



EMPLOYMENT TRIBUNALS

Claimant: Mr Fahmy Fahmy

Respondent: Countess of Chester NHS Foundation Trust

Heard at: Liverpool

On: 17 – 21 & 24 July 2023; 1 & 15 December 2023; deliberation on 22, 24, 25 & 26 January 2024; oral Judgment on 26 January 2024.

Before: Employment Judge Liz Ord
Tribunal Member Michelle Plimley
Tribunal Member Rob Aldritt

Representation:

Claimant: Ms Sarah Keogh (Counsel)
Respondent: Ms Louise Quigley (Counsel)

JUDGMENT

The unanimous decision of the tribunal is as follows:

1. Time limits

1.1. There was conduct extending over a period, the last act of which was within three months of issuing proceedings. Consequently, all the claims are in time and the tribunal has jurisdiction to hear them.

2. Detriments on the ground of protected disclosures

2.1. The claimant made 3 protected disclosures on 15 May 2020, 20 May 2020 and 21 May 2020.

2.2. The claimant was subjected to the following detriments on the ground that he made those disclosures:

2.2.1. A failure in May 2020 to implement changes to his work in a timely manner;

- 2.2.2. An unfair allocation of work without further remuneration;
 - 2.2.3. Communication of his duties to colleagues in an undermining manner;
 - 2.2.4. Recording concerns on the claimant's appraisal form for the first time in 20 years;
- 2.3. The claimant was not subjected to the following detriments on the ground that he made those disclosures:
- 2.3.1. Exclusion from ACA work;
 - 2.3.2. Failure to address the claimant's grievance in a timely manner;
 - 2.3.3. Failure between June and September 2021 to put in place/action a phased return to work in a timely manner.

3. Discrimination arising from disability

- 3.1. The claimant was treated unfavourably in the following ways because of his inability to have face to face patient contact:
- 3.1.1. An unfair allocation of work without further remuneration;
 - 3.1.2. Communication of his duties to colleagues in an undermining manner;
 - 3.1.3. Exclusion from ACA work;
 - 3.1.4. Recording concerns on the claimant's appraisal form for the first time in 20 years;
 - 3.1.5. Failure between June and September 2021 to put in place/action a phased return to work in a timely manner.
- 3.2. The claimant was not treated unfavourably in the following ways because of his inability to have face to face patient contact:
- 3.2.1. A failure in May 2020 to implement changes to his work in a timely manner;
 - 3.2.2. Failure to address the claimant's grievance in a timely manner;

4. Failure to put in place reasonable adjustments

- 4.1. The respondent had the following provisions, criteria or practices (PCPs) in place:
- 4.1.1. Taking a broad-brush approach to risk assessments, failing to adequately train staff undertaking risk assessments and failing to

prioritise those with disabilities who were more at risk of COVID-19 complications;

4.1.2. Only offering ACAs to individuals who were able to do face to face consultations.

4.2. The respondent did not have the following PCPs in place:

4.2.1. The practice of communicating sensitive and important matters informally, including via WhatsApp and group emails;

4.2.2. The policy of noting matters arising from the claimant's disability as concerns on his appraisal form.

4.3. The claimant was put to substantial disadvantage compared to someone without his disability because of the above PCPs (at paragraph 4.1):

4.3.1. The claimant was placed at undue risk due to not being prioritised during the risk assessment process;

4.3.2. The claimant was unable to earn additional monies by doing ACAs.

4.4. The following reasonable adjustments should have been implemented:

4.4.1. Having a more systematic and targeted approach to risk assessments during the pandemic, seeking out those who were at higher risk to ensure that they were prioritised and protected;

4.4.2. Including the claimant in offers of ACA work and treating him equally to his colleagues.

5. Victimisation

5.1. The claimant did a protected act by raising a formal grievance on 11 December 2020.

5.2. The respondent subjected the claimant to the following detriments because he raised that grievance:

5.2.1. Recording concerns on the claimant's appraisal form for the first time in 20 years;

5.2.2. Delaying in processing the claimant's grievance;

5.2.3. Failing between June and September 2021 to put in place/action a phased return to work in a timely manner.

5.3. The respondent did not subject the claimant to the following detriments because he raised that grievance:

5.3.1. Unfair allocation or continued unfair allocation of work;

5.3.2. Exclusion or continued exclusion from ACA work.

Employment Judge Liz Ord

Date 29 January 2024

JUDGMENT SENT TO THE PARTIES ON

5 February 2024

FOR THE TRIBUNAL OFFICE

Notes

1. Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided, they will be displayed on the tribunal's online register of judgments, which is visible to internet searches.