type fridge (the fridge). The claimant intimated that she could not do the vacuuming and Ms Carruthers agreed to take that task. During this shift, the claimant did not propose that she be provided with additional breaks beyond the 28-minute allocated break. The claimant was provided with a Henry-type vacuum to vacuum and located a mop and bucket, with appropriate COSHH cleaning-type gel fluids for commercial bar and restaurant for hard floors and which provide a slip resistant finish when burnished, to mop the floor area. The claimant in response, made a request to the respondent, for an upright vacuum and a domestic style (squirting) spray mop. The claimant did not suggest when she was requested to clean out the fridge, that she was limited in her ability to clean out the fridge.

2. The respondent declined to provide:

1. An upright vacuum, as the respondent already provided a Henry vacuum, which was light and had a long hose pipe. In use, the operation of an upright vacuum would not be lighter than a Henry vacuum, with regard to the general design and its long hose and pipe; and

2. a domestic style spray mop as it was not suitable for an industrial, commercial area such as the respondent premises restaurant and bar. In particular, the respondent was aware that such domestic household spray mops were not designed to operate with COSHH cleaning type gel fluids as required by the respondent for health and safety reasons, including having

regard to premises being a bar and restaurant for cleaning up spillages of drinks, and as would be deployed in the mop and bucket, and

5 3. The claimant carried on with tasks and concluded her shift at 3.15 pm Ms Carruthers as Assistant Manager for the respondent having agreed that the claimant could finish earlier than the scheduled 4.00 pm end time.

10 4. At 9.25 pm the claimant sent a text (the claimant's Thursday 2 March Text) to the respondent *"Sorry but I'm in agony tonight I can move glasses pour a pint and wash and wipe down. **Mopping and scrubbing fridges is not doing bar work.** Also in reasonable adjustments is letting me sit down and a few more unpaid breaks is fine. I love working there but I'm in so much pain I can't sleep (emoji sleep) I did tell you before I started I was disabled. see you in the morning I will take more painkillers and may be able to do more. I am great at customer service but I can't do manual labour hun sorry. But hope we can work this out see you tomorrow."*

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20 5. The claimant had not previously used the word disabled in any communication with the respondent. The claimant did not set out in her Thursday 2 March Text, that she ought to have been provided with an alternate mop, in particular a domestic spray type mop, nor did the claimant set out that she ought to have been provided with an upright vacuum instead of the provided Henry type vacuum.

25 6. The respondent replied that evening *"Hi sorry to hear that I understand I will speak to you tomorrow. Thanks."*

55. On **Friday 3 March 2023**

30 1. at 10 am the claimant attended at the workplace. The respondent met with the claimant along with a colleague, Ms Farish. The respondent expressed concern for the claimant's health in the context of the claimant's text message the preceding evening including a reference

to painkillers, and in which the claimant described that she was being required to work at a role which went beyond what the claimant regarded as basic bar work (namely cleaning). The respondent advised she was letting the claimant go and terminated the claimant's employment. There was no subsequent written notice to the claimant issued setting out the reason for the termination. As the claimant described in her subsequent grievance the respondent had offered a further meeting.

2. following the termination of her employment at 2.02 pm the claimant sent the respondent an email describing that she wished to raise a formal grievance.

"Dear Ainslie.

I have a problem with how I was treated today and dismissed.

In the Equality Act 2010 it is against the law to discriminate against anyone who has a disability.

You are aware of one of my disabilities before interview. I did not disclose all of them as I am not obliged to do so.

I was employed by yourself as a Bar Person and I have been trained on how to pull a pint, clean glasses and keep the soft drinks stocked.

I was not employed as a cleaner I asked for two reasonable adjustments one was to get a squirting mop so I didn't have to fill or empty or carry a mop bucket, that was dismissed because you wanted industrial mops. The second was to get the lighter Hoover one (where) I would not have to bend over, that was dismissed with a comment "more money".

After mopping and cleaning a very dirty drinks fridge I informed you I was in pain and you said we will have a chat in the morning.

*On arriving at work yourself and Allisa called me to a meeting and promptly sacked me without warning after 2 days! **The reason is***

because I struggled mopping and I struggled cleaning the drinks fridge.

*Both of which I did causing me extreme pain in my shoulders you refer to them as **Basic Bar Work** I however do not.*

5 *Firstly I should have been made aware this was a formal meeting and secondly I should have had a witness.*

There was no discussion before you sacked me so it was already decided before I arrived which is also against employment law

10 *I have had not been issued with a contract or a job description and far as I knew I was serving drinks and general bar duties. Saying you could not ask other staff to do what I couldn't is extremely undiverse.*

I was extremely upset when leaving and this has not helped my depression which I have suffered for a long time.

15 *I don't see any point in having a meeting as you made it perfectly clearly this morning as to where I stand.*

An ACAS consolidator will be in touch with you in due time.”
(Emphasis added)

20 56. At the commencement of her employment, while pursuing a complaint of disability discrimination against the previous operating company of the workplace, the claimant had restricted her self-description to her text message of 5 January 2022, referring only to the condition of osteoarthritis in her shoulders and could not lift anything heavy.

25 57. On **Saturday 4 March 2023**, the claimant had been scheduled to work from 4 pm to 10 pm– that would have included cleaning, both mopping and hoovering along with fellow bar staff, the claimant had intended request that Ms Campbell, who she had previously organised to attend the shift with her, to carry out any such cleaning role.

58. On **Friday 10 March 2023**, the respondent provided a pay slip to the claimant confirming her department was Bar Staff, which identified the Training Rate for 2 hours at £10.42 and for Basic Rate of 11.30 hours at £10.42. The Basic Rate reflected the First and Second Days. It did not (and is not required to) identify the employer.
59. On **Thursday 13 April 2023**, the respondent issued a P45 which identified in error that the claimant's leaving date was 14 April 2023 and identified the employer's name and address only as The Coach House Bar & Restaurant, Hoddom Castle, Lockerbie DG11 1AS.
- 10 60. On **Wednesday 10 May 2023**, Ms Campbell confirmed that she would no longer continue as the claimant's carer, it being a financial decision as the alternate employment with the respondent was better paid than the DWP-funded carer role for the claimant.
- 15 61. On **Monday 12 June 2023**, the claimant's GP issued a list of then-prescribed medicines for the claimant which included painkillers and inflammatory for Osteoarthritis and antidepressants.
62. Following the termination of her employment the claimant decided to retire and not seek alternate employment, and the respondent facility closed at the end of the season on 1 October 2023.
- 20 63. The claimant would only have continued to work with the respondent in a bar role for a matter of several weeks, in that the respondent required all bar staff to carry out a share of cleaning (beyond glass cleaning). The claimant considered that she should only be expected to carry out what the claimant regarded as Bar Work and not any element of cleaning (beyond glass cleaning) and mopping.
- 25

Witness evidence

Conclusions on witness evidence

64. The Tribunal heard evidence from the claimant although we do not consider that the claimant was seeking to be untruthful, she was not candid and open

in her evidence including in the provision of redacted and limited extract medical records and further in relation to her suggestion she would have continued working with the respondent till the end of the seasonal role in September 2023. The Tribunal concludes that the claimant would not have done so as that role included what the claimant regarded as non-bar work such as cleaning (beyond glass cleaning).

65. In relation to matters of substance, it is noted that the claimant elected to provide redacted limited medical records, having been provided with 121 pages, as such, the Tribunal does not have any record of any attendance at or about the time of the events complaint of nor of any attendance contemporaneously recording any alleged distress following termination, her approach to the respondent regarding her carer, was deliberately misleading in describing her as a friend.

66. While the claimant argues that her assessment of the type of mop which should have been provided should be preferred, the panel accepts the respondent's evidence reflecting what the Tribunal regards as the respondent's considerable experience in hospitality.

67. The Tribunal notes the terms 2-page statement of **Mr Smith** dated 6 June 2023, the claimant's partner. While the Tribunal does not consider that Mr Smith was seeking to be untruthful in his description of matters post the claimant's termination of employment, on balance, including having regard to the absence of fuller medical records as described above covering the post-termination of employment period, the Tribunal does not accept Mr Smith's statement and evidence to the Tribunal as accurate.

68. The Tribunal regarded the evidence of **Ms. Laura Campbell** as being wholly straightforward, as was that of **Ms. Angela Carruthers** and **Ms. Stephanie Farrish**.

69. The Tribunal is satisfied that it preferred the evidence of the respondent's witnesses to that of the claimant in matters of substance.

70. So far as relevant to an assessment of the witness evidence, no determination is made as to alleged customer complaints which had not been pled, and in respect of which there was no fair notice.

Submissions

5 71. It is not considered necessary in the interests of brevity to set out the claimant or respondent submission in full, where relevant reference is made to the respective submissions below.

72. In summary, the claimant argued that her claims should succeed. The claimant argued that as the seasonal period had ended the respondent should
10 be identified by the address provided in Companies House (as a director of Richard Ventures which was the address for the firm of accountants referenced above).

73. The respondent argued that, although they conceded in their submission that the claimant had a qualifying condition, the claims should not succeed. The
15 respondent did not seek to argue in submission that the correct respondent on the evidence adduced was Richard Ventures Ltd, nor did it set out that the address for the respondent should not be as proposed by the claimant in submissions. The respondent did not suggest that it had adduced evidence of roles which it considered that the claimant could have applied to minimise
20 her loss.

74. The respondent referenced **Secretary of State for Work and Pensions v Alam** [2009] UKEAT/0242/09 [Alam]; **Basildon & Thurrock NHS Foundation Trust v Weerasinghe** [2015] EAT/0397/14 [Weerasinghe]; **Hall v Chief Constable of West Yorkshire Police** [2015] EAT/0057/15 [Hall];
25 **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA 640 [Morgan]; **Aecom v Mallon** [2023] EAT 104 [Aecom].

Relevant Law

Who is the employer?

75. Consideration of the issue of who the employer is may include the operation of s230 of the Employment Rights Act 1996 which provides:

Employees, workers etc.

- 5 (1) *In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*
- (2) *In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.*
- 10 (3) *In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*
- (a) *a contract of employment, or*
- (b) *any other contract, whether express or implied and (if it is*
15 *express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*
- 20 *and any reference to a worker’s contract shall be construed accordingly.*
- (4) *In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.*
- (5) *In this Act “employment”—*
- 25 (a) *in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and*
- (b) *in relation to a worker, means employment under his contract;*

and “employed” shall be construed accordingly.

76. Further, having regard to the EAT decision in **Clark v Harney Westwood & Riegels & Others [2020]** UKEAT/0018/20, 0019/20 & 0576/19 (**Harney**) so far as relevant, there was no relevant documentary evidence identifying a (legal) entity as the employer. This is not a case where there is a mixture of documents in addition to facts to consider. There was no written agreement drawn up at the inception of the relationship from which the Tribunal may generally inquire whether it reflects the intentions of the parties. In determining whether Ms Richards was the employer, it would, therefore be relevant to consider whether the parties seamlessly and consistently acted as if the employer was Ms Richards rather than Richards Ventures Ltd, as this could amount to evidence of what was initially agreed.

Written Particulars

77. In terms of s1 of the Employment Rights Act 1996 (ERA 1996) an employee was entitled to receive from their employer, not later than two months after the beginning of their employment, a written statement of the major terms upon which she is employed. The Employment Rights (Employment Particulars and Paid Annual Leave (Amendment) Regulations 2018 amended Section 1 to 7 B of ERA 1996 with effect from 6 April 2020, making the right to a written statement of employment particulars a “*day one*” right for all workers.

78. However, s198 ERA 1996 now also provides an exception to the requirement to provide a written contract (and further from the sanction arising from failure) where employment continues for less than a month:

Short-term employment.

Sections 1 to 7 do not apply to an employee if his employment continues for less than one month.

Fair Notice

79. The Tribunal notes that the EAT observed in **Khetab v AGA Medical Ltd** [2010] 10 WLUK 481 (**Khetab**) that the purpose of the ET1 and ET3 “...is so that the other party and the Employment Tribunal understand the case being advanced by each party so that his opponent has a proper opportunity to meet it”, and further in **Chandhok and Another v Tirkey** [2015] IRLR 195 (**Chandhok**) Langstaff J, commented at para 18 parties are expected to set out the essence of their respective cases in the ET1 and ET3 and “... a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it”.

Burden of Proof in Discrimination Claims and General Case Law

80. s136 (1) to (3) of EA 2010 (the burden of proof provisions) set out:

“(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision. “

81. In **Madarassy v Nomura International plc** [2007] IRLR (**Madarassy**) Mummery LJ held at [57] that ‘could conclude’ [The EA 2010 uses the words ‘could decide’, but the meaning is the same] meant: ‘[...] that “a reasonable Tribunal could properly conclude” from all the evidence before it.’

82. However, a simple difference of treatment is not enough to shift the burden of proof, something more is required: **Madarassy** per Mummery LJ at para 56: ‘The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal ‘could conclude’ that, on the balance of

probabilities, the Respondent had committed an unlawful act of discrimination.'

EHRC Code of Practice

83. The Tribunal has taken into account that s15 (4) of Equality Act 2006 provides
5 that, the EHRC 2011 Statutory Code of Practice, shall be taken into account,
wherever it appears relevant to the Tribunal to do so. In particular the Tribunal
has taken into account the EHRC 2011 Code of Practice where it appears
relevant to do so including noting the terms of paragraph 5.21 as identified by
the respondent in submission and which sets out:

10 *5.21 If an employer has failed to make a reasonable adjustment which
would have prevented or minimised the unfavourable treatment, it will
be very difficult for them to show that the treatment was objectively
justified.*

84. Issues for **Section 13 of the EA 2010: direct discrimination because of
15 protected characteristic disability relied upon** are already set out as
above.

85. Issues for **Section 15 of the EA 2010: discrimination arising from
disability** include:

20 1. The unfavourable treatment (the specific treatment relied upon) is said
to be the respondent terminating the claimant's employment.

2. The Tribunal had regard to the proposition that "*something*" can arise
"*in consequence of*" a disability if the disability plays more than a trivial
part in causing that "*something*" and that the disability need not be the
predominant cause of the "*something*" that arises from it.

25 3. Did the respondent treat the claimant unfavourably because of those
things?

4. If so, has the respondent shown that the unfavourable treatment was
a proportionate means of achieving a legitimate aim? The legitimate

aim in this instance includes the use of the appropriate equipment for cleaning.

- 5 5. Alternatively, has the respondent shown that it did not know, and could not reasonably have been expected to know, that the claimant had the disability relied upon?

86. Issues for **ss20 & 21 EA 2010, reasonable adjustments (for disability)** are as set out above.

Remedy

- 10 87. If the claimant was discriminated against, issues in relation to remedy would include assessment of any injury to feelings award and what if any financial loss is attributable.

Mitigation of Loss

- 15 88. Section 123(4) ERA 1996 provides that in ascertaining the loss “... *the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of ... England and Wales or (as the case may be) Scotland.*”

- 20 89. In **Cooper Constructing Ltd v Lindsey** [2016] ICR D3 (**Cooper**) the Honourable Mr Justice Langstaff (President) reviewed the existing authorities on the burden of proof in respect of mitigation of loss and the extent of the duty and set out broad principles which are summarised as setting out in short that the burden of proof is on the wrongdoer; a claimant does not have to prove that she has mitigated loss, and the test may be summarised by saying that it is for the wrongdoer to show that the claimant acted unreasonably in failing to mitigate.

25 **Discussion and Decision**

Qualifying Disability

90. The respondent in submission conceded that the sole, condition relied upon by the claimant, namely osteoarthritis, amounted to a qualifying condition at the relevant time within the terms of Section 6 EA 2010.

Discussion and Decision

5 *Correct Employer/Respondent:*

91. The Tribunal considers that the determining issue, absent any written agreement of other relevant documentation was what both parties understood including giving consideration to whether the parties seamlessly and consistently acted as if the employer was Ms Richards or Richards Ventures Ltd. While the respondent's intention was to create an employment relationship with the limited company, the respondent never expressed that view to the claimant. At all times the parties seamlessly and consistently acted as if Ms Richards was the employer. In those circumstances, the Tribunal concludes that the claimant was at all material times engaged as an employee of Ms Richards.

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Provision of Terms and Conditions

92. In terms of s1 of ERA 1996 an employee was entitled to receive from their employer, not later than two months after the beginning of their employment, a written statement of the major terms upon which she is employed. The Employment Rights (Employment Particulars and Paid Annual Leave (Amendment) Regulations 2018 amended Section 1 to 7 B of ERA 1996 with effect from 6 April 2020, making the right to a written statement of employment particulars a “*day one*” right for all workers. Section 38 of the Employment Act 2002 (EA 2002) makes provision for an award in relation to the same.

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However, having regard to the operation of s198 of ERA 1996, given the length of service no such award is due.

Fair Notice

93. With regard to the respondent submissions, it is noted that it was now alleged that the termination of the claimant's employment followed alleged customer complaints.

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94. Such an allegation was not made out in the ET3 paper apart nor in the revised paper apart.
95. During the hearing, there was an allegation regarding what was suggested to be a customer complaint by a specific customer named John Devine. That was not foreshadowed in the respondent's pleadings, including the revised pleadings.
96. The Tribunal considers that had fair notice been given, it would have been open to the claimant to seek to call the specific customer and or otherwise seek a statement from that customer.
97. There was no evidence of any post-termination written communication by the respondent making reference to that alleged complaint, nor any other reason for termination. The Tribunal does not conclude that the termination arose following such an alleged complaint.

S13 EA 2010

98. The treatment complained of was the dismissal of the claimant. The Tribunal concludes that the treatment amounted to "*less favourable treatment*", the respondent treated the claimant less favourably than it treated or would have treated others, including hypothetical comparators, in not materially different circumstances. The respondent would not have dismissed a non-disabled employee in not materially different circumstances, the respondent did not seek any medical other clarification of the claimant's condition. The treatment was because of the protected characteristic relied upon and/or because of the protected characteristic of the claimant being a disabled person, the condition being osteoarthritis.
99. In short, the Tribunal concludes that claimant was dismissed without any process because of the respondent's concern over the claimant's health as reflected and manifested in the claimant's Thursday 2 March Text. That was less favourable treatment. The claimant's dismissal amounted to direct discrimination because of protected characteristic disability within the meaning of s13 EA 2010.

S15 EA 2010

100. The Tribunal concludes that the respondent treated the claimant unfavourably in dismissing the claimant because of the claimant's Thursday 2 March Text.

5 101. The Tribunal does not accept that the respondent did not know (and could not reasonably) be expected to know that that the claimant had the disability relied upon at that material time.

102. However, the Tribunal accepts that the unfavourable treatment, in so far as it arose from the claimant's position that she, in effect unlike her colleagues, should not be expected to carry out what the claimant asserted was not bar work namely cleaning (beyond glass cleaning), was a proportionate means of achieving a legitimate aim in that bar and restaurant premises required to be kept clean.

103. It would not have been proportionate, in circumstances, where the claimant had suggested that alternate domestic style spray mop be provided to allow her to mop the floor and further had proposed that she be provided with a upright vacuum which the Tribunal concludes would not have been material lighter than the Henry type vacuum, to allocate all cleaning (beyond glass cleaning) to other bar staff.

ss20 & 21 EA 2010

20 104. The Tribunal does not accept that the respondent did not know (and could not reasonably) be expected to know that that the claimant had the disability relied upon at that material time.

25 105. The "PCP" is a "*provision, criterion or practice*" which was (or could be) applied by the respondent to its bar staff was the provision of a commercial mop and Henry type vacuum for use in cleaning area of the bar and restaurant.

106. The Tribunal does not accept that that provision of Henry type vacuum put the claimant at a substantial disadvantage in relation to a relevant matter in comparison to non-disabled employees at the relevant time, in that the on the

information available the operational weight was not materially different to that of an upright vacuum as proposed by the claimant.

107. The Tribunal does accept that a domestic spray-type mop, in that it would have been materially lighter than a commercial mop, put the claimant at a substantial disadvantage in relation to a relevant matter compared to non-disabled employees at the relevant time.

108. However, the Tribunal concludes that there were no steps that could have been taken to avoid the disadvantage in the Tribunal accepts the respondent evidence that domestic-style spray mops were not designed to be used in commercial premises and with suitable COSHH cleaning fluids and were not suitable alternative to the mop provided.

109. In particular, the Tribunal concludes that the respondent did not fail to make a reasonable adjustment which would have prevented or minimised the unfavourable treatment in all the circumstances.

15 *Injury to feelings*

110. As above, the claimant had elected not to provide any documentation in compliance with the Tribunal's Ninth Order as set out above. Further, the claimant has provided what the Tribunal concludes is a significantly redacted extract of her medical records, which the Tribunal notes would have covered the period to 1 June 2023 and after the date of termination. The claimant had previously objected to evidence of Ms Campbell being adduced beyond actual dismissal. In all the circumstance the Tribunal concludes that the appropriate award is at lower band of the Vento scale and the Tribunal awards £1,000.

Mitigation and Loss

25 111. The Tribunal has taken as its starting point the burden of proof is on the respondent, the respondent did not adduce evidence of alternative roles which the claimant could have sought.

112. However, the claimant had elected not to provide any documentation in compliance with the Tribunal's Ninth Order as set out above. Further, the

claimant has provided what the Tribunal concludes is a significantly redacted extract of her medical records, which the Tribunal notes would have covered the period to 1 June 2023 and after the date of termination.

Financial Loss

5 113. The Tribunal accepts that the claimant is entitled to recover some initial financial loss. However, on the evidence before it, the Tribunal does not consider that it is just and equitable in all the circumstances to attribute the entire period of the claimant's loss to the date on which the claimant asserts she elected to retire, which is set out by the claimant as 34 weeks from the
10 termination.

114. In particular, the Tribunal has had regard to the claimant's election not to make available medical records for the period immediately post-termination.

115. The Tribunal notes that the claimant, in her post-termination grievance, argues that she *"was employed to by yourself as a Bar Person and I have
15 been trained on how to pull a pint, clean glasses and keep the soft drinks stocked. I was not employed as a cleaner..."*. The claimant further referenced the respondent's view that mopping and cleaning were Basic Bar Work, while the claimant set out *"I do not"*.

116. The claimant considered that while colleagues such as Ms Campbell would
20 take on such cleaning tasks, it should not fall within her role as bar staff. It is the Tribunal's conclusion that the claimant had always intended to seek to persuade colleagues such as Ms Campbell to take on any element of her bar staff role, which incorporated cleaning (beyond glass cleaning) and mopping. That is not a position that the Tribunal concludes would have operated for the
25 whole period and certainly would not have operated until the claimant elected to retire.

117. Taking a broad approach, the Tribunal accepts that approximately 1/2 of the period sought (34 weeks) is attributable, that is 17 weeks of net loss of £110.99 being **£1,886.83**.

118. The Tribunal is satisfied that the claimant would have been entitled to receive Universal Credit during the period to which the loss is attributable. Universal Credit is a recoupable benefit in terms of Reg 8 of the Recoupment Regs 1996. The Recoupment Regs 1996 apply to the period for which the claimant
5 is awarded compensation. The prescribed period is from **3 March 2023** to **7 July 2023**. The prescribed amount is **£1,886.83**.

Dismissal Process

119. The decision by the respondent followed no procedure, there was written notification of the reason for the dismissal. However, in the specific
10 circumstances of this case, the Tribunal is satisfied that the respondent was not required to follow the ACAS Code of Practice on Disciplinary Procedures, and as such, there is no basis for any uplift.

Conclusions

120. The claimant was a disabled person as asserted at the material time.
- 15 121. The claimant's claims in terms of s15 and ss20 and 21 EA 2010 do not succeed and are dismissed, as is the claimant's claim in respect of failure to provide written particulars of employment.
122. The claimant's claim in terms of s13 EA 2010 succeeds and the claimant is awarded:
- 20 1. £1,100 in respect of injury to feelings; and
2. £1,886.83 in respect of financial loss.
123. The role of the Tribunal is to weigh the evidence before it in the context of the respective pled position of the parties. This involves an evaluation of the primary facts and an exercise of judgment. The Tribunal has done so applying
25 the relevant law.

Employment Judge: R McPherson
Date of Judgment: 02 November 2023
Entered in register: 06 November 2023
and copied to parties

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