EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss Alexandra Crane	v	Hogs Back Brewery Limited

Heard at: Reading Employment Tribunal (by CVP)
On: 13 January 2025
Before: Employment Judge Talbot-Ponsonby
Members: Janice Wood
Dr Claire Whitehouse

Appearances
For the Claimant: In person
For the Respondent: Miss Jill Adams (marketing director)

JUDGMENT having been sent to the parties on 30 January 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. This is a claim by Miss Alexandra Crane, the claimant, against Hogs Back Brewery Limited, the respondent, alleging discrimination due to disability.

Claims and issues

2. The claimant was employed by the respondent from 7 March 2022 until 9 December 2022 as a marketing assistant apprentice. She suffers from Joint Hypermobility Syndrome, also known as Ehlers Danlos Syndrome. As a result of this, she says, she has difficulty standing for more than 10 minutes, or walking for more than 15 minutes, and from joint pain.

3. There are 2 elements to the claim:

    3.1 She claims that the respondent had a provision, criterion or practice (a "PCP") of requiring all employees to participate in the hop harvest, and that disadvantaged her because of her disability. She states that the respondent ought to have made adjustments by not requiring her to participate.

    3.2 The claimant claims direct disability discrimination in that after she complained to Mrs Sylvia Levick, the financial controller, she had a meeting with Mr Rupert Thompson, and he was dismissive of her and

failed to deal with her disability complaint. She states that this is direct discrimination under s. 13 of the Equality Act ("EqA") 2010. We have also considered whether this is discrimination arising from disability (s. 15 EqA 2010).

4 Early conciliation through ACAS was from 3 January to 14 February 2023, and the claim was presented on 6 March 2023.

5 The following issues arise in this case:

1. Time limits

(a) Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 4 October 2022 may not have been brought in time.

(b) Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

(i) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

(ii) If not, was there conduct extending over a period?

(iii) If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

(iv) If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

(a) Why were the complaints not made to the Tribunal in time?

(b) In any event, is it just and equitable in all the circumstances to extend time?

2. Disability

(a) Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

(b) Did she have a physical or mental impairment: Joint Hypermobility Syndrome / Ehlers Danlos Syndrome?

(c) Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

(d) If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

(d) Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

(f) Were the effects of the impairment long-term? The Tribunal will decide:

(i) did they last at least 12 months, or were they likely to last at least 12 months?

(ii) if not, were they likely to recur?

3. Direct disability discrimination (EqA 2010 section 13)

(a) Did the respondent do the following things:

(i) Fail properly to deal with the grievance by Mr Thompson in the meeting on 21 November 2022

(b) Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant has not named anyone in particular who they say was treated better than they were.

(c) If so, was it because of disability?

(d) Did the respondent's treatment amount to a detriment?

4. Discrimination arising from disability (EqA 2010 section 15)

(a) Did the respondent treat the claimant unfavourably by:

(i) Failing properly to deal with the grievance in the meeting with Mr Thompson on 21 November 2022

(b) Did the following things arise in consequence of the claimant's disability:

(i) Difficulty standing for more than 10 minutes, or walking for more than 15 minutes, and from joint pain?

(c) Was the unfavourable treatment because of any of those things?

(d) Was the treatment a proportionate means of achieving a legitimate aim? The respondent has not said what says what its aims were.

(e) The Tribunal will decide in particular:

(i) was the treatment an appropriate and reasonably necessary way to achieve those aims;

(ii) could something less discriminatory have been done instead;

(iii) how should the needs of the claimant and the respondent be balanced?

(f) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

5. Reasonable Adjustments (EqA 2010 sections 20 & 21)

(a) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

(b) A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:

(i) requiring all employees to participate in the hop harvest,

(c) Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that this caused her significant joint pain?

(d) Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

(e) What steps could have been taken to avoid the disadvantage? The claimant suggests:

(i) not requiring her to participate, but allowing her to watch instead, and/or allowing longer breaks

(f) Was it reasonable for the respondent to have to take those steps?

(g) Did the respondent fail to take those steps?

6. Remedy for discrimination

(a) Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

(b) What financial losses has the discrimination caused the claimant?

(c) Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

(d) If not, for what period of loss should the claimant be compensated?

(e) What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

(f) Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

(g) Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

(h) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

(i) Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?

(j) If so is it just and equitable to increase or decrease any award payable to the claimant?

(k) By what proportion, up to 25%?

(l) Should interest be awarded? How much?

Procedure, documents and evidence

6 The claim was heard over 2 days in the Employment Tribunal in Reading, before EJ Talbot-Ponsonby, Mrs Wood and Dr Whitehouse.

7 The Tribunal was presented with a bundle of 154 pages, together with witness statements from Miss Crane, Mrs Stacey Crane (the claimant's mother), and 4 witnesses from the respondent, being Miss Jill Adams (the marketing director and the claimant's immediate manager), Mr Rupert Thompson (the owner and managing director), Mrs Sylvia Levick (the financial controller), and Mr Matthew King (the estate manager). The tribunal has read the contents of the bundle and the witness statements. The tribunal heard oral evidence from all the witnesses.

8 The tribunal was referred to videos taken from shop on 24 March 2023. These were referred to in Miss Adams' witness statement and we watched them because both parties asked us to. The tribunal was somewhat concerned that this may not be a proper use of these videos in accordance with the General Data Protection Regulations; no doubt there are signs to make customers aware of the CCTV, but customers would normally expect those to be used for security purposes in the event of criminal behaviour, rather than as evidence in tribunal proceedings wholly unrelated to any security concern.

9 The claimant represented herself and the respondent was represented by Miss Adams. Both conducted themselves professionally and the tribunal was grateful to them both for their assistance.

10 The tribunal considered all the evidence before it, even if it is not specifically mentioned in the decision.

Fact finding

<u>Joint Hypermobility Syndrome</u>

11 The claimant suffers from Joint Hypermobility Syndrome, also known as Ehlers Danlos Syndrome. As a result of this, she says, she has difficulty standing for more than 10 minutes, or walking for more than 15 minutes, and from joint pain.

12 We heard from the claimant and her mother about the effect of the syndrome and, despite the paucity of the supporting medical evidence, we had no reason not to accept the claimant's account of how it affects her. We note that it does vary from day to day.

13 The claimant was employed from 7 March 2022 until 9 December 2022 as a marketing assistant apprentice.

14 The claimant stated in her second interview with the respondent that she suffered from Joint Hypermobility Syndrome and there was some discussion about adjustments in her previous work. Following this, Miss Adams and Mrs Levick looked up the condition on google, but did not think to ask the claimant for any more details about how it affected her on a day-to-day basis; Miss Adams relied on the claimant telling her whether she could or could not do something.

15 On 11 May 2022, the claimant completed a health questionnaire for the respondent. Mrs Levick had for the first time asked all staff to complete this. On this form the claimant ticked a box to say that she had a condition that could be a disability, and named it; she stated that she could not carry out physical work such as climbing ladders, bending, lifting and carrying. She did not think to put additional information on the form about how her condition affected her day-to-day life in the manner in which she has now described in her impact statement.

16 It would be helpful for the respondent, with young workers in a situation such as this, to talk directly to with them regarding a health condition as they may be unfamiliar where the responsibility for disclosure lies.

17 The claimant's role included assisting with social media (including writing blogs), photography, beer tastings, and learning about the brewery. Also worked on her own account on Saturdays as a photographer.

18 Miss Adams explained that the claimant's role was not wholly sedentary (in contrast to working in a call centre); the claimant went to the hop garden to learn about the hops and take photographs, on one occasion moving a light table. The claimant moved packages including beer bottles to her car, and to tastings; she asked to attend an all-day exhibition in London on 1 September 2022, and did attend the Great British Beer Festival (GBBF) on 2 August 2022.

19 On 15 July 2022, the claimant had a head injury (not at work) and suffered concussion. For some months thereafter she had post-concussion syndrome and Miss Adams tried to help by reducing her workload, giving focus to executional rather than more strategic projects, and writing weekly emails of "things to do this week".

20 On 2 August, the claimant attended the GBBF with Mr Thompson and other apprentices from the respondent. It was a fairly long day including walking and standing for considerable periods of time. The claimant has not suggested that she found this difficult to cope with and indeed on 21 July 2022 the claimant asked Miss Adams whether she could attend the Techspo exhibition in London on 1 September.

21 During September each year, it is the hop harvest. This is an important time for the respondent, and we heard evidence that they were very keen for all

employees to participate; this came through from all the respondent's witnesses. The claimant suggests that it was mandatory; the respondent's evidence was that it was not mandatory, but strongly encouraged. We find that it was not mandatory, but was strongly encouraged, and that this may well be a situation in which the claimant felt she was not able to refuse some level of participation.

22 On 12 September 2022, Miss Adams sent her weekly email to the claimant listing the week's tasks and the weekly schedule. This included, on the afternoon of Tuesday 13 Sept, helping with the hop harvest. The claimant responded to clarify the timing of her holiday on Thursday, but confirmed that she was happy with the remaining schedule, including the hop harvest on Tuesday.

23 The claimant states that she told Miss Adams on 12 September that she was very unsure about doing the hop harvest, as she was suffering from 3 injuries including her shoulder, back and ankle. Miss Adams states that the claimant did not tell her this. Although we have found that the claimant did discuss her disability from time to time, we do not find that the claimant specifically raised this. The evidence from the text message exchanges between the claimant and Miss Adams is that, when the claimant raised concerns, they were treated sympathetically and considerately. Miss Adams also stated that, every day, she would ask the claimant how she was. Although Miss Adams was very keen for the claimant to help with the harvest, she would certainly have paid attention to a specific concern regarding the claimant's injuries such as is now asserted.

24 We recognise that memories can be faulty, no matter how clear a recollection that the individual thinks he or she has. We find the claimant's account of this day is not consistent with any of the other witnesses, and is in several respects mistaken. In particular:

24.1 The claimant states that she was asked to carry out leaf picking for much of the afternoon, and did so: in cross examination, she said that she dd this from 2.00 until 3.00, alone, at the request of Mr King. The consistent evidence from the respondent's witnesses was that the leaf picking was a task that took place at the end of the day, because it is the last stage in the process; it was not taking place at 2.00 and did not start until after the tasting, at about 3.30 or 3.45 pm.

24.2 The claimant states also that, at about 2.30, Miss Adams came and photographed her at the leaf picking. Miss Adams' evidence is that she did not and could not have done, because she was in a meeting from 2.00 to about 3.00. We accept this evidence about the meeting; and the claimant's evidence about the photograph is in any event inconsistent with what we have found, that the picking took place later.

24.3 Mr Thompson gave evidence that the picking took about 30-45 minutes that year, although we note that he would not have been there the whole time. Mr King stated that the claimant took part in the leaf picking for about 30 minutes. He gave his evidence in a straightforward manner and we accept this. We do not accept that the claimant worked from at the leaf picking from 3.30 to 5.00 without a break.

24.4 The claimant and her mother both state that the claimant came home crying, and the claimant states that she was physically very tired. We

accept this but find that, just as the claimant has stated that she has better days and worse days, this is an occasion when she could have been made tired and hurt by a shorter period of activity than could otherwise have been the case.

24.5 The next day, the claimant came in for the afternoon as she was studying in the morning. Again, Miss Adams asked how she was; Miss Adams states that the claimant said, "OK" or "fine", or something similar; the claimant states that she stated that her back was sore from the previous day's work. Again, we find that the claimant did not raise this. It is not uncommon to say "fine" or "OK" as a fairly standard response and the evidence from Miss Adams's texts showing concern (even later, in September and October) suggests that, if the claimant had raised a concern, Miss Adams would have addressed this immediately.

25 The claimant told Mrs Levick in her meeting that she suffered from several weeks of pain as a result of this. This is not repeated in her witness statement and, in cross examination, she acknowledged that she had a separate back problem that lasted for some time so she could not necessarily attribute any pain to the work at the hop harvest. However, this would not have prevented from speaking about her back pain (whatever the source) to Miss Adams.

26 The claimant then looked for alternative employment, and received an offer of a job as a marketing assistant with Herrington Carmichael. She received this offer on 11 November 2022 and submitted her resignation the same day.

27 The resignation letter is in the bundle, in which the claimant expressed her gratitude to Miss Adams personally and the wider team, for making her feel welcome, and said how much she has enjoyed working at the company.

28 A few days later, on 17 November, the claimant asked Mrs Levick for a meeting. Mrs Levick listened and took notes, which are in the bundle, and she sent a copy to the claimant to approve, which the claimant did on 18 November. The claimant complained in that meeting that she could no longer work with her manager, and gave examples of this.

29 Mrs Levick told the claimant that, in the light of the concerns, she would raise these with Mr Thompson. We find that, even though the claimant did not use the word "grievance", this did amount to a grievance within the meaning of the policy and the respondent should have reminded the claimant of the existence of the policy and, if necessary, talked her through it, in case she wished to take this further.

30 On 21 November 2022, Mr Thompson met with the claimant. We have heard two different accounts of how this took place: the claimant states that this was a brief conversation in the bar (tap room); Mr Thompson states that he would have spoken to the claimant briefly in the tap room to arrange for her to come to his office, because he would not have discussed such a matter in a public place. We found Mr Thompson to be a sensible businessman, and we accept that this is how he would have behaved and that the meeting to discuss the claimant's complaint took place in his office.

31 At the meeting, Mr Thompson and the claimant discussed the letter. They have given different accounts of what was said, but they do appear to the tribunal to be different interpretations of the same meeting. Mr Thompson stated that he considered that this was essentially a character clash and that the claimant was, at times, mistaken.

32 Many of the complaints in the letter relate to Miss Adams' treatment of the claimant independent of the question of disability and it is understandable how Mr Thompson may have come to this view.

33 In relation to the disability, which was covered in the fourth paragraph and two numbered points, the first complaint related to the hop harvest event that we have already covered. The complaint, as written in the notes, appears to be that the claimant was required to carry out leaf picking for almost a whole day. Mr Thompson may well have been aware that the claimant participated in this for about 30m and that he did not regard it as a strenuous activity so this may be why he considered this to contain an element of misrepresentation.

34 Likewise, for the T-shirts, the company employs only about 35 people, and again Mr Thompson said he had investigated and found that there was no real merit in the claim.

35 The claimant states that Mr Thompson was dismissive about her disability. Mr Thompson states that he was more sympathetic and referred to his own back pain as a way of explaining that adjustments could be made to accommodate people.

36 Again, we find that this is two different memories of the same meeting and that, while Mr Thompson did say that he did not believe Miss Adams would behave in the way described, as far as the disability was concerned, he was not dismissive and referred to previous working practices as a way of explaining that people were more accommodating nowadays.

37 There was no subsequent follow-up from the meeting.

Law

Time limits: discrimination

38 Under the Equality Act 2010, section 123, there is a primary time limit of 3 months from the date of the relevant act, or if there is a continuing act, the end of the period of discrimination.

39 It is important to note that one must look at the act, not the consequences; this was made clear by the decision of the House of Lords in Barclays Bank plc v Kapur and ors [1991] ICR 208, which drew a distinction between a continuing act and an act that has continuing consequences. They held that where an employer operates a discriminatory regime, rule, practice or principle, then such a practice will amount to an act extending over a period. Where, however, there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing, even though that act has ramifications which extend over a period of time. Thus, in Sougrin v Haringey Health Authority [1992] ICR 650, CA, the Court of Appeal held that a decision not to regrade an employee

was a one-off decision or act, even though it resulted in the continuing consequence of lower pay for the employee who was not regraded. There was no suggestion that the employer operated a policy whereby black nurses would not be employed on a certain grade; it was simply a question whether a particular grading decision had been taken on racial grounds.

40 The tribunal has jurisdiction to extend time under section 123(1)(b) if it is just and equitable to do so.

41 This is a broad discretion. In Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA, the Court of Appeal stated that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) of the Equality Act 2010, "there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule." However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require this but simply requires that an extension of time should be just and equitable, as per the decision in Pathan v South London Islamic Centre EAT 0312/13.

42 The fact that a claimant has awaited the outcome of his or her employer's internal grievance procedures before making a claim is just one matter to be taken into account by an employment tribunal in considering whether to extend the time limit for making a claim: Apelogun-Gabriels v London Borough of Lambeth and anor [2002] ICR 713, CA.

43 The principles set out in section 33(3) Limitation Act 1980 can also be useful for a tribunal to consider, by analogy, although they are not binding and should not be used as a prescriptive list. Section 33(3) provides:

> "(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—
>
> (a) the length of, and the reasons for, the delay on the part of the [claimant];
>
> (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the [claimant] or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11, by section 11A, by section 11B or (as the case may be) by section 12;
>
> (c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the [claimant] for information or inspection for the purpose of ascertaining facts which were or might be relevant to the [claimant]'s cause of action against the defendant;
>
> (d) the duration of any disability of the [claimant] arising after the date of the accrual of the cause of action;
>
> (e) the extent to which the [claimant] acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the

injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the [claimant] to obtain medical, legal or other expert advice and the nature of any such advice he may have received."

Disability

44 The definition of disability is given in section 6(1) of the Equality Act 2010, and reads as follows:

"(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."

45 The meaning of "substantial" is given in section 212 of the Act, as being "more than minor or trivial". This is supplemented by guidance from the Secretary of State (2011).

46 In the case of Anwar v Tower Hamlets College EAT 0091/10, the Employment Appeal Tribunal held that "minor" and "trivial" are not synonymous and approved a finding by the Tribunal that the claimant's headaches, while more than trivial, were nonetheless minor and therefore did **not** amount to a disability. However, in Aderemi v London and South Eastern Railway Ltd [2013] ICR 591, the Employment Appeal Tribunal found that there was a bifurcation; unless a matter can be classified as "trivial" or "insubstantial", it must be treated as substantial.

47 The cumulative effects of any condition or impairment must be considered. The Secretary of State's guidance gives the example of a man with depression who experiences a range of symptoms, including a loss of energy and motivation, that makes even the simplest of tasks or decisions seem quite difficult. He finds it difficult to get up in the morning, get washed and dressed, and prepare breakfast. He is forgetful and cannot plan ahead. As a result, he has often run out of food before he thinks of going shopping again. Household tasks are frequently left undone or take much longer to complete than normal. Together, the effects amount to the impairment having a substantial adverse effect on carrying out normal day-to-day activities (paragraph B5).

48 Under Schedule 1 paragraph 5 EqA 2010, the effects of measures such as medical treatment must be ignored, and the tribunal must, if necessary, infer what the position would be without the treatment.

49 Only medical treatment, and not self-intervention, will amount to measures for the purposes of paragraph 5; in the case of Hubert v One Call 24 Ltd ET Case No.2202328/20, the Tribunal rejected H's contention that a series of self-interventions which she had deployed to deal with the impact of her depression and anxiety amounted to "medical treatment". She had on 3 occasions been prescribed anti-depressants, but not during the period March 2016-October 2019.

50 In Cruickshank v VAW Motorcast Ltd [2002] ICR 729, the Employment Appeal tribunal confirmed that the time for assessment of whether the claimant had a disability is when the alleged discrimination is said to have taken place. Evidence of the extent of someone's capabilities some months after the act of discrimination may be relevant where there is no suggestion that the condition has improved in the meantime: see Pendragon Motor Co Ltd t/a Stratstone (Wilmslow) Ltd v Ridge EAT 0962/00.

51 Schedule 1 to the Act sets out the meaning of "Long-term". Paragraph 2 of Schedule 1 provides, so far as relevant:

> "(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.
>
> (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
>
> (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed."

Discrimination

52 Section 13(1) Equality Act 2010 provides that (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

53 In order to claim direct discrimination under section 13, the claimant must have been treated less favourably than a comparator who was in the same, or not materially different, circumstances as the claimant.

54 In the pivotal case of Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL, (a sex discrimination case), Lord Scott explained that this means that "the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class".

55 In Watt (formerly Carter) and ors v Ahsan [2008] ICR 82, HL, (a race discrimination case), Lord Hoffmann opined that it is "probably uncommon" to find an individual who qualifies as a statutory comparator. Furthermore, where such an individual is identified, there is likely to be disagreement over whether his or her circumstances are materially different. However, Lord Hoffmann thought that in most cases "it will be unnecessary for the tribunal to resolve this dispute because it should be able, by treating the putative comparator as an evidential comparator, and having due regard to the alleged differences in circumstances and other evidence, to form a view on how the employer would have treated a hypothetical person who was a true statutory comparator."

56 The definition of direct discrimination in the Equality Act 2010 requires the complainant to show that he or she received less favourable treatment "because of a protected characteristic". The protected characteristic must be an "effective cause" of the treatment.

Burden of proof

57 Section 136 of the Equality Act 2010 provides that, once a claimant proves facts from which the tribunal could conclude, in the absence of any other explanation, that an employer has committed an act of direct discrimination, the tribunal is obliged to uphold the claim unless the employer can show that it did not discriminate.

58 Further guidance was given by Lord Justice Mummery in Madarassy v Nomura International plc [2007] ICR 867, CA, where he stated: "The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

Conclusions

59 Turning to each of the issues in turn:

1. Time limits

(a) Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 4 October 2022 may not have been brought in time.

(b) Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

(i) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

60 In respect of her meeting with Mr Thompson, the claim was brought in time. In relation to any alleged discrimination at the hop harvest, it has not been brought in time.

(ii) If not, was there conduct extending over a period?

61 Other than the complaint regarding her meeting with Mr Thompson, the claimant has not complained about any other discrimination following the leaf picking; the emails she sent to the respondent were civil; she then raised a complaint and says it was not addressed properly. Accordingly, the Tribunal does not find that there was conduct extending over a period.

(iii) If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

(iv) If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

(a) Why were the complaints not made to the Tribunal in time?

62 The claimant explained that she did not realise about ACAS or her ability to make a complaint to the Employment Tribunal.

(b) In any event, is it just and equitable in all the circumstances to extend time?

63 Taking into account the principles set out in the Limitation Act 1980, and the reason for the delay, being the claimant's ignorance of her rights, the Tribunal considered the balance of prejudice to the parties between allowing or refusing an extension of time. The Tribunal considered that, for a young worker at the beginning of her career not to know about her right to bring a claim in the Tribunal is reasonable. The respondent was not materially prejudiced by the late claim in respect of the hop picking (other than that it is not just dismissed), but the claimant would be prejudiced by not being able to seek redress. Accordingly, time for bringing the claim is extended until 6 March 2023, when it was actually submitted.

2. Disability

(a) Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

(b) Did she have a physical or mental impairment: Joint Hypermobility Syndrome / Ehlers Danlos Syndrome?

(c) Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

64 In cross examination, Mrs Levick accepted on behalf of the respondent that the claimant has a disability and did so at the relevant time, and the Tribunal agrees with this position.

65 It was clear from the evidence of the claimant and her mother that the impairment was intermittent, and that the claimant had better and worse days. On worse days, it was clear that it could affect ordinary day to day activities for the claimant.

(d) If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

(d) Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

(f) Were the effects of *the impairment long-term? The Tribunal will decide:*

(i) did they last at least 12 months, or were they likely to last at least 12 months?

66 The effects of the impairment had been ongoing for a significant amount of time and it was clearly long term

(ii) if not, were they likely to recur?

3. Direct disability discrimination (EqA 2010 section 13)

(a) Did the respondent do the following things:

(i) Fail properly to deal with the grievance by Mr Thompson in the meeting on 21 November 2022

67 The Tribunal has found that Mr Thompson did not fully investigate before the meeting and, in particular, did not interview the claimant as part of his investigation, whether before or after the meeting; having decided following his later investigations that he considered that the claimant's claim was in part misrepresented, he did not follow this up with any further letter to the claimant or offer a meeting.

(b) Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant has not named anyone in particular who they say was treated better than they were.

68 The Tribunal considered as a comparator someone with pain but on a short-term basis, such as sciatica. For such a person, the Tribunal considered, having heard his evidence, that Mr Thompson would have behaved in the same way.

69 The respondent is a small company and was trying to resolve the matter informally. The Tribunal was satisfied that this this is the manner in which Mr Thompson would have handled any complaint. It may be that he was insensitive, but this is not of itself less favourable treatment.

70 The Tribunal considered that if the respondent were to ensure that its staff received some training in handling grievances, including the proper use of a grievance procedure, in which the allegations can be addressed by both complainant and the other party, this would assist in resolving matters more swiftly.

(c) If so, was it because of disability?

71 There was no treatment that was less favourable, so this question does not arise. It is also possible that the respondent's failure to follow up later in part be because by then the claimant had left the respondent's employment.

(d) Did the respondent's treatment amount to a detriment?

72 Not having the ability to have her grievance reviewed through ordinary grievance procedure does amount to a detriment.

4. Discrimination arising from disability (EqA 2010 section 15)

(a) Did the respondent treat the claimant unfavourably by:

(i) Failing properly to deal with the grievance in the meeting with Mr Thompson on 21 November 2022

(b) Did the following things arise in consequence of the claimant's disability:

(i) Difficulty standing for more than 10 minutes, or walking for more than 15 minutes, and from joint pain?

(c) Was the unfavourable treatment because of any of those things?

73 As per the findings above, the respondent's treatment of the claimant did not arise as a result of her disability.

(d) Was the treatment a proportionate means of achieving a legitimate aim? The respondent has not said what says what its aims were.

74 This question does not arise.

(e) The Tribunal will decide in particular:

(i) was the treatment an appropriate and reasonably necessary way to achieve those aims;

(ii) could something less discriminatory have been done instead;

(iii) how should the needs of the claimant and the respondent be balanced?

(f) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

5. Reasonable Adjustments (EqA 2010 sections 20 & 21)

(a) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

75 The respondent did know that the claimant was the disability, because she told them at her second interview, and it is also clear that they knew because they did seek to make adjustments, as can be seen from an email sent on 12 September 2022 shortly before the hop harvest. The respondent knew or should have known from the outset.

(b) A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:

(i) requiring all employees to participate in the hop harvest,

76 The tribunal has found that the respondent did not strictly require the claimant to participate in the hop harvest, but she was strongly encouraged to do so, to the extent that she felt that she could not refuse. It is likely that Miss Adams' enthusiasm for the claimant to participate will have felt overbearing to the claimant.

(c) Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that this caused her significant joint pain?

77 In the absence of adjustments, the claimant would have been at a substantial disadvantage.

(d) Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

78 The respondent should have known that, in the absence of adjustments, the claimant would have been at a substantial disadvantage.

(e) What steps could have been taken to avoid the disadvantage? The claimant suggests:

(i) not requiring her to participate, but allowing her to watch instead, and/or allowing longer breaks

(f) Was it reasonable for the respondent to have to take those steps?

79 The tribunal considered that it was reasonable for the respondent to allow the claimant only to do undemanding tasks and also take breaks as needed.

80 In the context of the importance to the respondent of the hop harvest and their ethos of ensuring that everyone was included and felt part of the community, it would not be reasonable for the respondent to expect her to do nothing; it was reasonable to expect her to participate in a way that she was able to.

(g) Did the respondent fail to take those steps?

81 The tribunal was referred to an email which makes it clear that Miss Adams had contacted Mr King to identify suitable tasks for the claimant.

82 Mr King had suggested that the claimant look around and see what tasks she felt she could perform. All the respondent's witnesses said that leaf picking was a communal activity with a variety of people and that you could do it for shorter or longer periods; the claimant was able to take breaks if needed. Mr King knew of her disability and would have permitted breaks had the claimant said she needed them. Because of intermittent nature of the claimant's disability, the respondent could not necessarily know how much the claimant could do on any particular day.

83 In particular, Mr King's evidence that he suggested to the claimant to identify tasks that she thought she would be able to do that means that the claimant ought to have understood that she could tell him if she was finding anything too difficult.

84 For all these reasons, the Tribunal finds that the respondent did make reasonable adjustments for the claimant to allow her to participate in the hop harvest.

6. Remedy for discrimination

85 In the circumstances, this does not arise

Approved by:

Employment Judge Talbot-Ponsonby

21 April 2025

SENT TO THE PARTIES ON

24 April 2025

FOR THE TRIBUNAL OFFICE