



EMPLOYMENT TRIBUNALS

Claimant: XYZ

Respondent: Birmingham City Council

FINAL HEARING

Heard at: Birmingham

On: 10 May 2024

Before: Employment Judge Camp

Members: Mr R Virdee
Mr R Spry-Shute

Appearances

For the Claimant: in person, assisted by his wife

For the Respondent: Mr P Wilson, counsel

JUDGMENT BY CONSENT

All complaints are dismissed upon withdrawal pursuant to rules 51 and 52 of the Rules of Procedure **apart from:**

1. a complaint of constructive unfair dismissal under section 98 of the Employment Rights Act 1996;
2. the following numbered complaints in the attached list of complaints:
 - 2.1 9 to 14, 16 & 20. Notwithstanding what is suggested in the attached list, these are pursued as complaints of direct age discrimination or age-related harassment;
 - 2.2 1 to 8, 25 to 27, 29, 30, 32, 33, 35 & 36. Notwithstanding what is suggested in the attached list, these are pursued as complaints of direct disability discrimination or disability-related harassment;
 - 2.3 44 to 49, which are victimisation complaints under the Equality Act 2010.
3. claims for unfavourable treatment because of something arising in consequence of disability under section 15 of the Equality Act 2010, relying on the Claimant's conduct during an incident with a Mr Marsh on 5 November 2021 as the "*something*", about the Respondent subjecting the Claimant to a disciplinary investigation and then disciplinary proceedings alleging gross misconduct and continuing to do so up to the Claimant's resignation;
4. complaints of direct disability discrimination, alternatively unfavourable treatment because of something arising in consequence of disability, about the following: "*9/6/22 – RF continuing to ignore C's disclosure of diagnosed conditions/disability by e-mail and failing to factor it in as mitigation for the disciplinary*";

5. complaints of breach of the duty to make reasonable adjustments based on the following PCPs (a PCP being a “*provision, criterion or practice*” in accordance with section 20 of the Equality Act 2010):
 - 5.1 a policy of requiring employees who are off sick to communicate directly with the Respondent/employer unless verbal consent was given by the employees for anybody else to liaise with the Respondent/employer;
 - 5.2 a PCP of not having 1-to-1 meetings or stress risk assessments of individuals working in the Respondent’s caretaking department at the Bromford and Hodge Hill estates;
6. a claim for unpaid holiday pay and an unauthorised deductions claim for a backdated pay rise.

**Employment Judge Camp
24th May 2024**

Note:

(1) There is a Tribunal order in place preventing the Claimant from being identified directly or indirectly. Breaching that order is a criminal offence. Please contact the Employment Tribunals in Birmingham if you would like further information about the order.

(2) A incorrect draft version of this Judgment, signed by the Employment Judge 20 May 2024, was sent to the parties by mistake on 22 May 2024. It should be disregarded.

**LIST OF COMPLAINTS
REFERRED TO IN PARAGRAPH (1) OF THE JUDGMENT SIGNED BY THE JUDGE ON 24/5/2024**

Disability related harassment

1. The letter December 2022-hostile, humiliating, degrading, offensive
2. Disciplinary letter in September 2022-hostile, degrading
3. PB email July 2022-humiliating, offensive, degrading
4. PB insisting on an oppressive level of contact, Hostile, degrading.
5. LM Kiddy fiddling comment October 2021-humiliating, offensive, degrading.
6. The punch and the chair November 2021-hostile, offensive, degrading
7. Receiving a disciplinary pack with several GDPR breaches May 2022, offensive, humiliating-effect regardless of what the breaches were
8. RF asking C to use his grievances as mitigation at a disciplinary hearing September 2022-degrading, offensive.

Age related harassment

9. Lee farting and telling me he Can get rid of me December 2020-offensive, degrading.
10. Lee ignoring me for weeks- hostile, degrading.
11. Snapping and bin room door March/April 2021-hostile
12. Youngsters fuck off may/June 2021-hostile, offensive, degrading.
13. Lee and Malcolm avoiding being around me- hostile, degrading.
14. The punch and the chair November 2021-hostile, offensive, degrading

Direct Age Discrimination

15. LM's conduct throughout employment
16. NR and GW allowing LM to confront me for doing my job and making no attempt to de-escalate the situation until it was too late November 2021
17. The rejection of my grievance October 2022
18. GW and MH comments in investigation meeting incorrectly assuming inexperience got job because good on computers etc May 2022
19. The findings of the investigation report May 2022
20. Constructively dismissing me October 2022
21. Pursuing me for GM due to alleged verbal abuse of LM but not NR
22. Witnesses, managers and /hr Withholding exculpatory facts from a formal disciplinary process from 5/11/21 onwards.
23. Finding a case to answer on allegation 3 contrary to LM March -May 2022
24. HR suggesting and making numerous unfavourable amendments to disciplinary documents and influencing the investigating officer's decision making and upgrading a finding of misconduct to GM in order to establish my GM from November 21 onwards.

Direct Disability Discrimination

25. PB wanting contact once a week rather than once a month as per policy August 2022
26. Failure to refer to OH for 8 months between November 2021 and July 2022
27. RF promising a fair investigation knowing the opposite was true November 2021
28. Advertising my job before I received my disciplinary pack and the procedure had completed.
29. Allegations of power going to my head and head changing that are ongoing.
30. Pursuing me for GM due to alleged verbal abuse of LM but not NR, via a predetermined GM disciplinary
31. The investigation report findings March to May 2022
32. Finding a case to answer on allegation 3 contrary to LM March to May 2022
33. Witnesses, managers and /hr Withholding exculpatory facts from a formal disciplinary process.
34. BW and PB deceiving me by telling me I done the right thing by formally complaining about the attempted assault but withholding facts from me and the investigation May 2022

35. HR suggesting numerous unfavourable amendments to disciplinary documents, influencing the investigating officer's decision making and upgrading a finding of misconduct to GM in order to establish my GM from November 2021
36. RF's refusal of formal grievance.
37. PB accepting my resignation on 17/10/22.

Whistleblowing detriment

38. The pre-determined GM disciplinary procedure November 2021 onwards
39. The letter December 2022
40. Failure to pay on time`
41. The rejection of my grievance
42. Constructively dismissing me
43. HR suggesting numerous unfavourable amendments to disciplinary documents, influencing the investigating officer's decision making and upgrading a finding of misconduct to GM in order to establish my GM from November 2021

Victimisation

44. The pre-determined GM disciplinary procedure
45. The letter December 2022
46. Failure to pay on time and correctly January 2023
47. The rejection of my grievance October 2022
48. Constructively dismissing me October 2022
49. HR suggesting numerous unfavourable amendments to disciplinary documents, influencing the investigating officer's decision making and upgrading a finding of misconduct to GM in order to establish my GM from November 2021

Reasonable adjustments

50. A policy of requiring employees who are off sick to communicate directly with the Respondent/employer unless verbal consent was given by the employees for anybody else to liaise with the Respondent/employer?
51. A PCP of not having 1 to 1 meetings or stress risk assessments of individuals working in the Respondent's caretaking department at the Bromford and Hodge Hill estates