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# EMPLOYMENT TRIBUNALS

***Claimant***

***Respondents***

Mrs J Seale

**AND**

Secretary of State for the Home Department

**Heard at:** London Central

**On:** 5 January 2020

**Before:** Employment Judge Russell

**Members:** Ms S Pendle  
Mr D Carter

**Representation**

**For the Claimant:** Mr J Cox, Union Representative

**For the Respondent:** Ms A Cohan, of Counsel

## JUDGMENT

1. The Claimant's claims of unfair dismissal and disability discrimination fail and are dismissed.

## REASONS

1 This claim from Mrs Seale was one of unfair dismissal and disability discrimination and was listed for four days. We were able to deal with most of the case by lunchtime on day three assisted by the representations of the party's representatives and the presentation of the evidence even though there were three large files of documents and four witnesses including a further Respondent witness who was unable to attend. The Claimant was dismissed for medical inefficiency.

2 On 28 July 2018 her disability was accepted by the Respondent for the purposes of s.6 of the Equality Act 2010 and she suffered in particular from dyslexia and dyspraxia. Obviously, she had this disability since birth but due to her strong skills and abilities had successfully undertaken a variety of roles with the Home Office since she started work there in 1993. The nature of these jobs

and her skills and what she describes as the hidden nature of her particular disability meant that not until she was working in the asylum team at the Home Office from December 2012 was it that due to the pressures of that particular role her disability clearly impacted on her job. Her challenges led to performance management discussions as to her performance in that role which naturally upset her and in turn led to her making internal grievance and internal discussions as to redeployment through work place reasonable adjustment. The work place reasonable adjustment move (RAM) policy and process was later to become a central part of this case. The RAM policy applies where reasonable adjustments made to an existing role (so primarily for disabled employees) have not been successful and the role is not therefore sustainable. The policy is designed to facilitate the finding of an alternative job which is suitable to the disabled employee. However, there was another step in the narrative before the Respondent and the Claimant focussed on the RAM policy because the Claimant, when hearing that asylum department was moving from London to Croydon where she wished to remain working in the Capital City, applied for a job as presenting officer and was accepted for this in June 2016 without an interview or trial period.

3 Unfortunately, due to the unpredictable nature of the job and the fast past litigious environment and target drive work the Claimant quickly decided (and again this was her decision) that she needed to move to a different role that did take account of her circumstances and it was the failure to find such an alternative that ultimately led to her dismissal on 27 July 2018 on the grounds of medical inefficiency which the Respondent categorises as capability, a potentially fair reason for dismissal. The Claimant claims unfair dismissal and that she was discriminated against arising out of her disability because she was only dismissed as a result of being unable to carry out the presenting officer's role and that was (she says) because of her disability and there was no justification for this. In addition, whilst the Respondent submits extensive efforts were made to assist the Claimant including a number of reasonable adjustments and all that might have been expected of them the Claimant claims otherwise and that she could have been found an alternative role and that if reasonable adjustments had been made this would have happened. There was a lack of practical and effective assistance by the employer she says and she should not have been forced to go through a competitive process in respect to such alternative roles as were identified.

4 We heard evidence from the Respondent's witnesses Matthew Harold the Claimant's Line Manager for most of the relevant period, Geoff Sharland who made the decision to dismiss and Robert Peck who held the appeal as well as the Claimant herself. We also considered the statement from Barbara Uzodinma who replaced Mr Harold as the Claimant's Line Manager on 16 February 2018 some four months or so before her dismissal although she (Barbara) had worked alongside the Claimant for some one and a half years prior to this. However, she could not give evidence in person because she was on maternity leave and so we gave less weight to her evidence as a result. We also heard submissions from Ms Cohen the Counsel for the Respondent and Mr Cox representing the Claimant and taking these and the evidence into account these are our findings. We should add that the disputed facts between the parties are limited here

although there are some. Our findings attempt to deal with these and then the legal issues between the parties are dealt with after those findings to avoid duplication.

### Findings

5. The Claimant chose to apply for the purchasing officer role and did so voluntarily and primarily because she did not want to work in Croydon. She was not content in her pre June 2016 asylum department role which was also a factor but unlike her role in the asylum department the presenting officer job was in London and they had no plans to relocate the role to Croydon or otherwise outside London.

6. Her unwillingness to work in Croydon was due to her wish to work at or near her home in North West London because of her carer duties to family members. For this reason, obviously unrelated to her own disability she constantly refused to consider jobs in Croydon with a slight caveat that towards the end of her employment, and this is dealt with below, she said she might be more flexible.

7. The Respondent had rejected the idea of a trial period for the Claimant in the presenting officer role. This is unfortunate and we agree with Andrew Lewis' comments on 24 October 2016 that this should have happened. We appreciate that the fact it did not was in part due to the Claimant being dealt with as "surplus" as part of a possible redundancy programme when moving between the asylum and the presenting officer role but the lack of a trial period led to the Claimant mistakenly taking the presenting officer role which was unsuitable for her. She then continued in that post on reduced duties and getting increasingly disappointed and concerned until her dismissal. Obviously, this is all very unfortunate.

8. In the meantime, the restrictions put on her search for alternative jobs inevitably ruled her out of a lot of potential roles especially as many senior jobs within the Home Office had moved to Croydon. Naturally, in such a large organisation there was still senior jobs that were potentially open to her and we note she had been a High Executive Officer (HEO) since 2004 and such jobs still existed in London but clearly it made the search for alternative jobs more restricted.

9. Although they made a number of reasonable adjustments before doing so the Respondent correctly triggered the RAM policy in the early Autumn of 2016 and due to the Claimant not being able, once she had actually started to undertake the actual job, to do certain aspects of the presenting officer role. This is demonstrably the case and was due to her disability. The presenting officer role was described by Mr Harold for the Respondent and involved being in Court for some three days and preparing for the Court in two days so presenting cases in Court was around 60% of the role. The presenting officer would normally be allocated four cases of varying complexity to present on the days that they are in Court and obviously there was a lot of work involving documents and multi-tasking, time pressures and so on which the Claimant due to her disability would find too challenging. And so, as a disabled employee she was entitled to be

given the opportunities available to such individuals under the RAM policy which states as follows:

What to do if work place (reasonable) adjustment cannot be accommodated in an existing role

The following process should be followed in cases where an individual's reasonable adjustments are no longer sustainable / effective in their existing role or where a new reasonable adjustment has been recommended and cannot be implemented in the individuals existing role, for example an operational immigration officer whose adjustment requires them to be office bound. It should be noted that staff who need to be found an alternative role as a result of their reasonable adjustments should be given equal priority for any available posts as staff who are surplus.

Phase One

A case conference must be arranged as soon as it becomes apparent that a reasonable adjustment cannot be accommodated or where a disabled member of staff is struggling with their role. The individual, their direct line manager and an appropriate senior manager with the authority to sanction a suitable solution should attend. In most cases the appropriate senior manager is likely to be Grade 7 level or above ...

The case conference should focus purely on discussing options such as:

Job carving [details of job carving then follow]

Redeployment (within team / business area) [details then follow]

Temporary role / loan / detached duty [details then follow]

Working pattern / location / pattern [details then follow]

Consideration of options must take place as a priority and if a suitable alternative is not identified following the case conference you should proceed to Phase 2 with immediate effect:

Phase Two

SCS escalation – escalate the case to the relevant SCS within the business area with a view to exploring redeployment to an alternative post within the SCS business area.

Disability champion escalate the case to the directorate disability champion (where appointed) and diversity strategy board member with a view to exploring redeployment to an alternative post within the directorate.

HR business partner – bring the case to attention of the relevant HRBP who may have an awareness of available posts or planned future posts across

the directorate / department. HRBPs can provide details of the strategic resourcing picture but will not source / identify specific roles.

Career transition service - in addition to checking for suitable job vacancies across the Civil Service line managers may wish to contact the Career Transition Service (CTS). The CTS provides support staff on the Home Office redeployment register and is sometimes made aware of vacancies that are not advertised through Civil Service Jobs [details for these follow]

It is the responsibility of the department to ensure that all possible options are explored to enable the individual to remain in employment. However, there is also responsibility on the individual to be proactive in searching for alternative roles, this should include registering on CS jobs ....

Whilst every effort must be made to explore options to retain an individual in employment in their existing grade it may not be possible to do so in some cases. Where all reasonable options have been explored and a suitable post has not been identified it may be necessary to explore alternative outcomes such as down grading (voluntarily) or, as an absolute last resort exiting the organisation. The Home Office is committed to ensuring that anyone who leaves the organisation in these circumstances does so with the outmost dignity and respect.

10. So, there were two phases on 19 October 2016. The case conference took place with the Claimant and her Line Manager, Mr Harold who then wrote to the Claimant arising out of that meeting on 20 October to summarise the discussion. In short, he determined that there were no Phase One options that were appropriate and the Claimant agrees with this and the fact she should have an immediate escalation to Phase Two which we will deal with below.

11. The Claimant's disability was highlighted in the case conference not to criticise her but to assist her, we quote from this:

"Janet is finding the role very stressful and the disabilities (Dyslexia and Dyspraxia) means she struggles to deal with large volumes of information quickly and the unstructured nature of the prep and Court environment".

He goes on to mention the role of the Health Department and the OHS findings which state the following:

"Janet has excellent reading, vocabulary and reasoning skills, however due to her disability she is not suited to target driven and fast paced working roles especially if they are unstructured in nature. Janet needs time to organise information and map out how it fits together. OHS recommend a number of strategies which may assist".

They concluded that because of this Janet would be suit the following:

- Policy related roles
- Structured roles

- Non fast paced relaxed target role, factual evidence based work.
- A work area which would assist to her situation and disability e.g. reduced environmental noise and reduced distraction

This reflects Mr Harold's own evidence and in particular the restrictions he, on behalf of the Respondent, felt needed to be spelt out before any alternative job search could be successful. For instance, in his statement he says at one point:

"The Claimant's restriction has drastically reduced a number of roles that were available. She wanted a policy or project role at HEO level that was structured, factual evidence based, not fast paced, not target driven, part time with a work place with reduced environmental noise, reduced distraction and no lifting".

In addition, to the Claimant's restrictions as a result of disabilities the Claimant would only accept job roles in Central London. She also wanted a role with flexible working, preferably allowing her to work from home to two/three days. These requirements related to her care and responsibilities for her husband and son.

He goes on:

"The Home Office is a large organisation but the number of roles in Central London is ever decreasing due to Home Office selling many of its Central offices. The majority of our roles are based in Croydon but the Claimant refused to work in Croydon which limited the roles that we could offer significantly".

12. So, the stage was set early as to some of the obstacles that were going to be in the Claimant's way in finding a successful alternative job. The HR business partner was under Phase Two of the RAM process policy obligated to contact other departments to try and get suitable vacancies for her and one early example of this is an email of 7 February 2017 from Miranda Hungerford where she writes to all of the HR BP teams giving information as to the Claimant's position and the fact that she is in need of a reasonable adjustment move. In that she states the criteria which need to be taken into account. The Claimant says that it is disappointing that she did not meet up with Miranda Hungerford to discuss these communications and that some of the restrictions are unfair because they are too restrictive. However, we find it was legitimate that the communication took place through her Manager Mr Harold and the restrictions that are included in the HR correspondence do reflect the advice from OHS and the Claimant's particular circumstances. For instance, the Claimant complained about the fact that reduced noise was put down there but this is based on the OHS recommendation. The Claimant complained about the fact that lifting was added to the list of restrictions but she had had complaints as to a chronic back condition and so none of this list of restrictions are unreasonable but having said that we do agree with the Claimant that its portrayed her rather negatively. During the evidence it was clear that there could have been a possibility of putting her application in a more positive manner, in other words focusing on her particular skill sets rather than just mentioning where there were obstacles which

is a matter of presentation and partly due with the problem with the process but it is a material point. In any event the objective was to have a “managed move” so that the Claimant could perhaps be managed to a suitable job if it is one that she had a fit for and would like to accept and this did not envisage any interview in such circumstances.

13. We do find that Mr Harold worked hard to assist the Claimant to get another job, we note that during this period the Claimant more than once said that she had no criticism of him, just of the process. Mr Harold met her regularly, communicated fully with her, for instance his email of 12 January 2017 tried to ensure that whilst she was working she was at least undertaking fulfilling and less stressful duties within the presenting officer post. He also ensured that her case and request for suitable sensitive roles was escalated to a Senior Civil Servant, James Stevens and other SCSs and to the Respondent’s disability champion initially Charlotte Palmer and later Alison Kingman as required by Phase Two of the RAM policy but over and beyond that we note that he arranged for the Claimant to have mock interviews, indicated that she should have extra time for the preparation for any interviews that took place and gave regular and constructive feedback for instances exchanges with her on 12 September 2017 to assist the Claimant with her CV and how to word her “credentials” which were of primary importance when she was applying for jobs herself. He even ensured that she got the presentation slides from a training course on credentials which she could not attend because of her summer holiday plans. We note that her concern that she found it difficult to complete a template / prescribed form and performed better with open applications and better still on a face to face interview because of her particular disabilities. So that the help that Mr Harold provided was focused and appropriate. He liaised regularly with the Claimant, for instance 26 April 2017 he gave a summary at her request and a detailed chronology of the work that had been done on her behalf on 31 August 2017. When she asked about the redeployment pool (which we will come back to, but would not have been suitable to her), he enquired internally as to whether that could have been a possible route for her to follow and he agreed to her having one and then two and perhaps at the end even more days in the week to look for alternative jobs without having to actually undertake work for the Respondent. He also determined not to make her poor attendance record a disciplinary matter a point which was also taken into account by her subsequent Line Manager Barbara Uzodinma to avoid potentially prejudicing her on going alternative job search, so a considerable effort was taken even if the Claimant felt that it should have been even more conscientious. And Mr Harold was strong on making a note of the steps that had been taken and it is for this reason that we prefer his evidence to the Claimant’s on the difference of opinion as to whether or not she did or did not go to him as her Principal Manager for the material time, identifying jobs that she had looked at herself on the CTS website and on balance we find that she did not do so because otherwise Mr Harold would have referred to them. But we do note that under Phase Two of the RAM process that she was asked to do that if she could.

14. The RAM policy did not mean the Respondent was obliged to find a job for the Claimant or do all the running around for her, it is fair to expect her to look for other roles herself. She did so but only from May 2017 at the earliest so some

seven months into the search. A lot of her applications were unsuccessful and the Respondent asked us to find that perhaps she should have accepted from the outset that many of the jobs she applied for were unsuitable. The Claimant disagrees and we can make no findings on that as we have limited information as to the individual jobs she applied for or the details where she was unsuccessful. But we do find that the applications the Claimant made were anonymised, there was no reference to her name, sex or age. So those considering the application did consider them on the merits and there is no evidence that any of the rejections from her own applications were due to or arose out of her disability. Whilst accepting that it may have been difficult to get feedback on successful or unsuccessful applications we find that there is a paucity of information that was provided back to her managers by the Claimant as to helpful feedback even though this was being sought well into 2018 by Barbara Uzodinma and certainly had been done by Mr Harold before her. Moreover, she benefitted from the two ticks guaranteed interview scheme in respect of Home Office applications guaranteeing her an interview where she met the minimum requirements for the particular role, this is dealt with further in due course. So, it all adds to the effort that was being made on her behalf.

15. The fourth strand of the Phase Two of RAM policy related to Career Transition Service (CTS). This was potentially the most useful way of the Claimant getting another job as it allowed the Claimant's managers to contact CTS and find out in respect of those yet unadvertised vacancies that might be of interest to the Claimant, those earmarked for potentially redundant staff and thus for her to get a head start where a suitable vacancy rose and again moved into the role if there was a fit and without an interview. Because she had access to the job before it went "live" on the Civil Service website. We note that in respect of another disabled employee who was suffering from cancer that she was able to get a job this way even though it is naturally disappointing that the Claimant did not and that there were not more opportunities that came her way. However, we heard evidence from the Claimant as well as the Respondents that there were a number of possibilities which came out of these enquires and whilst accepting that she did not have any interviews from this source we find that of the jobs that were referred to her such as in OSCT Science and Technology, 1898 Policy and Delivery, Special Cases Unit and so on, it was the Claimant who primarily decided that the jobs were not suitable to her for personal reasons. We are not criticising her for that particularly as her personal reasons included the very commendable fact that she was caring for family members and we accept that she was genuinely keen to find an alternative job. We obviously empathise with her for the fact that this did not happen through this route or her own efforts but the Respondent discharged its end of the bargain by making regular enquiries through the CTS programme on her behalf and looking to see how she was getting on and of course in respect of other applications help to improve her CV and competences and generally give her relevant assistance.

16. The Claimant remains concerned that she was not given the "priority" that "at risk of redundancy" staff received. However, she cannot legitimately complain as she was not in the same group as redundancy staff or surplus staff dealt with through restructure, redeployment and the redundancy process. The redundancy stage which is run principally by the Career Transition Service is for



those employees who were at risk of losing their job because it no longer existed. Whilst the Claimant correctly identified that she was at risk of losing her job if she did not find an alternative she was not in a redundant situation but was a disabled employee looking to move jobs and whilst it is right that she was given special consideration it would no doubt be a cause of concern if disabled employees were put, for instance, in a redeployment pool (with a very short timescale to get another job we observe) rather than given consideration particular to their needs. She did have the benefit of the RAM policy and although the wording of the RAM policy when it refers to her getting equal priority to staff who are surplus perhaps leaves something to be desired we find that even potential redundant staff were expected to find alternative jobs and not rely just on the Respondent and the Claimant did have a number of opportunities to be treated more favourably than employees who were not in her situation. These have been highlighted above but it did include the guaranteed interview which was available to employees who were disabled and enabled her to apply for jobs that might be of interest to her (on the general website rather than through the CTS programme) where she scored 4 or more out of 7 even if the job had attracted a short list of candidates scoring 5 or more on their competences. So, on balance whilst we find the process perhaps could have been coordinated in a slightly more transparent way we find the RAM process followed by the Respondent and the other protections and assistance granted to the Claimant was very full and fair and it is unreasonable for the Claimant to expect that the job would definitely come to her without a job interview to determine her suitability for a particular role or without her making significant efforts on her own behalf.

17. Again, this is not meant to criticise her and we know she applied for over fifty jobs and we found that she did want to get alternative employment, so she was not just going through the motions but we have also determined that she did not connect with the process as positively as she should have done. We totally understand that the Claimant is disappointed that after her five or six interviews and discussions with potential vacancy holders that this did not lead to a specific job offer and we understand that she would have hoped for more from the Claimant's internal processes. However, the most significant factor in this we find are the limitations the Claimant chose to put on jobs that she would seek and the principle one was geography nothing to do with her disability. Although as anticipated earlier in these reasons there is some evidence that towards the end of her search she might have been more flexible as to where she was prepared to work, there was little evidence of this throughout a long process some two years where she effectively restricted any job search to London and certainly consistently resisted full time work. This latter last condition is for a good reason because she had care responsibilities but it was her reason and she cannot blame the employer for the fact that this significantly reduced the number of potential jobs. Her work duties were also restricted partly due to a disability, the problems with target driven fast paced work etc. We do not mean by this that she could not meet deadlines as she rightly says she was used to meeting those for many years having been employed in the Home Office for over two decades, nor are we suggesting that she is not a very smart individual with considerable skill set. But the work that she was unable to undertake was limited (particularly given her senior level) due to her disability.

18. Another factor however, unrelated to her disability, was a refusal on more than one occasion to consider an EO rather HEO role even when facing dismissal as a possible alternative. This was anticipated i.e. the possibility of voluntary demotion under the RAM process but she would not consider it. The Claimant explained that she saw this as a demotion because of her disability and that the same problems i.e. relating to a disability would be present in many lower grade roles and she was also concerned about her pension loss by taking a lower salary. But the Claimant was wrong to see it as a demotion, it was just a way of increasing an opportunity for the job search as clearly there are going to be more jobs available lower down the pyramid of management and some were no doubt suitable for her. We do not know if this is the case but the Claimant should certainly have considered it and we note that the Respondent had agreed to safeguard her salary for a further two years and given her age this was a reasonable step to take and rather than simply dismiss it out of hand we would have expected her to engage in communication with the Respondent and see what effect that might have been for a final salary scheme looking to the years ahead and how much (if at all) it would have caused her detriment in respect of pension. Her inflexibility in this respect we find was unreasonable because even if she had come to the conclusion that this was not something that she should have accepted she should have given it full consideration and to describe it as a demotion because of her disability is looking at it from the end of the telescope and the relevant point here in respect to these matters is that it was the Claimant's choice and so it was out of the Respondent's control and can only have further limited her options job wise.

19. As early as 31 August 2017 Mr Harold raised a possibility of dismissal as a last result. Obviously, this is anticipated in the RAM policy as well along with a requirement that the Respondent should deal with the employee in a dignified way which we feel that they did at all stages in what was a very long process. In a meeting of 8 March 2018 Mr Sharland also mentioned the possibility of dismissal as part of a detailed discussion and yet the Respondent was still looking actively for roles for the Claimant and she was still going for interviews and this even continued after her dismissal. The Respondent states it is considerate not to have a fixed period for this job search and we agree with that, we also observe that in respect of redundant employees (going back to the Claimant's concern that she was not put into redeployment pool) they would only have a few months before they would lose their job by virtue of redundancy whereas the Claimant had around two years from the late Summer 2016 to the end July 2018. The Respondent says this is more than fair and again we agree. We empathise with the Claimant, we understand why this has been very stressful and why she felt isolated but in the duties that she was asked to do whilst she looked for another job and in the communication with her as to exploring job options on a regular basis, the Respondent did not seek to add to her stress. We feel that overall they followed a full and caring process and one which few employers even large organisations and other public bodies could emulate or seek to emulate however regrettable that her job search was unsuccessful. We find the Respondent attempts to assist were genuine, prolonged and well communicated and when the Respondent dismissed the Claimant for medical inefficiency in July 2018 it was reasonable for them to conclude at that time that the internal processes had been exhausted.

Legal Issues

20. Applying these findings to the issues of this particular case we find that the reason for the Claimant's dismissal was capability, a potentially fair reason at s.98 of the Employment Rights Act 1996 and that it was in the circumstances a fair dismissal under s.98(4) ERA 1996 for the reasons referred to above.

Discrimination Claim

21. It is obviously accepted that she was disabled but the Respondent did comply with its duty to make reasonable adjustments again as set out above. The RAM process itself was obviously designed to assist disabled employees but even over or beyond that process the Respondent did make a number of reasonable adjustments itself in order to give the Claimant the best opportunity to apply for jobs or have a short cut to getting alternative job opportunities. We have been referred to the cases of Archibald and also Wade by the Claimant and Respondent respectively and asked to consider whether ensuring that she does not have a competitive interview would be a reasonable adjustment. We take the authority of Wade as confirming that it is not necessary to do so where a job may not be suitable or does not meet the essential requirements of the position and in any event, we note that the Claimant was partially provided with an opportunity to be managed into position rather than going through an interview process. The resources of the Claimant were considerable and we recognise as a large organisation there is sometimes no joined up thinking and might be some legitimate concern that the right jobs were getting notified to the Claimant. But a lot of this we found has been down to her own efforts and the employer certainly made the reasonable adjustments that might be expected of it and went further indeed, so the claim that there was a failure to make reasonable adjustments fails.

22. Under s.15 of the Equality Act 2010 the issue relating to discrimination arising from disability is dealt with in this way. The Respondent did treat the Claimant unfavourably by dismissing her because that unfavourable treatment was clearly because she was unable to carry out the role in which she was employed due to her disability. There were other factors in place as we have discussed such as her reluctance to move to work in Croydon and insistence on flexible working none of which related to her own disability and her refusal to accept a lower grade job. However, there can be no doubt that the reason she could not carry out the role which she was employed was also down to her disability and it was wholly legitimate that she should have said so and then an effort then made to manage her into a job where this would not be problem for her. And on this basis because her dismissal would not have taken place but for her disability there has been discrimination arising out of her disability. However, in this case we find it was a proportionate means of achieving legitimate aim and therefore can be justified on this basis. We found that the Respondent followed a proper policy and process over a number of years and that there were genuine and conscientious attempts to find her alternative work both through the RAM process and through individual efforts by her managers and other colleagues and it was only as the RAM policy says, in the final analysis, that the Claimant was dismissed when no appropriate jobs could be found for her. And therefore, the

Respondent's conduct justifies the decision that it took and the Claimant's claim fails for that reason in these circumstances.

23. Because the Claimant has failed on the issue of liability there is no need for us to go on and consider remedy and her case is dismissed.

Employment Judge Russell

Dated:27 Jan 2020

Sent to the parties on:

28/1/20

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For the Tribunal Office