



EMPLOYMENT TRIBUNALS

Claimant: Mr A Higgins

Respondent: Deafness Resource Centre Limited

HELD AT: Manchester

ON: 13 March 2017

BEFORE: Employment Judge Howard

REPRESENTATION:

Claimant: In person

Respondent: Mr A Johnston, counsel

JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that the claimant was at the relevant time a disabled person by reason of ulcerative colitis. Accordingly the Tribunal has jurisdiction to determine his claim of disability discrimination.

DIRECTIONS

1. The claimant's claim of direct discrimination pursuant to section 13 of the Equality Act 2010 is dismissed upon withdrawal.
2. The claimant's further particulars are treated as an amendment to the claim form.
3. By 20 March 2017 the claimant shall send to the respondent a fully itemised Schedule of Loss.
4. By 20 March 2017 the claimant shall write to the respondent specifying, (i) for the purposes of his claim of harassment (section 26 of the Equality Act 2010), the 'unwanted conduct' relied upon and how that conduct relates to his disability; (ii) for the purposes of his claim of victimisation (section 27 of the Equality Act 2010); the 'protected act' relied upon and the 'detriments' arising as a consequence of this protected act.
5. The respondent has leave to serve an amended response provided it does so by 3 April 2017.

6. The respondent accepts responsibility for providing an agreed bundle of documents for the hearing and shall send the claimant a draft index thereto by 18 April 2017, to which the claimant shall indicate agreement or any additions required by 25 April 2017, and the respondent shall provide the claimant with one complete copy of the bundle by 2 May 2017 and have five further copies in readiness for hearing.

7. The parties shall send to each other written statements of the witness evidence, including the claimant's own, to be relied upon at the hearing, by 31 May 2017.

8. The matter is listed for three days to determine liability and remedy if appropriate from 21-23 June 2017 inclusive at the Manchester Employment Tribunal, Alexandra House, 14-22 The Parsonage, Manchester, M3 2JA commencing each day at 10.00am.

9. The respondent shall inform the Tribunal whether mediation is pursued within seven days.

NOTE OF DISCUSSION

Preliminary hearing on jurisdiction

1. It was not disputed that the claimant has ulcerative colitis, a condition with a recurring effect in that it flares up episodically and it not disputed that this condition is long-term.

2. The parties agreed that the relevant time for the purposes of determining whether the claimant is disabled is August 2016 when the claimant was dismissed.

3. The Employment Judge accepted the claimant's evidence as to the impact of his condition of colitis on his continence as at August 2016 and found that it was substantial. The Employment Judge also accepted that the pain which the claimant was in, at that time, was such as to have a substantial adverse effect on his ability to carry out normal day-to-day activities. Taking account of the 'Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability' and in particular the example at D22 of the guidance, specific to the effect of continence caused by colitis, the Employment Judge was satisfied that the claimant was a disabled person by reason of ulcerative colitis.

4. The Employment Judge proceeded to hold a case management discussion and the following is noted:

5. The claimant's claims are as follows

Section 15 Equality Act 2010

(1) The claimant's claim, in essence, is that he was dismissed for taking a period of sick leave caused by his colitis and he relies upon his dismissal as the unfavourable treatment.

- (2) The respondent states that the claimant was dismissed for misconduct and that there is no causal link between his sickness absence and the reason for his dismissal.
- (3) The Employment Judge discussed with the claimant the basis upon which a claim of direct discrimination might be pursued and the claimant accepted that his claim was for discrimination arising from his disability i.e. his absence on sick leave, and withdrew his claim of direct discrimination which was dismissed accordingly.
- (4) The respondent does not rely upon the defence of proportionality and legitimate aim.

Reasonable Adjustments – Section 21

- (5) The claimant believes that adjustments should have been made to the disciplinary proceedings to allow him to participate effectively and that the respondent's failure to do so caused him the disadvantage of not being able to effectively present his case and consequently his dismissal.
- (6) The provision, criterion or practice relied upon by the claimant is the requirement to attend the respondent's premises for the disciplinary hearing and/or that disciplinary proceedings could not be conducted by electronic means.
- (7) The respondent states that the claimant claim is factually incorrect; he was not required to attend their premises, and, in any event, that they took all reasonable steps to accommodate his disability by offering to meet at a suitable alternative venue.
- (8) The respondent will rely on the defence of 'knowledge' at schedule 8 part 3. 20; that it did not or could not reasonably be expected to know that the claimant was a disabled person.

Harassment and Victimisation

6. The Employment Judge explored the basis of the claimant's claims of harassment and victimisation and gave the claimant seven days to reflect upon the merits of those claims. If he intends to pursue them the claimant was ordered to provide particulars.

7. Directions were given. The parties have already completed the disclosure of documents.

8. Judicial mediation was explored with the parties and the respondent will revert within seven days if it is pursued.

9. The claimant made an application for specific disclosure. The respondent agreed to provide a transcript of the appeal hearing within seven days to the claimant's email address. The Employment Judge refused the claimant's application for a copy of the respondent's search history related to the condition of ulcerative colitis, considering it to be disproportionate.

Employment Judge Howard

Date 15th March 2017

JUDGMENT AND DIRECTIONS SENT TO THE PARTIES ON

21 March 2017

FOR THE TRIBUNAL OFFICE

(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.