



EMPLOYMENT TRIBUNALS

Claimant
Mr. T. Coomber

v

Respondent
British Telecommunications PLC

JUDGMENT AND ORDER AT PRELIMINARY HEARING

Heard at: Bristol

On: 14th February 2017

Before: Employment Judge R Harper

Appearances

For the Claimant: Mr. T. Coomber
For the Respondent: Mr. Ward

JUDGMENT

The claim of disability discrimination is dismissed upon the claimant's withdrawal.

The sole remaining claim is unfair dismissal to be heard before a Judge alone.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, it was agreed that the hearing in this claim would be completed within **2** days. **It has been listed at Exeter Employment Tribunal, Keble House, Southernhay Gardens, Exeter EX1 1NT to start at 10.00 am or so soon thereafter as possible on 3rd and 4th July 2017. The parties are to attend by 9.30 am on each day.** The hearing may go short, but this allocation is based on the claimant's intention to give evidence and to call **0** further witnesses and the respondent's intention to call **2** witnesses. The claimant may need regular breaks during the hearing which is why the case was listed for two days rather than one day.

2. The time at the hearing will be used as follows:-
 - 2.1. There will be **1.5** hours tribunal reading time on the first morning with the evidential part of the hearing commencing at 1130;
 - 2.2. By 12 noon on 4th July 2017 at the latest the evidence and submissions will have been completed;
 - 2.3. A maximum total of **40 minutes** (half each) for submissions on liability;
 - 2.4. Approximately **1** hour for the Tribunal to determine the issues which it has to decide and reach its conclusions;
 - 2.5. **40 minutes** for the Tribunal to give judgment, with reasons if possible;
 - 2.6. **40 minutes** for the Tribunal to identify issues relevant to remedy, hear further evidence if appropriate and reach its conclusions in respect thereof, if the claimant succeeds in whole or part.

Every time estimate must make a realistic allowance for pre-reading by the Employment Judge and, if required, the members. The time within which a case must be concluded will thus run from the beginning of the pre-reading. Should the period allowed for pre-reading prove inadequate, the time available in tribunal will be shortened correspondingly. The same principle will apply if too little time is allowed for the judge (and members) to read any written closing submissions.

The hearing may be actively case managed if necessary with the imposition of time limits to ensure that it is completed within the allocated time.

Introduction and the issues

3. The claimant indicated that he had not intended to bring a disability discrimination claim and therefore the disability claim was dismissed upon his withdrawal.

The claimant is awaiting to hear whether his Union – the CWU – will be representing him in this case. Currently he remains representing himself. He confirmed that his email address is

It is agreed that the claimant was employed between 28th March 2005 (not 2015 as in the ET3) and 14th December 2016. The claim was presented in time on 6th December 2016.

The respondent asserts that this was a capability dismissal and it relies on four periods of absence: 26.6.14 – 17.11.14; 4.8.15 – 25.9.15; 27.4.16 – 28.5.16; 19.8.16 – 14.12.16 (the date of termination of employment). The issues will be whether the evidence supports the contention that this was a capability dismissal and whether the respondents adopted a fair procedure and whether it was fair and reasonable to dismiss the claimant. The respondent asserts in the alternative that any compensation should be reduced under the principles of **Polkey v A.E. Dayton Services Limited**.

Remedies

4. If the claim or part of it succeeds the issue of remedy will be determined. The time allocated includes time for dealing with remedy. The claimant has indicated that compensation is being sought by way of remedy.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Disclosure of documents

- 1.1 On or before 7th March 2017, the parties mutually to disclose documents relevant to the issues identified above by list and/or copy documents as appropriate. Documents to be disclosed are all relevant documents which are in the parties' possession, custody or control, whether they assist the party who produces them, assist the other party or appear neutral. This includes, from the claimant, documents relevant to all aspects of any remedy sought. Documents relevant to remedy include evidence of all attempts to find alternative employment.

2. Statement of remedy/schedule of loss

- 2.1 By the 7th March 2017, the claimant provide to the respondent and to the Tribunal, an itemised statement of the sums claimed by way of remedy (also called a schedule of loss) including details of any income (including state benefits) received after the end of employment.

3. Bundle of documents

- 3.1 By the 28th March 2017, a common set of core, relevant documents be agreed, assembled into a bundle, indexed and page numbered for use of the witnesses and the Tribunal, and limited without further direction to **150** single pages. This limit does not include the ET1, ET3, and schedule of loss. The bundle be prepared by the respondent, one set provided to the claimant and its contents agreed by the parties. The limit on the bundle size may not be exceeded by more than 5% without the express prior consent of the Tribunal.
- 3.2 The respondent is ordered to bring **2** copies of the bundle of documents to the Tribunal for use at the hearing, by 9.30 am on the day of the hearing.

4. Witness statements

- 4.1 By the 21st April 2017, witness statements, including that of the claimant, be prepared and exchanged, these statements to form the primary evidence of the witnesses. These will be taken as read, subject to the discretion of the Tribunal. No witness will be permitted to give evidence without leave of the Tribunal unless a statement of evidence has been provided in accordance with this order.
- 4.2 The claimant's statement must include information to enable the Tribunal to deal with compensation or other remedy, if appropriate.
- 4.3 Statements should be typed and in **short** numbered paragraphs.

4.4 The witness statements be limited as follows –

The claimant **3,000** words

The respondent's witnesses **5,000** words in total.

Each statement must state the number of words it contains. These limits may not be exceeded by more than 5% without the express prior approval of the Tribunal

4.5 Sufficient copies of the above be supplied to the Tribunal for use at the hearing by 9.30 am on the day of the hearing.

5. Chronology and cast list

5.1 By 09:30 on the first day of hearing the parties are to hand in to the tribunal an agreed short neutral chronology;

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge R Harper

Date: 14th February 2017

Sent to the parties on:

16 February 2017

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For the Tribunal:

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