

IN THE EMPLOYMENT TRIBUNAL

CASE NOS: 2302750/2015

CROYDON

BETWEEN:

MR TIBEBU SHIFERAW

Claimant

-and-

GUYS & ST THOMAS NHS FOUNDATION TRUST

Respondent

AGREED LIST OF ISSUES & SCOTT SCHEDULE

Key

- ERA 1996 = Employment Rights Act 1998.
- EA 2010 = Equality Act 2010.
- Claim Form = claim form received on 27.9.15.
- F&BP = "Further Particulars of Claim" sent to the Respondent and the Tribunal on 15.1.16.
- Numbers in [...] refer to paragraph numbers.

Unlawful deduction of wages (s.13 ERA 1996)

1. Was there an agreed temporary variation of the Claimant's contractual hours from 37.5 hours to 20 hours per week in October 2008?
2. Was there an agreement for the Claimant to revert to his full time contractual hours and if so, when?
3. Did the Claimant request / agree a permanent change to 20 hours per week with effect from June 2014?
4. Is the claim for unlawful deduction of wages out of time and if so, was it reasonably practicable to present the claim in time?
5. If in time, is the Claimant entitled to receive pay for the 17.5 hours a week not worked got the period May 2012 to June 2014?
6. If there was a variation to the Claimant's contract, was there a breach of s.4 ERA 1996 and what compensation should be awarded if so?

Disability

7. The parties agree that the Claimant is disabled, as defined by the EA 2010, from October 2007 until May 2012 by virtue of a back condition.
8. The Claimant asserts that he is disabled, as defined by the EA 2010, from April 2013 onwards by virtue of depression and anxiety. This matter is live between the parties.

Direct disability discrimination (s.13 EA 2010)

9. Did the Respondent treat the Claimant less favourably because of his back disability? The Claimant advances the allegations below:

9.1. October 2008 – May 2012: Claimant's hours were reduced from 37.5 hours to 20 hours per week:

- (i) Unilaterally.
- (ii) Without consultation.
- (iii) Without receiving formal notification.

See claim form [1.6, 1.8-1.10, 1.17-1.19] and F&BP [1-2].

9.2. May 2012 – June 2014: Claimant's requests to work full-time ignored.

See claim form [1.11-1.13 & 1.19] and F&BP [5].

9.3. May 2012 – June 2014: Claimant's request to be referred to OH, so that his hours could be increased to full hours, ignored.

See claim form [1.11] and F&BP [6].

10. Has this claim been lodged within the applicable primary time limits?

11. If not, should the Tribunal extend the time limits?

12. If the Claimant is successful, what compensation is the Claimant entitled to recover?

Unfavourable treatment arising from disability (s.15 EA 2010)

13. Did the Claimant require reduced hours at work, which arose in consequence of the Claimant's back disability?

14. If so, was the Claimant subject to unfavourable treatment because he required (or had required) reduced hours at work? The Claimant advances the allegations below:

14.1. May 2012 – June 2014: Claimant's requests to work full-time ignored.

See claim form [1.11-1.13 & 1.19] and F&BP [5].

14.2. May 2012 – June 2014: Claimant's request to be referred to OH, so that his hours could be increased to full hours, ignored.

See claim form [1.11] and F&BP [6].

15. If so, can the Respondent show that the treatment of the Claimant was a proportionate means of achieving a legitimate aim as per s.15 (1) (b)?

16. Did the Respondent know, or should the Respondent have reasonably known, that the Claimant had the disability outlined in para 13 above?

17. If the Claimant is successful, what compensation is the Claimant entitled to recover?

Harassment (s.26 EA 2010)

Back condition

18. Did the Respondent engage in unwanted conduct in relation to the Claimant's (past) back disability?

19. If so, did this have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him?

20. The unwanted conduct relied upon by the Claimant is as follows:

20.1. May 2012 – June 2014: Claimant made to continue working 20 hours per week despite having made a full recovery from the back condition.

See claim form [1.10 & 1.19] and F&BP [3].

21. Has this claim been lodged within the applicable primary time limits?

22. If not, should the Tribunal extend the time limits?

23. If the Claimant is successful, what compensation is the Claimant entitled to recover?

Depression / anxiety

24. Did the Respondent engage in unwanted conduct in relation to the Claimant's alleged disability of depression / anxiety?

25. If so, did this have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him?

26. The unwanted conduct relied upon by the Claimant is as follows:

26.1. May 2013: Requiring the Claimant to complete accuracy competencies.

See claim form [2.7] and F&BP [7].

26.2. Sep 2014 – May 2015: Insisting that the Claimant work at Guy's dispensary.

See claim form [2.14] and F&BP [10].

26.3. Sep 2014 – Feb 2015: Refusing to investigate the Claimant's grievance properly and then rejecting it.

See claim form [2.16] and F&BP [11].

27. Has this claim been lodged within the applicable primary time limits?

28. If not, should the Tribunal extend the time limits?

29. If the Claimant is successful, what compensation is the Claimant entitled to recover?

Failure to make reasonable adjustments (s.20 EA 2010)

Accuracy competencies (claim form [2.7], F&BP [7])

30. In around March 2013, did the Respondent impose a PCP that the Claimant should fulfil accuracy competencies since he was moving to a new Dispensary?

31. If so, did the PCP put the Claimant at a substantial disadvantage because he was suffering from sleep problems/impaired concentration as a consequence of his alleged disability of depression/anxiety?

32. If so, would it have been a reasonable adjustment for the Respondent to postpone the assessments?

33. If so, are the knowledge requirements set out at para 20, Schedule 8, Part 3 of the EA 2010 satisfied?

34. Has this claim been lodged within the applicable primary time limits?

35. If not, should the Tribunal extend the time limits?

36. If the Claimant is successful, what compensation is the Claimant entitled to recover?

Capability procedure in May 2013 (claim form [2.10], F&BP [8-9])

37. In May 2013, did the Respondent impose a PCP that the Claimant should pass accuracy competencies in order to be considered competent to perform his role?

38. If so, did the PCP put the Claimant at a substantial disadvantage because he was suffering from stress, impaired concentration, insomnia as a consequence of his depression and anxiety as well as depression and anxiety itself?

39. If so, would it have been a reasonable adjustment for the Respondent to postpone the capability process until he had finished medical treatment or place him on unpaid leave until the medical treatment was completed?

40. If so, are the knowledge requirements set out at para 20, Schedule 8, Part 3 of the EA 2010 satisfied?

41. Has this claim been lodged within the applicable primary time limits?

42. If not, should the Tribunal extend the time limits?

43. If the Claimant is successful, what compensation is the Claimant entitled to recover?

Capability procedure in December 2013 (claim form [2.10], F&BP [8-9])

44. In December 2013, did the Respondent impose a PCP that the Claimant be competent at dispensing accurately in order to be considered competent to perform his role?

45. If so, did the PCP put the Claimant at a substantial disadvantage because he was suffering from stress, impaired concentration, insomnia as a consequence of his depression and anxiety as well as depression and anxiety itself?

46. If so, would it have been a reasonable adjustment for the Respondent to postpone the capability process until he had finished medical treatment or place him on unpaid leave until the medical treatment was completed?

47. If so, are the knowledge requirements set out at para 20, Schedule 8, Part 3 of the EA 2010 satisfied?

48. Has this claim been lodged within the applicable primary time limits?

49. If not, should the Tribunal extend the time limits?

50. If the Claimant is successful, what compensation is the Claimant entitled to recover?

Change in location (claim form [2.14], F&BP [10])

51. From September 2014 to May 2015, did the Respondent impose a PCP that the Claimant should work at Guy's Dispensary?

52. If so, did the PCP put the Claimant at a substantial disadvantage because he was anxious to work there as a consequence of his depression and anxiety?

53. If so, would it have been a reasonable adjustment for the Respondent to move the Claimant away from Guy's Dispensary as soon as he was fit enough to return to work?

54. If so, are the knowledge requirements set out at para 20, Schedule 8, Part 3 of the EA 2010 satisfied?

55. Has this claim been lodged within the applicable primary time limits?

56. If not, should the Tribunal extend the time limits?

57. If the Claimant is successful, what compensation is the Claimant entitled to recover?

Permanent redeployment (claim form [2.14-2.17], F&BP [12])

58. From 20 March 2015, did the Respondent impose a PCP that the Claimant should work at Guy's Dispensary?

59. If so, did the PCP put the Claimant at a substantial disadvantage because he was anxious to work there as a consequence of his depression and anxiety?

60. If so, would it have been a reasonable adjustment for the Respondent to redeploy the Claimant permanently away from Guy's Dispensary?

61. If so, are the knowledge requirements set out at para 20, Schedule 8, Part 3 of the EA 2010 satisfied?

62. Has this claim been lodged within the applicable primary time limits?

63. If not, should the Tribunal extend the time limits?

64. If the Claimant is successful, what compensation is the Claimant entitled to recover?

14 June 2016