



EMPLOYMENT TRIBUNALS

Claimant

Mr F Peckitt

Respondent

J&P Norwich Limited

v

PRELIMINARY HEARING

Heard at: Bury St Edmunds

On: 20 December 2017

Before: Employment Judge Laidler

Appearances:

For the Claimant: In person (assisted by his father).

For the Respondent: Mr D Chapman, Solicitor.

JUDGMENT

- 1. The claims were received out of time but it is just and equitable to extend time to allow the claims to proceed.**
- 2. Case management orders are made as set out below.**

REASONS

- 1. The claim form in this matter was received on 8 August 2017. The claimant stated he had been dismissed on 2 April 2017 but elsewhere in the claim form stated the 27 March 2017, the date upon which the respondent relies. The claim is one of disability discrimination only. The claimant engaged in ACAS early conciliation on 27 June 2017 and the certificate was issued on 29 June 2017.**

2. In its response the respondent pleaded that the claim was out of time. This hearing was listed to determine whether or not the claim was received out of time, and if so whether it would be just and equitable to extend time within the meaning of s.123 of the Equality Act 2010.
3. The claimant relies upon the condition of Tourette's Syndrome as a disability within the meaning of the Equality Act 2010. The claimant was called to give evidence and explained how he had been unable to work since his dismissal. He tried doing some voluntary work at the British Heart Foundation but had to stop that because of the worsening of his Tourette's Syndrome.
4. The claimant obtains assistance from Dr Judith Eaton, Consultant Clinical Psychologist with whom he was having blocks of six sessions every two weeks. He asked Dr Eaton to write a letter which he believed was prepared shortly before he submitted his claim form but is undated. This confirmed that she has been working therapeutically with the claimant for several months, that he had a diagnosis of Tourette's Syndrome which can be severe and debilitating at times, and that he also suffers from high levels of anxiety. Dr Eaton confirmed the claimant has suffered considerable distress and experienced feelings of humiliation as a result of incidents which occurred at the place of work, and became quite mentally unwell. That had impacted significantly upon his ability to successfully navigate the claims process including completing relevant paperwork in a timely manner.
5. The claimant accepted he had engaged in ACAS early conciliation but found that was something that he could deal with as opposed to the adversarial procedure associated with bring a claim and the need to set out his claim on the ET1 claim form. Although he recalled that ACAS had mentioned that the claim needed to be brought within three months they were unable to advise on the precise date. The claimant consulted Norfolk Community Law Service by which time the claim was out of time hence him applying in the claim form for an extension of time. During this time the claimant had been suffering severely from his condition and it would sometimes be so bad that he would suffer regular fits and at this time he started walking with the aid of a stick.
6. After having heard the claimant's evidence the solicitor for the respondent asked if he could have time to take instructions and having done so he informed the tribunal that he was not going to pursue the argument that the tribunal had no jurisdiction to hear the matter as the claim was out of time. He would no longer be arguing that it was not just and equitable to extend time.
7. The tribunal's decision therefore is that the claim albeit received out of time, it is just and equitable to extend time. It is quite clear the claimant's condition worsened, he had difficulty in dealing with the completion of the forms but he acted as quickly as he could once he knew that the forms needed to be submitted. The respondent has not been prejudiced by what is in effect a very short delay and the claims will therefore proceed.

CASE MANAGEMENT SUMMARY

1. The issue of time limits having therefore been dealt with there was a discussion about the claims.

Disability

2. The respondent accepts the claimant is disabled within the meaning of the Equality Act 2010 by virtue of Tourette's Syndrome.
3. It appeared to the respondent that there were two distinct claims: -
 - 3.1 Direct discrimination.
 - 3.2 Failure to make reasonable adjustments.

Direct discrimination

4. The claimant believes that he was dismissed having advised the respondent that he had Tourette's Syndrome. He does not accept there were unauthorised absences and believes he can show from text messages that he was not absent without permission. As soon as his condition was disclosed to the respondent the claimant says he was sent home and dismissed.
5. The respondent does not accept this interpretation of events, but in any event state that if they had had another employee without the disability who had unauthorised absences he would also have been dismissed.
6. There is clearly a factual dispute as to what occurred which will need to be determined on hearing the evidence.

Failure to make reasonable adjustments

7. The claimant sets out in his claim form adjustments that he considers should have been made including allowing a discussion about reasonable adjustments. However, it was difficult to identify the "provision, criterion or practice" that put the claimant at a substantial disadvantage. Having discussed the matter in more detail the claimant accepted that his complaint is really one of direct discrimination on the grounds of his disability and not a failure to make reasonable adjustments.
8. The claimant has not served a schedule of loss and an order has been made for is to do so. The Judge explained that this should include details of his loss or earnings and injury to feelings claimed. He has suggested in his claim form that the injury to feelings award may be in the region of £10,000 and the Judge explained that was highly unlikely on the facts of this case, and bearing in mind the short period of employment. He should return to the advice centre that he has instructed previously who should be able to assist with the preparation of a schedule of loss, and also discuss with him the difference between a personal injury claim and that of injury to feelings.

9. The parties were urged to embark upon discussions about the claim and explore whether or not it could be resolved by alternative means. This has been taken into account in the directions that have been given and the listing of the hearing.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Statement of remedy/schedule of loss

- 1.1 The claimant is ordered to provide to the respondent and to the Tribunal, so as to arrive on or before **19 January 2018** a properly itemised statement of the remedy sought (also called a schedule of loss).
- 1.2 The claimant is ordered to include information relevant to the receipt of any state benefits.

2. Disclosure of documents

- 2.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by sending to the other copy documents so as to arrive on or before **19 January 2018**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
- 2.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.
- 2.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.
- 2.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

3. **Bundle of documents**

- 3.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 3.2 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **9 March 2018**.
- 3.3 The respondent is ordered to bring sufficient copies (at least five/three) to the tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

4. **Witness statements**

- 4.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 4.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.
- 4.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 4.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 4.5 It is ordered that witness statements are exchanged so as to arrive on or before **21 March 2018**.

5. **The hearing**

- 4.1 The hearing has been listed for **2 days on 11 and 12 April 2018 at Norwich Employment Tribunals, Norwich Magistrates Court, Bishopgate, NORWICH, Norfolk, NR3 1UP** to start at 10am or so soon thereafter. The parties are to attend by 9.30am.

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 Laidler

12 January 2018

Sent to the parties on:

For the Tribunal:

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