



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE HALL-SMITH

PRELIMINARY HEARING

BETWEEN:

Mr R Aryee

Claimant

AND

Langridge Organic Products Ltd

Respondent

ON: 9 May 2017

APPEARANCES:

For Claimant: Did not attend

For Respondent: Mr J Vatcher, Counsel

REASONS

(Reasons for the Judgment sent to the parties on 22 May 2017 at the request of the Claimant)

1. By a claim form received by the Tribunal on 12 August 2016, the Claimant, Mr Ronald Aryee, brought complaints of unfair dismissal and unlawful discrimination on grounds of age and on grounds of disability against the Respondent, Langridge Organic Products Ltd.

2. At a telephone Preliminary Hearing on 27 February 2017, the case was listed for a Preliminary Hearing to be heard on 9 May 2017, to determine whether the Claimant was a disabled person at all material times. At that telephone hearing the Claimant was represented by a Consultant, Ms A Khan.
3. There was subsequent correspondence from the Tribunal to the parties in relation to the hearing listed on 9 May 2017 and in relation to case management orders that had been issued.
4. On 25 April 2017 Regional Employment Judge Hildebrand wrote to the parties and directed that the parties were to communicate only by post (as requested by the Claimant) and that the Claimant was to comply with directions made on 27 February 2017 and that the case was to remain as listed.
5. At the hearing on 9 May 2017, the Claimant failed to attend. The Respondent was represented by counsel Mr James Vatcher.
6. At the outset of the hearing enquiries were made about the Claimant's whereabouts, but without success. I considered that in circumstances where the Claimant had been in contact with the Tribunal by letter from him to the Tribunal as recently as 17 April 2017, and had been represented at the telephone preliminary hearing when the hearing date for this preliminary hearing had been listed, there was no good reason for the Claimant's non-attendance. Accordingly, I decided to consider the preliminary issue in the absence of the Claimant.
7. I had regard to the contents of the Tribunal file which contained a number of medical reports on the Claimant and an impact statement from the Claimant. The Claimant's medical reports included the following, namely a letter from the Claimant's GP dated 18 of October 2016, the Claimant's impact statement, a discharge notification from Kings College Hospital, an operation note from Mr Ashok Narayana, Surgical Registrar, medical correspondence from 2011 to 2015, including correspondence between the Department of Cardiology at Kings College Hospital and the Claimant's GP, Dr Johnson.
8. I also heard evidence from a witness called on behalf of the Respondent, Mr Alex Pearce, the Managing Director of the Respondent company.
9. The Claimant contended that he was a person with a disability within the meaning of section 6 of the Equality Act 2010, by reason of a heart condition.
10. Section 6 of the Equality Act provides
 - (1) ***a person (P) has a disability if –***
 - (a) ***P has a physical or mental impairment, and***
 - (b) ***the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.***
11. The Claimant's impact statement stated the following

My contracting heart failure had a debilitating effect on me before and after my operation to correct the defective heart valve. The operation has rendered my daily activities laborious as I needed assistance in routine daily activities such as bathing as I needed the help of my wife to get out of the bath.

I struggle with my breathing when I walked up any form of incline and I was limited the distance and amount I could walk as I got tired easily and I had to take several breaks even to walk short distances, hence I was reluctant to venture far from home.

I wondered whether things would never be the same again but I was determined to return to work as I need to support my family. Four months after my operation it was very difficult to carry any heavy loads such as shopping bags or boxes for any considerable amount of time.

12. In a letter dated 21 September 2012 from the Cardiac Health and Rehabilitation team at Kings College Hospital, the Claimant's clinical presentation was reported as follows

This 56-year-old gentleman attended clinic for assessment prior to commencing a cardiac rehabilitation programme for patients living with heart failure. Mr Aryee appeared well in clinic and his heart failure symptoms are stable. Mr Aryee admits he does not weigh himself regularly but tells me has not noticed any swelling recently to his lower leg or ankles and he seems to have a good understanding of fluid management or when he should take a diuretic. He explains he only experiences dyspnoea on exertion such as walking uphill but makes a quick recovery. He denies any orthopnoea or PND and sleeps with two pillows Mr Aryee denies any chest pain, pre syncope or syncope. Mr Aryee explains that he does often feel tired that he thinks that this is in relation to the hours he works rather than as a symptom of his heart failure.

His blood pressure remains elevated. He explains that Amlodipine is a recent addition to his medication list to try and give him better blood pressure control. I have explained that regular exercise can also help to reduce blood pressure. Mr Aryee completed the six minute walk test today. He walked a total of 380 m without any need to stop. Had an appropriate heart rate response to the activity and made a quick recovery."

13. On 18 January 2016 the Claimant underwent a surgical procedure, namely tissue aortic valve replacement. A medical report dated 29 February 2016

from Kings College Hospital from Mr DC Whittaker, MD, FRCS stated the following:

I met this charming 59-year-old man with his wife in clinic today. He reports general chest ache around his sternal wound site. He has been increasing his paracetamol intake from 4 to 6 tablets a day. There are no signs of local or systemic infection. No oedema of his ankles is noted. He does not have any shortness of breath when he is walking on the flat. Information about ways to managing his hypertension had been given and discussed with him. Dental advice given again and he is aware that he needs to organise teeth extraction with antibiotic cover and maintain good dental hygiene.

14. In his evidence to the Tribunal, Mr Pearce, the Respondent's Managing Director stated that he had no knowledge that the Claimant had attended the cardiac health and rehabilitation service in 2012 and that he had struggled with breathlessness between 2011 and 2015. The first time he had been aware of the Claimant's heart condition was in January 2016 when the Claimant telephoned to say he had been admitted to hospital and that he had undergone open heart surgery.
15. Mr Pearce stated that he was concerned when he had read the Claimant's impact statement because the Respondent had never been informed of any of the symptoms the Claimant had recorded in his impact statement, and had continued to drive company vehicles to make deliveries to the Respondent's customers. The Claimant never returned to work for the Respondent after January 2016.
16. The impairment relied upon by the Claimant was a physical impairment, namely a heart condition. Having regard to the medical evidence it was and remains clearly a long-term condition. Accordingly, the issue for the tribunal to determine is whether the Claimant's heart condition had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities. Substantial has been judicially defined as meaning more than trivial.
17. I noted that although the Claimant has complained of breathlessness, there was no evidence this had impacted on his work activities with the Respondent and I accepted the evidence of Alex Pearce, whom I found a wholly credible witness. The medical report of September 2012 from Kings College Hospital reported that the Claimant often felt tired but that he thought that this was in relation to the hours he worked rather than as a symptom of his heart failure and the report also stated that the Claimant had completed a six minute walk test involving a total of 380 metres without any need to stop and that he had appropriate heart rate response to the activity and had made a quick recovery.

18. The report from Kings College Hospital following his surgery in January 2016 reported the Claimant did not have any shortness of breath when walking on the flat and that no oedema of his ankles was noted.
19. Although the reports refer to hypertension, I do not consider that the medical evidence supports a contention that the Claimant was a disabled person by reason of the combined effect of his hypertension and his heart condition.
20. The Claimant's impact statement appeared to be inconsistent with the medical evidence, which did not in my judgment evidence the fact that the Claimant's impairment had a substantial adverse effect on his day to day activities. The Claimant had remained at work until his surgery in January 2016 and the Claimant's work was physical in nature.
21. In my judgment having regard to the totality of the evidence, the Claimant was not a person with a disability at all material times within the meaning of section 6 of the Equality Act 2010.
22. I further noted that the Claimant had not been at work since January 2016. The Claimant's claim form was not received by the tribunal until 12 August 2016. The ACAS notification was 30 June 2016, nearly 6 months after the Claimant had last been at work. Accordingly, any allegation of discrimination complained of by the Claimant while at work, would fall outside the primary statutory time limits.

Employment Judge Hall-Smith

Date: 18 July 2017