



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000005/2022

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Held via Cloud Video Platform (CVP) in Glasgow on 16 January 2023

Employment Judge L Wiseman

10 **Mrs Lynn Taylor**

**Claimant
In Person**

15 **Hoddon Castle Coach House Limited (in Liquidation)
c/o Begbies Traynor**

**Respondent
Not present and
Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

- 20 1. The tribunal decided the complaint of discrimination arising from disability (section 15 of the Equality Act) was well founded, and ordered the respondent to pay to the claimant compensation in the sum of £1140.

REASONS

- 25 2. The claimant presented a claim to the Employment Tribunal in which she complained that she had been discriminated against because of the protected characteristic of disability. The claimant has osteoarthritis. The claimant in particular complained she had not been given sufficient shifts and had been asked to do duties she found difficult because of her disability.
- 30 3. The respondent entered a response in which it disputed the claimant was a disabled person for the purposes of the Equality Act, and denied the allegations made by the claimant. The respondent acknowledged the claimant had wanted shifts of 5 hours or less per week, but it had not always been possible to accommodate this.

4. The respondent subsequently went into voluntary liquidation and confirmed neither they, nor the appointed liquidator, would be present at the hearing.
5. The tribunal heard evidence from the claimant and were referred to a number of productions (largely messages between the claimant and the respondent).
5 We, on the basis of the evidence before the tribunal, made the following material findings of fact.

Findings of fact

6. The claimant was diagnosed as having osteoarthritis in her right arm in 2016,
10 and at the top of her spine in 2019. The claimant has been prescribed painkillers by her GP.
7. The claimant has difficulty doing tasks which involve heavy lifting or stretching. The claimant cannot carry heavy bags of shopping or Hoover. The claimant can cook but cannot lift heavy pots. The claimant finds stretching up
15 painful and stretching downwards causes her to feel dizzy. She has difficulty washing her hair and has had grab rails fitted in her house.
8. The claimant contacted the respondent in early April 2022 to enquire about work. The claimant met with Ms Carol Brotherston, owner of the respondent, to discuss working for the respondent. The claimant told Ms Brotherston she
20 had osteoarthritis but could undertake bar work. There was also mention of a supervisor position. The claimant requested short shifts of up to 20/25 hours per week.
9. The claimant started working behind the bar and in the first week, worked 25 hours.
- 25 10. The claimant was asked, whilst on shift, to also clear glasses and food plates from tables. The claimant was not able to carry glasses and plates on trays, but was able to do this task by carrying fewer glasses and plates. The claimant was not able to Hoover at the end of the shift.

11. The claimant's hours dropped to 5 hours per week in the following weeks. The claimant contacted the supervisor about this, who responded to say there were not enough shifts because there were other staff and the claimant's "limitations" had to be taken into account.
- 5 12. The claimant queried whether "limitations" meant her disability. The supervisor confirmed that it did not: it meant trying to accommodate shorter shifts and other staff.
13. The claimant raised the issue of not being given enough shifts with Ms Brotherston, who confirmed there were plenty of shifts, but the issue was
10 trying to accommodate short shifts.
14. The claimant, by message sent on the 7 May, raised an issue regarding another supervisor. Ms Brotherston replied to say the matter would be investigated. Ms Brotherston asked the claimant to confirm what duties she could do, what she could do with difficulty and what she could not do. Ms
15 Brotherston also confirmed the caravan park was quiet that weekend and so the claimant's shift had to be cancelled.
15. The claimant responded by confirming her resignation with effect from the 10 May 2022.
16. The claimant worked a total of 40.75 hours for the respondent and received
20 an hourly rate of £10 per hour.
17. The claimant obtained alternative employment at the start of June. She worked 14 hours per week, and was paid an hourly rate of £10.50. This employment last for 6 weeks.
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The Claim

18. The claimant brought a complaint of discrimination arising from disability (section 15 of the Equality Act). The unfavourable treatment was said to have been (i) only being given 5 hours work per week and (ii) the word “limitations”.
19. The claimant also brought a complaint of failure to make reasonable adjustments (section 20 of the Equality Act). The claimant did not identify a provision, criterion or practice said to have been applied by the respondent. The claimant argued two adjustments should have been made: (i) a trolley should have been provided for the collection and transport of glasses and plates and (ii) the dishwasher should have been moved to a height which suited her better.

Discussion and Decision

20. The first issue for the tribunal to consider is whether the claimant is a disabled person in terms of the Equality Act, and if so, whether she was so disabled at the time of the alleged discrimination. The claimant has osteoarthritis, for which she is prescribed medication for pain relief. The osteoarthritis affects the claimant’s right arm and the top of her spine.
21. The tribunal must determine whether the physical impairment had a substantial adverse effect on the claimant’s ability to carry out normal day to day activities. The claimant has difficulty with a number of day to day activities: she cannot lift heavy items and finds stretching difficult. The claimant cannot carry bags of shopping; she cannot Hoover; she cannot lift heavy pots and pans in the kitchen. The claimant also finds it difficult to lift her arms to wash her hair.
22. The tribunal was satisfied the physical impairment of osteoarthritis had a substantial adverse effect on the claimant’s ability to carry out normal day to day activities. The impairment is long term. The tribunal decided the claimant was a disabled person in terms of section 6 of the Equality Act, and was so at the time of the alleged discrimination.

23. We next considered the claim of discrimination arising from disability. We had regard firstly to the statutory provisions set out in section 15 of the Equality Act. The section provides that a person discriminates against a disabled person if the person treats the disabled person unfavourably because of something arising in consequence of the disabled person's disability, and the person cannot show that the treatment is a proportionate means of achieving a legitimate aim.
24. The claimant argued she had been treated unfavourably when she had asked for 20/25 hours of work per week, but had only been given 5 hours work per week after the first week. The tribunal accepted this was unfavourable treatment.
25. The tribunal next asked whether the unfavourable treatment happened because of something arising in consequence of the claimant's disability. We understood from the claimant's evidence that she could not, as a consequence of her disability, undertake certain tasks, for example, lifting/carrying heavy items, stretching, hoovering. We accepted the claimant's evidence that she had been asked, whilst on shift, to help clear glasses and plates and also to Hoover. The claimant told the tribunal she could not carry a tray of glasses or plates, but she could carry them individually. The tribunal concluded the unfavourable treatment happened because of something arising in consequence of the claimant's disability, being her inability to carry trays of glasses and plates, and to Hoover. We decided this complaint was well founded.
26. The claimant next argued that there had been unfavourable treatment arising from the use of the word "limitations". The tribunal accepted this was unfavourable treatment. The claimant challenged the supervisor about her use of the word, and whether it related to the claimant's disability. The supervisor told the claimant it did not relate to her disability, but rather the fact the claimant wanted to work short shifts, and there were other staff to factor into the rota. The reason the claimant wanted to work short shifts was because of her disability. We concluded the unfavourable treatment arose as a consequence of disability because the reason for the unfavourable

treatment was because of the claimant's need to work short shifts: this was a consequence of her disability. We decided this complaint was well founded.

27. We next considered the claim of failure to make reasonable adjustments. Section 20 of the Equality Act provides that where a provision, criterion or practice of the employer, puts a disabled person at a substantial disadvantage ... then the employer is under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage.
28. The first point in bringing a claim of failure to make reasonable adjustments is to identify the provision, criterion or practice (PCP) of the employer which is said to put the disabled person at a substantial disadvantage. The claimant had not identified a PCP and did not identify a PCP when asked by the Employment Judge about this matter. It is not for the tribunal to articulate the PCP for a party. Further, even if the tribunal identified the PCP as the practice of asking bar staff to clear glasses and plates, we did not consider this subjected the claimant to a substantial disadvantage in circumstances where the claimant said she could do that task as long as she did not have to carry a tray of glasses or plates. We concluded for these reasons to dismiss this complaint.
29. The claimant did not identify a PCP in relation to the dishwasher and accordingly this complaint was dismissed for that reason.
30. We, in conclusion, found the complaint of discrimination arising from disability to be well founded.
31. The claimant is entitled to an award of compensation. The tribunal calculated there was a period of 3 weeks between the claimant leaving employment with the respondent and gaining alternative employment. We calculate the claimant lost wages of £240 in this period (the tribunal took the total number of hours worked = 40 hours, and divided this by 5 weeks, to give an average of 8 hours per week. We multiplied 8 hours by £10 per hour, to give a figure of £80. We then multiplied £80 by 3 weeks to give a figure of £240 loss).
32. We also awarded the claimant the sum of £900 for injury to feelings.

33. The respondent is ordered to pay to the claimant compensation in the sum of £1140.

5 Employment Judge: Lucy Wiseman
Date of Judgment: 17 January 2023
Entered in register: 19 January 2023
and copied to parties

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