



EMPLOYMENT TRIBUNALS

Claimant: Miss C Walker
Respondent 1: Support Clean Limited
Respondent 2: Simon Dalton

HELD BY: CVP **ON:** 13 and 14 April 2021

BEFORE: Employment Judge Shulman
Members: Ms G M Fleming
Miss L Fawcett

REPRESENTATION:

Claimant: Ms E King, Trainee Solicitor
Respondent: Mr W Lane, Solicitor

JUDGMENT

1. The claim of direct discrimination - sex on 24 February 2020 is dismissed.
2. The claim of harassment - sex is dismissed.
3. The claim of direct sex discrimination on 26 June 2020 is upheld against both respondents and the matter is now moved for remedy.
4. The remedy hearing will take place by CVP on 16 June 2021 at 10am and the claimant is ordered to bring to the Tribunal on the date of the remedy hearing an up to date schedule of loss.

REASONS

1. Claims

- 1.1. There are two claims of direct sex discrimination.
- 1.2. There is one claim of harassment – sex.

2. Issues

2.1. Direct sex discrimination.

2.1.1. Did the respondents treat the claimant less favourably by:

- (a) Denying the claimant reinstatement into a full-time position due to the fact that she was a mother and the respondents believed she would not be able to work full time. The claimant relies on a hypothetical comparator.
- (b) Denying the claimant time off to attend a smear test. The claimant relies on a hypothetical comparator.

2.1.2. If the claimant was treated less favourably then was this because of her sex.

2.1.3. 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 she was treated worse than someone else would have been treated.

The claimant has not named anyone in particular who she says was treated better than she was.

2.2. Harassment – sex.

2.2.1. Did the respondents subject the claimant to unwanted conduct?

- (a) The claimant relies upon what the second respondent told her on 26 June 2020 including that after having unsuccessfully employed his sister the second respondent no longer wanted to employ part time workers as it was too “stressful” to employ them.

2.2.2. If so was the unwanted conduct in relation to sex?

2.2.3. If so did the unwanted conduct violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

2.2.4. If not did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

2.3. Was the claim of direct sex discrimination alleged to have occurred on 24 February 2020 out of time?

2.3.1. Given the date the claim form was presented and the dates of early conciliation any complaint about something that happened before 17 June 2020 may not have been brought in time.

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

- (a) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- (b) If not was there conduct extending over a period?
- (c) If so was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- (d) If not were the claims made within a further period that the Tribunal thinks just and equitable. The Tribunal will decide:
 - (i) Why were the complaints not made to the Tribunal in time?
 - (ii) In any event is it just and equitable in all the circumstances to extend time?

3. The law

The Tribunal has to have regard to the following provisions of the EA:

- 3.1. Section 13(1) (direct discrimination).
- 3.2. Section 26(1) EA (harassment).
- 3.3. Section 123(1) EA (time).

The Tribunal is not setting out those provisions.

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

It should be noted that in the remainder of this decision the two respondents can be referred to as the respondent save when Mr Dalton second respondent is referred to by name.

- 4.1. Direct discrimination – sex - Alleged to have taken place on 24 February 2020.
- 4.2. The claimant says that in a telephone call between herself and Simon Dalton, managing director of the first respondent he, Mr Dalton, asked the claimant, a cleaner on flexible part time duties, to work the next day. The claimant said she was unable to do so because she had another commitment. She said that she told Mr Dalton that this was for a smear test. Mr Dalton in his evidence denied that he was told that the commitment was for a smear test, but because of our findings of fact which follow we find that the reason for the claimant's proposed absence is not relevant. Mr Dalton in fact said he would try to find someone else, but if he could not he asked the claimant to work and she agreed. In fact she did work. He then asked the claimant to let him know about the date of any re-arranged appointment and she agreed. We find that this was an amicable exchange and this was evidenced by an exchange of texts on 24 February 2020 (bundle page 82). The claimant did not issue a claim for any of the claims until 18 September 2020 and she should have issued her claim for the direct sex discrimination allegation occurring on 24 February 2020 within three months on 23 May 2020, so she was late. She was in the period from March 2020 to July 2020 and beyond having concerns about her

health in relation to the smear test. She was also on furlough and had three children all at home to look after. She told us that this affected her ability to lodge a claim earlier.

- 4.3. Direct sex discrimination - 26 June 2020 - On 22 April 2020 the claimant was placed on furlough. Whilst the claimant stayed at home some other of the first respondent's employees went back during May 2020.
- 4.4. On 19 June 2020 the claimant was made redundant.
- 4.5. On 24 June 2020 a full time cleaner called Sarah resigned and the claimant heard about it from another colleague.
- 4.6. On 26 June 2020 the claimant telephoned Mr Dalton to see if she could have her job back. Mr Dalton said there was no part time job for her to return to. The vacant position was full time and the claimant offered to do that job (full time). Mr Dalton referred to difficulties his sister had working full time because of child care. The claimant did not have a driving a licence but we find that no mention of her driving ability did come up in this conversation. The Tribunal finds that in the circumstances of the pandemic a driving licence would be important but we do not find that that was a consideration in this conversation.
- 4.7. Harassment – sex. The findings of facts set out in relation to the sex discrimination direct claim at paragraphs 4.2 to 4.6 apply to this claim. Further we find that in reference to part time workers Mr Dalton did not mention in the conversation on 26 June 2020 that it was too stressful to employ part time workers. Indeed the first respondent does so employ part time workers now because Mr Dalton said that there were some good benefits to having such staff. They could work on any days and were flexible.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respected parties):

- 5.1. Direct sex discrimination 24 February 2020.

We find that although out of time it would be just and equitable to equitable to extend time sufficiently to allow the claim to proceed. We do this because of the claimant's concerns about her health during the relevant period, the difficulties arising in relation to the pandemic and her being on furlough and in particular having three children at home.

So far as this claim itself is concerned (that is direct sex discrimination 24 February 2020) what happened on that date was we find too uncontentious to amount to less favourable treatment and that claim is dismissed.

- 5.2. Sex discrimination direct 26 June 2020.

This was a different situation. The second respondent does not deny that he introduced his sister into the conversation around the claimant's request to work full time. Mr Dalton knew well the claimant had children and we are satisfied that in introducing his sister's position that was being used by him to deny the claimant the possibility of employment, the claimant having only recently been employed by the first

respondent and having regard to the fact that there was a vacancy for her to apply for. The claimant was treated less favourably and it was because of the second respondent's concerns that the claimant would not be able to manage because of child care. We find that a hypothetical comparator in this case would be a man working full time for the first respondent and we do not believe that Mr Dalton would be drawing such comparisons with such a man. We therefore allow this claim.

5.3. Harassment – sex.

We do not find that the conduct in relation to which we have made findings of fact amounts to unwanted conduct which had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The conduct in its context does as we have decided amount to sex discrimination on the same date but harassment requires something different and we do not think that the respondents' conduct demonstrates that. We do not accept that the conduct had the effects prescribed in section 26 EA and we have taken into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect. That claim is hereby dismissed.

Employment Judge Shulman

26 April 2021

Date _____

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