



EMPLOYMENT TRIBUNALS

Claimant: Mr B Sequerra

Respondent: Cityroad Limited (in Creditors Voluntary Liquidation)

Heard: in Sheffield

On: 23 January 2025

Before: Employment Judge Ayre, sitting alone

Representation

Claimant: In person

Respondent: Did not attend and was not represented

JUDGMENT having been sent to the parties on 29 January 2025 and written reasons having been requested in accordance with Rule 60(4) of The Employment Tribunal Procedure Rules 2024, the following reasons are provided:

1. The name of the respondent is amended to Cityroad Limited (in Creditors Voluntary Liquidation)
2. The claimant was, at the time of the alleged acts of discrimination, disabled due to bipolar disorder.
3. The claim for discrimination arising from disability fails and is dismissed.
4. The claim for failure to make reasonable adjustments fails and is dismissed.
5. The claim for disability related harassment succeeds.
6. The respondent is ordered to pay the sum of £2,000 to the claimant.

REASONS

Background

1. The claimant issued a claim in the Employment Tribunal on 31 October 2023 following a period of early conciliation that started on 17 September 2023 and ended on 29 October 2023. The claim form includes a complaint of disability discrimination. The claimant says that he is disabled due to bipolar disorder.
2. The claim was served on the respondent at the respondent's then registered office at Mallard House, Heavens Walk, Doncaster, DN4 5HZ. The respondent has not filed a response to the claim and has played no part in these proceedings.
3. A search of Companies House reveals that on 30 November 2023 David Adam Broadbent and Michael Jenkins were appointed as joint liquidators of the respondent. On 11 December 2023 the registered office of the respondent changed to 11 Clifton Moor Business Village, James Nicolson Link, Clifton Moor, York, YO30 4XG.
4. On 23 February 2024 a Preliminary Hearing took place before Employment Judge Brain. The claimant attended the hearing, the respondent did not.
5. On 18 June 2024 a letter was sent to the respondent's liquidators informing them that as no response has been received to the claim, a judgment may now be issued. There is no record on the Tribunal file of the liquidators having responded to that letter or having played any part in the proceedings.
6. A second Preliminary Hearing took place before Employment Judge Miller on 6 September 2024. Neither party attended that hearing. The claimant was unable to join the hearing due to technical issues. The hearing went ahead in the absence of the parties and Employment Judge Miller directed that the case be listed for final hearing, as there was insufficient information before him to make a determination of the issues. The claimant was ordered to do the following:
 1. Prepare and send a Schedule of Loss to the Tribunal and the respondent 4 weeks before the hearing;
 2. Prepare and send a witness statement 4 weeks before the hearing. Employment Judge Miller helpfully set out in the Record of the hearing the questions that the claimant should address in his witness statement; and
 3. Send copies of any documents 4 weeks before the hearing.
7. The claimant has not complied with any of these Orders.

The hearing

8. The claimant attended this hearing without having complied with any of the Case Management Orders. He had no documents, no witness statement, and no Schedule of Loss.

9. At the start of the hearing we discussed whether to go ahead today, with the claimant giving his evidence orally, or to postpone the hearing to give the claimant time to comply with the Case Management Orders. The claimant's preference was to go ahead. He said that he did not think he would be disadvantaged in doing so because his bipolar disorder caused him to have a good memory.
10. Given that this claim is not defended by the respondent, that the claimant's preference was to proceed with the hearing, that this is now the third hearing in the case, and that the respondent is in liquidation so the claimant is unlikely to recover much, if any, compensation, it was in my view proportionate to go ahead. The clerk provided the claimant with a copy of the Records of the Preliminary Hearings so that the claimant knew the issues that needed to be decided and the questions he would have to address, and the hearing was adjourned for approximately one hour to give the claimant time to prepare. During that time the claimant sent a number of emails to the Tribunal including written answers to the questions set out in the Record of the Preliminary Hearing on 6 September 2024.
11. The hearing then proceeded and the claimant gave his evidence orally.

The issues

12. The issues that fell to be determined at the hearing were identified at the Preliminary Hearing on 23 February as follows:

Time limits

1. Was the claim made within the time limit in section 123 of the Equality Act?
Specifically:
 1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 2. If not, was there conduct extending over a period?
 3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? Specifically:
 1. Why were the complaints not made to the Tribunal in time?
 2. Is it just and equitable in all the circumstances to extend time?

Disability

2. Was the claimant, at the time of the alleged discrimination, disabled within the meaning of section 6 of the Equality Act 2010? Specifically:
 1. Did he have a mental impairment: bipolar disorder?
 2. Did this have a substantial adverse effect on his ability to carry out day-to-day activities?
 3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

4. Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?
5. Were the effects of the impairment long-term? Specifically:
 1. Did they last at least 12 months, or were they likely to last at least 12 months?
 2. If not, were they likely to recur?

Discrimination arising from disability

3. Did the respondent treat the claimant unfavourably by:
 1. Excluding the claimant from sales meetings?
 2. Excluding the claimant from client meetings?
 3. Reducing the claimant's range of responsibilities?
4. Did the following things arise in consequence of the claimant's disability:

The claimant receiving from his GP and giving to the respondent a note asking for consideration of the claimant's mental health, his 'fragility' and the need for a structured working environment?

5. Was the unfavourable treatment because of the GP note?
6. If so, was the treatment a proportionate means of achieving a legitimate aim? The respondent has not put forward any legitimate aims.

Reasonable adjustments

7. Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?
8. Did the respondent have a PCP of requiring the claimant to undertake the full range of duties as a recruitment consultant?
9. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the claimant had a greater need for clarity and structure, a need for certainty over client lists, clarity over the roles of the members of the team, the creation of appropriate professional boundaries, process guidance and proper training and induction?
10. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
11. What steps could have been taken to avoid the disadvantage? The claimant suggests:
 1. A proper induction process;
 2. Proper training; and

3. The implementation of a proper structure and guidance around client lists, team roles and boundaries.
12. Was it reasonable for the respondent to have to take those steps and when?
13. Did the respondent fail to take those steps?

Harassment related to disability

14. Did the respondent do the following things:
 1. Exclude the claimant from sales meetings;
 2. Exclude the claimant from client meetings; and/or
 3. On a date towards the end of July 2023, did an employee of the respondent say to the claimant that "*no one likes you; no one respects you, you're crazy*"?
15. If so, was that unwanted conduct?
16. Did it relate to disability?
17. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
18. If not, did it have that effect, taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Remedy

19. What financial losses has the discrimination caused the claimant?
20. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
21. If not, for what period of loss should the claimant be compensated?
22. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
23. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
24. Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

25. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
26. Did the respondent or the claimant unreasonably fail to comply with it?
27. If so is it just and equitable to increase or decrease any award payable to the claimant?
28. By what proportion, up to 25%?
29. Should interest be awarded? How much?

Findings of fact

13. The claimant has suffered from periods of depression going back as far as 2008 when he attempted to take his own life. His GP diagnosed him with bipolar disorder in 2021, although he has experienced the effects of the condition since at least 2013. Bipolar disorder is a long term condition which is expected to last indefinitely.
14. The effects of bipolar disorder on the claimant's ability to carry out normal day-to-day activities vary according to whether he is in a manic phase or a depressive phase. They include the following:
 1. Periods of time when he is unable to get out of bed or face the world;
 2. Periods when he is unable to get dressed or care for himself, and relies upon other people for support;
 3. Periods when he is unable to go to the shops or have any interaction with people.
15. The claimant finds communication and interaction with people difficult and can come across as blunt and rude. This causes him to struggle with friendships and he relies on his family for support. At times bipolar disorder causes him to feel suicidal and he lives in fear of experiencing suicidal thoughts again.
16. The claimant also struggles to control his spending and has a tendency to spend large sums of money on impulse. As a result he does not carry bank cards with him.
17. The claimant has been unable to work due to bipolar disorder for a number of years, although he also describes a number of positive impacts of the condition upon him and says that, at times, it has had a beneficial effect on his work. The claimant has worked successfully as a recruitment consultant in the past.
18. The claimant began treatment for depression in 2013, but the medication he was proscribed, Sertraline, triggered manic behaviour and impulsive decisions, including excessive spending. The claimant discontinued Sertraline after approximately one year and has not taken any further medication for his bipolar disorder. He is not currently on any medication.

19. The claimant manages his condition through regular therapy, lifestyle changes and what he describes as 'self-management', which includes establishing structured routines, monitoring mood fluctuations and practising mindfulness. He has given up drinking alcohol entirely.
20. In May 2023 the claimant began working for the respondent as a recruitment consultant on a salary of £50,000 pa plus bonuses. The respondent is a small recruitment business owned and managed by Nigel Brewster, who the claimant had previously worked with in another role. At the time of the claimant's employment the respondent employed approximately 20 or 25 people. Shortly after the events that this claim is about the respondent went into liquidation.
21. The claimant was interviewed for the role of recruitment consultant and declared that he has bipolar disorder during the interview process. This did not prevent the respondent from taking him on as an employee.
22. The claimant began work on or around 1 May 2023. He was based in an office in Sheffield city centre in which the workspace comprised both a shared office, open to the public, and a private office used just by the respondent. The claimant could work in both spaces and was initially provided with a key to the private office.
23. The claimant carried out the full range of duties as a recruitment consultant. He participated in client meetings along with Nigel Brewster, as well as internal sales meetings which took place every Monday. He experienced difficulties at work, particularly in his relationships with other people. He also found the lack of structure in the respondent's business difficult. He began having confrontations with colleagues, including one of the directors, Paula Barber, and people began to criticise his performance. There were disputes over the 'ownership' of clients.
24. The claimant approached his GP for support. The GP provided a note which the claimant forwarded to Nigel Brewster on or around 15 June in which the GP stated that the claimant was experiencing some mental stress and needed support. The GP did not refer in the note to bipolar disorder or suggest any specific support that could be provided. The respondent had a contract with Westfield Health to provide mental health support. The claimant had access to support through Westfield Health and used this support.
25. On Friday 23 June 2023 the claimant had a conversation with Mr Brewster. It is clear from the evidence before me (specifically a letter prepared by the respondent shortly after the conversation) that Mr Brewster's interpretation of that conversation was that the claimant resigned. The claimant could not recall the conversation but accepted that he may well have resigned, because he has a tendency to do things in the heat of the moment which he subsequently regrets or changes his mind about.
26. On 23 June the respondent produced a letter addressed to the claimant in the following terms:

“Following our conversation on Friday 23 June 23 I am writing to confirm the termination of your employment with Cityroad t/a Brewster Partners recruitment group. Further to your resignation the following arrangements apply:

- 1. Your employment with the company will officially terminate on Friday 30 June 2023 and as discussed you will work your notice until this date. As of the date of this letter and in accordance with the relevant provisions in your employment contract you will receive your normal salary and contractual benefits up to your final day of employment.*
- 2. You must return any property belonging to the company including (without limitation) mobile telephone, computer, company credit card, documents material records, notes and confidential documents in good condition as soon as possible and by no later than 5pm on Friday 30 June 2023.*
- 3. Your final salary payment will be made in the usual way subject to normal deductions of tax and NIC. You can expect your final payment on Friday 30 June 2023. We shall forward your P45 in due course. Any accrued but unused holiday entitlement will be paid with your final salary payment.*
- 4. We remind you that you remain bound during your notice period and afterwards by the confidentiality obligations and restrictive covenants contained in your employment contract together with the implied duties of good faith and fidelity. If you have any concern over the effect or meaning of these restraints you should take your own independent legal advice but to summarise we do consider these prohibit you from contacting, dealing with and soliciting work from customers among other matters.*

I would like to take this opportunity to wish you all the best for the future. If you've any further questions please do not hesitate to contact me. “

27. The letter was signed by Nigel Brewster, partner and chief executive of the respondent. Unfortunately, the claimant did not receive the letter until 11 September 2023.
28. On 23 June 2023 the respondent took away the claimant's company laptop and phone as well as the key to the private office. The claimant's company email account was terminated.
29. The claimant continued to work however, using the shared office space, LinkedIn and his personal network of contacts until September 2023. After the 23 June the claimant was not invited to any client meetings or to internal sales meetings. The reason for this was that the respondent believed that the claimant had resigned.
30. In July 2023 the respondent cancelled the claimant's contract with Westfield Health, which the respondent used to provide mental health support to employees
31. On a date towards the end of July 2023, whilst the claimant and Mr Brewster were in the shared office, Mr Brewster said to the claimant that *“no one likes you; no one respects you, you're crazy”*.

32. The claimant was not paid after 30 June and asked the respondent why he had not been paid. On 11 September Paula Barber of the respondent sent an email to the claimant explaining that the claimant had been dismissed and attaching a copy of the letter of 23 June purporting to terminate the claimant's employment on 30 June.
33. The claimant only received the letter of 23 June on 11 September and that was the date upon which his employment actually ended. The respondent did subsequently pay the claimant for the period up to 11 September 2023.
34. Since leaving the respondent's employment the claimant has not looked for alternative employment. He has not claimed benefits other than Personal Independence Payment which has been refused. He is appealing that decision. The claimant has set up his own business and continues to run that business. He has not yet drawn any salary from it.
35. The claimant has been living off the proceeds from the sale of a property of his and has recently sold a second property. He lives with his mother and has limited outgoings, as he controls his spending tightly.
36. When asked what effect the treatment by the respondent had on him, the claimant said that it had "turned him off working for a company", and that he now feels unable to enter a company structure.
37. In response to the question whether he had noticed any change in his mental health and in his ability to manage his condition as a result of what happened at work, the claimant replied that he is now more aware of the requirement for employers to make reasonable adjustments. He accepted that he did not ask for any reasonable adjustments whilst he was working at the respondent.
38. In September 2023 the claimant was referred by his GP to a CBT therapist, and he is still receiving therapy. In October 2024 he was referred to a bipolar workshop and he started attending the workshop in December 2024.

The Law

Time limits in discrimination claims

39. Time limits for bringing discrimination claims are set out in section 123 of the Equality Act 2010, with the relevant provisions being the following:

"(1) ...proceedings on a complaint within section 120 may not be brought after the end of –

(a) the period of 3 months starting with the date of the act to which the complaint relates, or...

(b) such other period as the employment tribunal thinks just and equitable.

....

(3) For the purposes of this section -

- (a) conduct extending over a period is to be treated as done at the end of the period;*
- (b) failure to do something is to be treated as occurring when the person in question decided on it.*
- (c) failure to do something is to be treated as occurring when the person in question decided on it.”*

Disability

40. The relevant statutory provisions are contained Section 6 of the Equality Act 2010 which provides that:

“(1) A person (P) has a disability if -

- a) they have 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”.*

41. Schedule 1 Part 1 Para 2 of the Equality Act defines long-term as:

“an impairment which has lasted for a least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person effected”.

42. Paragraph 12 of Schedule 1 of the Equality Act provides that:

“When determining whether a person is disabled the Tribunal must take account of such guidance as it thinks is relevant”.

43. The Equality Act 2010 Guidance on matters to be taken into account in determining questions relating to the definition of disability (“the Guidance”) was issued by the Secretary of State pursuant to section 65 of the Equality Act in May 2011.

44. In ***Goodwin v Patent Office [1999] ICR 302*** the then President of the Employment Appeal Tribunal gave guidance on the approach for Tribunals to adopt when deciding whether a claimant is disabled. He suggested that the following 4 questions should be answered in order-

1. Did the Claimant have a mental or physical impairment?
2. Did the impairment affect the Claimant’s ability to carry out normal day-to-day activities?
3. Was the adverse condition substantial?
4. Was the adverse condition long-term?

45. When considering whether a claimant has an impairment the guidance of ***Rugamer v Sony Music Entertainment UK Ltd [2011] IRLR 664*** is helpful. In that case the EAT defined impairment as ‘some damage, defect, disorder or

disease compared with a person having a full set of physical and mental equipment in normal condition' and the phrase "physical or mental impairment" as referring to a person' having in everyday language something wrong with them physically or something wrong with them mentally'.

46. The Tribunal has to decide whether the impact on the Claimant's ability to carry out normal day to day activities is substantial. Section 21(1) of the Equality Act defines substantial as meaning "*more than minor or trivial*".
47. When deciding whether the adverse impact is substantial or not the Tribunal must take account of the cumulative effects of the impairment. The Guidance provides examples of factors which it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. Paragraph B2 states that "*The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial*". Paragraph B7 provides that: "*Account should be taken of how far a person can reasonably be expected to modify his or her behaviour. For example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities*". Account should also be taken of where a person avoids doing things example because they cause pain, fatigue or social embarrassment or because of the loss of energy or motivation.
48. It is for the Tribunal to decide whether an impairment has a substantial effect and when making that decision the Tribunal must take account of the impact on day-to-day activities were the individual not receiving the medical and other treatment to support their condition.
49. Day-to-day activities are given a wide interpretation and in general will be things that people do on a regular or daily basis. They can include general work-related activities but will not include activities which are only normal for a small group of people. In ***Adremi v London and South Eastern Railway Ltd [2013] ICR 5912***, the EAT held that a Tribunal has to consider the adverse effect not upon the claimant's carrying out of normal day-to-day activities, but upon his ability to do so. The Tribunal's focus should be on what the claimant says he cannot do as a result of his impairment.
50. The burden of proving that he is disabled within the meaning of section 6 of the Equality Act 2010 falls on the claimant, ***Kapadia v London Borough of Lambeth [2000] IRLR 699***.

Discrimination arising from disability

51. Section 15 of the Equality Act 2010 states that:

“(1) A person (A) discriminates against a disabled person (B) if –

- (a) A treats B unfavourably because of something arising in consequence of B’s disability, and*
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

52. In a claim under section 15, no comparator is required, and the claimant is merely required to show that he has suffered unfavourable treatment and that the reason for that treatment was something arising because of his disability.

53. In ***Secretary of State for Justice and another v Dunn EAT 0234/16*** the then president of the EAT, Mrs Justice Simler, identified four elements that must be made out for a claimant to succeed in a complaint under section 15:

1. There must be unfavourable treatment;
2. There must be something that arises in consequence of the claimant’s disability;
3. The unfavourable treatment must be because of (ie caused by) the something that arises in consequence of the disability; and
4. The respondent must be unable to show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

Reasonable adjustments

54. Section 20 of the Equality Act 2010 states as follows:-

“(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage...”

55. Section 21 of the Equality Act 2010 provides that:-

“(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with a duty to make reasonable adjustments...

56. Assuming that the claimant is a disabled person, the following are the key components which must be considered:

1. What is the provision, criterion or practice ("PCP"), physical feature of premises, or missing auxiliary aid or service relied upon?
2. How does that PCP/ physical feature/missing auxiliary aid put the claimant at a substantial disadvantage in comparison with persons who are not disabled?
3. Can the respondent show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage?
4. Has the respondent failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?
5. Is the claim brought within time?

57. Paragraph 6.28 of the Equality and Human Rights Commission's Code of Practice on Employment (2011) sets out factors which it is reasonable to take into account when considering the reasonableness of an adjustment. These include:-

1. The extent to which it is likely that the adjustment will be effective;
2. The financial and other costs of making the adjustment;
3. The extent of any disruption caused;
4. The extent of the employer's financial resources;
5. The availability of financial or other assistance such as Access to Work; and
6. The type and size of the employer.

Harassment

58. Harassment is defined in section 26 of the Equality Act as follows:

"(1) A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

- (b) *The conduct has the purpose or effect of –*
- (i) *Violating B’s dignity, or*
 - (ii) *Creating an intimidating, hostile, degrading, humiliating or offensive environment for B...*

(4) *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –*

- (a) *the perception of B;*
- (b) *the other circumstances of the case;*
- (c) *whether it is reasonable for the conduct to have that effect...*

59. In deciding whether the claimant has been harassed contrary to section 26 of the Equality Act, the Tribunal must consider three questions:

- b. Was the conduct complained of unwanted:
- c. Was it related to disability; and
- d. Did it have the purpose or effect set out in section 26(1)(b).

Richmond Pharmacology v Dhaliwal [2009] ICR 724.

60. In ***Hartley v Foreign and Commonwealth Office Services [2016] ICR D17*** the EAT held that the words ‘related to’ have a wide meaning, and that conduct which cannot be said to be ‘because of’ a particular protected characteristic may nonetheless be ‘related to’ it. The Tribunal should evaluate the evidence in the round, recognising that witnesses will not readily accept that behaviour was related to a protected characteristic. The context in which unwanted conduct takes place is an important factor in deciding whether it is related to a protected characteristic (***Warby v Wunda Group plc EAT 0434/11***).

Burden of proof

61. The relevant statutory provisions are set out in section 136 of the Equality Act 2010 as follows:

“(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.

....

(5) A reference to the court includes a reference to –
(a) an employment tribunal....”

62. Section 136 creates, in discrimination cases, a two stage burden of proof (see ***Igen Ltd (formerly Leeds Careers Guidance and others v Wong [2005] ICR 931*** and ***Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205*** which is generally more favourable to claimants, in recognition of the fact that discrimination is often covert and rarely admitted to.

63. In the first stage, the claimant has to prove facts from which the tribunal could decide that discrimination has taken place. If the claimant does this, then the second stage of the burden of proof comes into play and the respondent must prove, on the balance of probabilities, that there was a non-discriminatory reason for the treatment.

Compensation for discrimination

64. Section 124 of the Equality Act 2010 (“**the EQA**”) sets out the remedies available in a successful discrimination claim. Section 124(2) provides that the tribunal may “*order the respondent to pay compensation to the complainant*”. Section 124(6) states that “*The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court...under section 119*”.

65. Section 119 of the EQA contains the remedies available to the county court where it makes a finding of discrimination and includes, at section 119(4) the power to award compensation for injured feelings (whether or not it includes compensation on any other basis).

66. In determining the amount of injury to feelings, the tribunal must take account of the guidelines laid down by the Court of Appeal in ***Vento v Chief Constable of West Yorkshire Police (No. 2) 2003 ICR 318***, as subsequently revised, and of the Presidential Guidance on Employment Tribunal awards for injury to feels and psychiatric injury, issued in September 2017 and subsequently updated.

67. The Vento guidelines, in summary, are that:

1. The top band applies in only the most serious cases, such as where there has been a lengthy campaign of harassment;
2. The middle band applies to serious cases that do not merit an award in the top band; and
3. The lower band applies in less serious cases, for example involving a one off or isolated act of discrimination.

68. The Presidential Guidance provides that for claims presented on or after 6 April 2023 the Vento bands are as follows: a lower band of £1,100 to £11,200 (less serious cases); a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200. These bands take account of the 10 per cent uplift set out in ***Simmons v Castle [2012] EWCA Civ***

1288.

Conclusions

Disability

69. The claimant has a mental impairment, bipolar disorder, that he has lived with for many years. Although his formal diagnosis was in 2021 he experienced symptoms of bipolar disorder going back to 2013 and possibly beyond.
70. The bipolar disorder has had and continues to have a substantial impact on the claimant. At times it causes him to feel suicidal and he has in the past attempted to take his own life. He lives in fear of experiencing suicidal thoughts again.
71. The condition impacts the claimant's ability to carry out normal day to day activities. At times he is unable to get out of bed or dress himself and is reliant upon other people for support. The claimant is prone to impulsive spending, so shopping can be difficult for him, and he does not carry bank cards.
72. The condition also affects his ability to communicate and interact with people. At times he is unable to face the world and avoids social contact and his communication style can be blunt. He has difficulty forming and maintaining relationships and has few friends.
73. To his credit, the claimant has developed strategies for dealing with his condition which do not involve medication. He has undertaken therapy, and continues to do so, has changed his lifestyle to cut out alcohol completely, and has adopted a number of practices such as mindfulness practice. These have helped reduce the impact of bipolar disorder on him.
74. Despite the steps that the claimant has taken, the claimant's condition continues to have an impact on his ability to carry out day to day activities. That impact is more than a trivial one, and therefore satisfies the definition of substantial. .
75. I am satisfied on the evidence before me that the claimant has a mental impairment, bipolar disorder, that the impairment has a substantial adverse impact on his ability to carry out normal day to day activities. I am also satisfied that the impact on the claimant is long term. It has lasted since at least 2013 and is predicted to last indefinitely.
76. For the above reasons I find that the claimant is disabled within the meaning of section 6 of the Equality Act by reason of bipolar disorder.

Knowledge of disability

77. The claimant, to his credit, told the respondent about his bipolar disorder at the time of his interview for potential employment. He was open with them about his condition. I have no hesitation therefore in finding that the respondent did have knowledge of the claimant's disability.

Discrimination arising from disability

78. There were three specific allegations of discrimination arising from disability:

1. Excluding the claimant from sales meetings;
2. Excluding the claimant from client meetings; and
3. Reducing the claimant's range of responsibilities.

79. The respondent did not deny doing any of these things and I accept the claimant's evidence that they did happen, from 23 June 2023 onwards.

80. The next consideration therefore was whether the claimant receiving from his GP and giving to the respondent a note asking for consideration of the claimant's mental health, his 'fragility' and the need for a structured working environment arose in consequence of the claimant's disability.

81. I have no hesitation in finding that it did. I accept the unchallenged evidence of the claimant that he did give the respondent a GP note. It is clear that the note was provided because of the claimant's disability, and that he provided it to the respondent because of the disability.

82. I have then gone on to consider whether the unfavourable treatment referred to above was because of the GP note. In his evidence to the Tribunal the claimant accepted that he may well have resigned on 23 June 2023. He also told the Tribunal about a letter that was sent to him by the respondent which he did not receive until September 2023. That letter was dated 23 June and makes clear that the respondent believed that the claimant had resigned on 23 June and that his employment terminated on 30 June.

83. It is entirely normal for an employee to be excluded from meetings and to have their responsibilities removed upon the termination of their employment. I find that in this case the reason why the claimant was excluded from meetings and his responsibilities were reduced from 23 June onwards was because the respondent believed that the claimant had resigned on 23 June. It was not because of the GP note.

84. The claim for discrimination arising from disability therefore fails and is dismissed.

Reasonable adjustments

85. For the reasons set out above, I find that the respondent did know about the claimant's disability, from the date of the claimant's interview for the role and throughout the course of his employment.

86. I accept the claimant's evidence that, whilst working for the respondent, he was required to undertake the full range of duties as a recruitment consultant. The respondent did, therefore, apply the PCP relied upon by the claimant for the reasonable adjustments claim.

87. I have then considered whether the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability. The claimant's case was that as a result of his disability he had a greater need for clarity and structure, a need for certainty over client lists and for clarity over the roles of the members of the team, the creation of appropriate professional boundaries, process guidance and proper training and induction.
88. The claimant told the Tribunal in evidence that he was capable of doing the full range of duties of a recruitment consultant, and he even credited his bipolar disorder with helping him at work. The claimant is an experienced recruitment consultant who has been very successful in the past.
89. The evidence before the Tribunal did not support a conclusion that it was the requirement to undertake the full range of duties as a recruitment consultant that caused the claimant any difficulties. Rather, the difficulties experienced by the claimant were as a result of the way in which the respondent's business was set up and run. The claimant perceived the respondent's business to be unstructured, and that may very well have been the case. Some businesses, particularly small businesses, are unstructured.
90. It was the lack of structure that caused the claimant difficulties, rather than the application of the PCP. I find that the application of the requirement for the claimant to undertake the full range of duties as a recruitment consultant did not place the claimant at a disadvantage compared to someone without the claimant's disability.
91. The claim that the respondent failed to make reasonable adjustments therefore fails and is dismissed.

Harassment related to disability

92. The claimant makes three allegations of harassment related to disability:
1. Excluding the claimant from sales meetings;
 2. Excluding the claimant from client meetings; and/or
 3. On a date towards the end of July 2023, an employee of the respondent saying to the claimant that "*no one likes you; no one respects you, you're crazy*"?
93. I find, on the unchallenged evidence of the claimant, that all three of these things happened. I also find that each of them was unwanted by the claimant. I accept the claimant's evidence that he wanted to attend sales and client meetings and was unhappy at being excluded. I also find that the comment in July 2023 was offensive to the claimant and unwanted by him.
94. I have then gone on to consider whether the above conduct related to disability. I find that the exclusion of the claimant from sales and client meetings was not related in any way to the claimant's disability. Rather, the reason for that treatment

was because the respondent believed that the claimant had resigned on 23 June and considered his employment to have terminated on 30 June. The comment made in July 2023 did, however, relate to disability. The use of the words “*you’re crazy*” are a clear reference to the claimant’s mental health.

95. I also find that the comment in July 2023 had the effect of creating a degrading, humiliating and offensive environment for the claimant. The comment was clearly offensive and upset the claimant.

96. The claim for harassment related to disability is therefore well founded in relation to the third allegation of harassment (relating to the comment in July). The other allegations of harassment are not well founded.

Time limits

97. The claimant commenced early conciliation on 17 September 2023. The act of discrimination occurred in late July 2023. The complaint of discrimination was made within three months of the act of discrimination and the claim is therefore in time.

Remedy

98. I have upheld just one of the claimant’s complaints of discrimination, that relating to a comment made in July 2023. The claimant has not suffered any financial loss as a result of that comment, as his loss of earnings arises from the termination of his employment.

99. The claimant has suffered hurt feelings and it is therefore appropriate to make an award for injury to feelings. In deciding the amount of the award, I have taken account of the fact that the act of discrimination was a one off and isolated incident, which did not form part of any continuing act of discrimination. There was no evidence before me of the discrimination having an impact on the claimant’s mental health, and the claimant has been able to work and to set up his own business.

100. The claimant described the impact of the comment on him as being that he no longer wishes to work for a company and is more aware of the obligation of employers to make reasonable adjustments.

101. In the circumstances, an award at the lower end of the lower Vento band is, in my view, appropriate. I therefore order the respondent to pay the sum of £2,000 to the claimant. I make no award for interest.

Employment Judge Ayre

Date: 27 February 2025

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE

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