



EMPLOYMENT TRIBUNALS

Claimant: Mr A Woodley

Respondent: B & M Retail Limited

Heard at: Liverpool

On: 15,16,17,18 April 2024

Before: Employment Judge Aspinall
Mr Wells and Ms Price

Representation

Claimant: in person

Respondent: Mr Proffitt, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The direct discrimination complaint succeeds in part. The respondent subjected the claimant to less favourable treatment because of his disability which amounted to detriment when

at 3.1.1 on the List of Issues, on 8 September 2021 Mr James referred to the claimant as a “fucking schizo” and

at 3.1.3 on the List of Issues, it scheduled a 5 consecutive day shift from 22 September 2021 including a Saturday and

at 3.1.5 on the List of Issues when it scheduled the claimant for Saturdays 25 September, 2 October and 9 October 2021 and subsequently made changes to the rotas for those weeks and

at 3.1.6. on 9 October 2021 when it put the claimant on shift, knowing that he had counselling/therapy and a 50th birthday party that day and had asked not to work Saturdays.

2. Those complaints succeed as detriments under section 13 and cannot also succeed as harassment complaints¹. The other parts of the direct discrimination and or harassment complaints at 3.1.2, 3.1.4 and 3.1.7 fail for the reasons given in oral judgment.

3. The claimant's claim for failure to reasonably adjust succeeds in part. The respondent failed to reasonably adjust at 6.4.1 on the List of Issues for failing to allow the claimant to work across 4 days (not including Saturdays) in September-October 2021. The other part of the failure to reasonably adjust complaint in relation to dismissal fails.

4. The claimant's claim for discrimination arising out of disability fails. The claimant conceded that the respondent's decision to proceed to disciplinary had not arisen out of his disability. The dismissal arising out of disability complaint fails; the respondent having established dismissal as a proportionate means of achieving its legitimate staffing aim.

5. The claimant's claim for unfair dismissal fails for the reasons given at oral judgment.

6. The claimant was a litigant in person and there will now need to be a remedy hearing. A separate case management order will be sent out to prepare for remedy.

Employment Judge Aspinall

Date: 18 April 2024

JUDGMENT SENT TO THE PARTIES ON

2 May 2024

FOR THE TRIBUNAL OFFICE

Notes

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.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

¹ The Tribunal accepts the submission of the respondent made during oral judgment that the complaints at paragraphs 3 and 4 of the List of Issues could not succeed as both harassment and direct discrimination complaints by virtue of the operation of sections 212 and 39 Equality Act 2010.

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>