



EMPLOYMENT TRIBUNALS

Claimant

Ms O Motajo-Adebayo

v

Respondent

Precious Homes Limited

Heard at: Watford Employment Tribunal (CVP) **On:** 5 July 2024; &
5-6 September 2024

Before: Employment Judge R Wood; Mrs F Betts; Mrs J Costley

Appearances

For the Claimant: Dr Taiwo (Lay Representative)

For the Respondent: Mr Pike (Solicitor)

JUDGMENT

Upon a finding at a Preliminary Hearing that the claimant did not have a disability as defined by the Equality Act 2010; and that the claimant did not make the alleged protected disclosures, the Tribunal makes the following orders:

1. The claim of direct disability discrimination is dismissed.
2. The claim of disability related harassment is dismissed.
3. The claim of failure to make reasonable adjustments is dismissed.
4. The claim of automatically unfair dismissed is dismissed.

For the avoidance of doubt, this judgment brings the claimant's case to a conclusion, all claims having been dismissed.

DECISION AND REASONS

Claims and Issues

1. Page numbering referred to in square brackets in these reasons are to pages in the bundle, unless otherwise stated.
2. The Tribunal having handed down an extempore judgment, there was a request from the claimant on the day for full written reasons. They are set out below.
3. This is a claim brought by the claimant in respect of a number of aspects of disability related discrimination under the Equality Act 2010, and automatic unfair dismissal on the basis that the claimant made protected disclosures. The respondent is a private limited company providing residential care and supportive living throughout the UK. The claimant was employed as a care worker from 8 December 2022, until June/July 2023 on a probationary basis. She alleges that she had a severe mental health breakdown which caused her to be off work from 24 June 2023 to 24 July 2023. During this time, she says she was dismissed. The claimant alleges that she was dismissed because she had made protected disclosures and/or because she was required to look after her father who had a disability and/or because of her own disability, which caused her to be absent from work and to behave unusually. The respondent asserts that the claimant was dismissed because of performance and conduct related issues on 22 June 2022, at, or shortly after, a meeting with the claimant on the same day.

Procedure, Documents and Evidence Heard

4. The preliminary hearing was initially listed on 5 July 2024 via remote CVP hearing. Unfortunately, the parties were not ready on that occasion, so the hearing was adjourned to 5 and 6 September 2024. We first of all heard testimony from the claimant, who adopted her witness statement, as well as the contents of her further and better particulars document [18], and her disability impact statement [115]. From the respondent, we heard evidence from Miss Gafoor and Mr Owen who confirmed that their witness statements were truthful and accurate and adopted them as their evidence to the Tribunal. We also had an agreed bundle of documents which comprises 120 pages. We were assisted by helpful submissions from Dr Taiwo and Mr Pike.
5. In coming to our decision, the panel had regard to all of the written and oral evidence submitted, even if a particular aspect of it is not mentioned expressly within the decision itself.
6. The parties agreed at the outset of the hearing that there were three issues for the Tribunal to decide. These were:

- (i) Whether the claimant and/or the claimant's father was disabled for the purpose of section 6 of the Equality Act 2010;
- (ii) Whether the respondent had knowledge (actual or constructive) of the Claimant's and/or the claimants father's disability as at 22 June 2023;
- (iii) Whether the Claimant make a protected disclosure for the purposes of Employment Rights Act 1996 (ERA) s.43A and B.

Findings and Reasons

6. We first considered the question of whether the claimant had, as of 22 June 2023, a disability as defined by the Equality Act 2010. We adopted the law as set out in the written submissions of the parties. They seem to be correct, and no issue was taken by either party on the law as stated. In summary, it is as follows.
7. Section 6 of the Equality Act 2010 provides: (1) A person (P) has a disability if—
(a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
8. The Tribunal must also take into account Schedule 1 of the Equality Act 2010 which so far as is relevant provides: 2(1) The effect of an impairment is long-term if — (a) it has lasted for at least 12 months, (b) it is likely to last for at least 12 months, or (c) it is likely to last for the rest of the life of the person affected.
9. We start by finding that the decision to dismiss the claimant was taken during the meeting of 22 June 2023. We accept the respondent's witnesses testimony on this point. It is consistent with the documentary evidence, and in particular the letter at [96]. We accept that she was not sent the dismissal letter by email until 27 June 2023, but for the purposes of any discrimination claim, it is the date of the decision which is relevant.
10. As to the question of whether the claimant had an impairment, we were somewhat confused by the way she put her case. It was variously argued that on 22 June the claimant had depression, a stress related illness, or a psychosis. There is no need for a formal diagnosis in order to establish a disability, but there must be an identifiable impairment. The burden is upon the claimant to prove that she satisfied the various facets of the definition of disability.
11. There was very little medical evidence submitted in relation to the claimant. There are two pages of extracts from her GP records at [128-129]. These are records of consultations between August 2022 and July 2023. It was difficult to understand why the claimant did not disclose more information given that she informed the Tribunal she had obtained a full copy of her records from her GP.
12. The claimant also told us that she had sometimes felt unwell from about March/April 2023, and had consulted with an NHS 111 doctor in April and then May. This

is evident from her GP records. What is not contained in those records is any diagnosis, or for that matter, the prescribing of a 10mg daily dose of amitriptyline. The claimant briefly showed us a photograph of a box of amitriptyline. However, it was not at all clear how she had obtained this, or when. We note with surprise that she suggested that it might be possible to obtain amitriptyline 'over the counter'. This did not accord with our understanding. We were not satisfied that in April/May 2023 that the claimant was diagnosed with a particular condition, or that she was prescribed amitriptyline.

13. There were two other items of medical evidence in the bundle. At [132] and dated 21 July 2023, there was a letter from a consultant psychiatrist which explained that the claimant had been "*admitted to hospital on the 27th of June 2023 and detained under Section 2 of the Mental Health Act 1983....., for assessment and treatment of a stress-related illness. She appears to have been unwell for a couple of months prior to admission and remains under our care at this present time*".
14. At [139], in a letter dated 12 February 2024 from a community psychiatric nurse, it states: "*[the claimant] came to the attention of mental Health services In June 2023. She has since been receiving treatment for early onset of psychosis. She is under a consultant psychiatrist, and I am her allocated care coordinator who supports her in the in the community.*".
15. We find these letters to be brief and lacking in sufficient detail as to diagnosis at the relevant time. Neither letter relates to the relevant point in time, namely 22 June 2023, the date when we find the decision to dismiss occurred. The February 2024 letter is clearly of very limited relevance to the events of June 2023. The earlier letter does make some observations as to the two months preceding the claimant's admission to hospital. However, it was our view that this too was rather vague, and was likely to be have been based on information which came from the claimant herself.
16. As to the claimant's own testimony, she accepts she did not have an impairment and was not disabled when her employment started on 8 December 2022. She says she became unwell in around April 2023 when she first called 111. We find that there is nothing in her medical records suggestive of serious health concerns prior to that date. Neither do the medical records reveal a serious health condition in April, May, or up to 22 June 2023. In our judgement, the claimant has failed to disclose sufficient medical evidence as to her diagnosis, the date of that diagnosis, the medication she was taking, the effect of the condition on her normal day to day activities or the duration for which that effect might have been extant.
17. We note that the claimant attended work throughout until 19 June 2023, when she was suspended pending the investigation and meeting on 22 June, save for 3-4 days absence in May 2023. This is not consistent with the claimant having an impairment or a disability. As will be repeated below, we find that the claimant

continued to tell the respondent that she was fine throughout the relevant period. We find that evidence of strange behaviour and conduct which is out of character amounts to insufficient evidence of impairment in this case. We therefore find that the claimant did not have an impairment at the relevant date.

18. For the sake of completeness, we then consider whether there was, so far as the claimant is concerned, a substantial adverse effect on her ability to carry out normal day to day activities. During her testimony, the claimant admitted that she was able to carry out normal day to day activities up to the end of her employment with the respondent. She did refer to finding it more difficult to do some things, but despite being given the opportunity to do so, was unable to provide any examples. We note that the claimant had very demanding duties with the respondent, being responsible for the care and supervision of adults with serious behavioural issues. She was able to remain at work save for one short period of a few days. Accordingly, we find that the claimant failed to satisfy us that there was a substantial adverse effect on ability to carry out normal day to day activities at the relevant time.
19. A disability under the Equality Act 2010 must be 'long term' as defined above. The earliest the claimant could have had an impairment on her case was April 2023. The claimant explained that she had applied for a new job in September, when she had attended an interview and been successful. This was for a similar care role, looking after children, working between 60-180 hours per month. She told us that she had informed her employer of her medical history. She also stated that she had asked not to start until January 2024 for health reasons. Even if we accept this, we find that she was likely to have been able to carry out normal day to day activities by the start of that employment, at the latest. We find therefore that the claimant's condition did not have a long term substantial adverse effect for more than the period May 2023 to January 2024, even on her own evidence.
20. We also consider whether, as of 22 June 2023, it was likely (i.e. whether it "could well happen") that the claimant's condition would have the requisite long-term effect i.e. for a period of 12 months, or the rest of her life. Without the benefit of hindsight, it is our view that it is unlikely that anyone would have foreseen a long term impairment at that stage. She had received a limited diagnosis and prescription, even on her own evidence. She was persistent in suggesting that she was 'fine'. In so concluding, we have regard to the fact that the claimant had no prior history of mental health condition which might have made it more likely her condition would have a longer effect on her ability to carry out normal day to day activities. What symptoms she was experiencing could just as easily have been attributed to short term stressors such as her mother being overseas or her father's wellbeing.
21. In this claim it is tempting to conclude that because the claimant was admitted to hospital under the Mental Health Act on 24 June, that she must have had a

disability on 22 June. We do not think that is safe logic here. We think it likely that the claimant was, by reason of various personal stressors, predisposed to mental health crisis, which was triggered by the meeting of 22 June and the realisation that she was at least in danger of losing her job. This is always an important matter, but in the claimant's case, her immigration status in the UK depended upon her maintaining employment with the respondent. We think this realisation caused a severe and sudden collapse of her mental health state after 22 June.

22. For all of the reasons explained, we find that the claimant did not have a disability on 22 June 2023 as defined.
23. We turn then to the question of the claimants father's alleged disability. We can deal with this more briefly. There is absolutely no medical evidence relating to her father. We have not even seen any independent evidence that her father is in a care home, let alone the reasons for his admission, and when. We note that in her application, the claimant stated that her father "was in a care home during Covid" (i.e. in the past tense). We were told in the further and better particulars that he suffered a stroke several years before and that this had restricted his mobility and speech. As stated, there is no medical support for this evidence.
24. The claimant puts her case on the basis that one can safely infer from the fact that her father is in a care home that he had a disability as of 22 June. We do not agree. The definition of disability is specific and requires careful thought as to the evidence required to satisfy the definition. In our judgment, the claimant has failed to discharge the burden of proof in respect of this issue.
25. In the light of our findings as to the existence of a disability in relation to the claimant, and to her father, there is no need to continue on to consider the question of knowledge. However, for the sake of completeness, we will address the issue briefly, in case we are adjudged to have been wrong as to the existence of a disability.
26. We find that the respondent did not have knowledge of either the claimant's or her father's alleged disability. The claimant argues that by reason of strange behaviour and conduct on her part, which was out of character, that the respondent should have made further enquiries which would have revealed a disability, and that by reason of which the respondent is fixed with constructive knowledge of disability. We do not agree with this submission. In our view, the respondent was prompted, by reason of her behaviour (such as inappropriate laughing) and conduct (using her phone and poor time keeping) to have at least two, if not three, meetings with her in June. We are satisfied that in various ways she was asked by her employer if there were any problems and whether she needed help. However, the claimant opted to state she was fine and did not need help. We are satisfied that there was no obligation to go further so far as the respondent was concerned.

27. We do not agree that the respondent was reasonably required to refer the claimant to an Occupational Health advisor. She had said she was fine and the respondent was entitled to take this at face value in the circumstances of this case. What they had seen, without the benefit of hindsight, did not justify or require them to seek to pressure the claimant to see a medical advisor. We doubt she would have agreed to attend or to cooperate in any event. We note that her mother's friend only got her to the hospital on 24 June by tricking her, and that she ran away from hospital on 26 June. In our view, and for whatever reason, the claimant did not accept she was ill as of 22 June 2023. How then is her employer expected to have known? Accordingly, we find that the respondent did not have actual or constructive knowledge of C's disability, even if one existed.
28. In terms of knowledge of her father's alleged disability, we accept the respondents witness's evidence that they were unaware that the claimant had to start late or leave early because of her father's condition (if it be true), and that they knew nothing as to why her father was in a care home. As already stated, it is our view that one cannot infer disability as defined by simple reason of residence in a care home. We find that the respondent did not have actual or constructive knowledge of the claimants father 's disability.
29. We turn finally to the question of whether there was a protected disclosure. As with other aspects of her case, we find that the claimant's evidence was vague. She was unable to be adequately specific and consistent as to who she had told about lack of support, when she had told them, and how many times she had made disclosures. We preferred the evidence of the respondent's witnesses, and in particular Miss Gaffoor, who was in our view, convincing and plausible. She was adamant that in the case of patient JP, that he was always covered by two members of staff according to the rota, and that even if one of those staff went to the toilet briefly, that someone else covered. We were told that JP had serious behavioural issues and could be violent and unpredictable. We also note that the claimant seems not to have mentioned these disclosures, or the perceived treatment of them, in any of the meetings in which her negative conduct was raised. We find that the significance of any comments she may have made informally, have been exaggerated in order to bolster her claims.
30. The claimant has provided insufficient evidence that, at the time of the alleged protected disclosures, she had had one of the matters in s. 43B of the ERA in mind; or that she raised the matter in the public interest as distinct from raising the matter as a personal complaint. It is our view that on this question, and others in the case, insufficient thought has been given as to how to prove her case. What has been produced has been sparse, vague and unsatisfactory.
31. Accordingly, we find that on a balance of probabilities, the claimant did not make a protected disclosure.
32. The claims are therefore all dismissed.

Employment Judge R Wood

Date: 4 November 2024.....

Sent to the parties on: 21/11/2024 ...

S. Kowalska
For the Tribunal Office