



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr J Norgate

v

**Respondent:**  
DPD Group UK Limited

**Heard at:** Reading **On:** 19 and 20 February 2018

**Before:** Employment Judge Gumbiti-Zimuto  
Members: Mrs J Cameron and Mr M Selby

## Appearances

**For the Claimant:** In person  
**For the Respondent:** Mrs R Magdani (Solicitor)

**JUDGMENT** having been sent to the parties on **22 February 2018** and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. In a claim form presented on 11 March 2017, the claimant made complaints about unfair dismissal, redundancy payment and notice pay, unauthorised deduction from wages and breach of the duty to make reasonable adjustments. The claimant withdrew his complaints of unfair dismissal and redundancy payment at the preliminary hearing on 21 June 2017. The claims that the Tribunal has had to determine were set out in the case management summary and orders of 21 June 2017 and relate to a complaint about failure to make reasonable adjustments, notice pay and unauthorised deduction from wages. At the start of the hearing before this employment tribunal, the claimant withdrew his complaint about notice pay so the Tribunal has not been concerned to deal with that matter which is dismissed upon withdrawal.
2. The claimant gave evidence in support of his own case. The claimant provided to the Tribunal a short witness statement consisting of approximately 262 words. The claimant also provided a letter dated 6 July 2017 written "To whom it may concern" from Dr S Khader who is the claimant's GP. The claimant's witness statement did not set out all the matters that were required in order to explain his case. The claimant was therefore permitted to give extensive further evidence as part of his evidence in chief before being cross-examined by the respondent.
3. The respondent relied on the evidence of three witnesses: Mr Ian Parker,

Mr Kamaldeep Minhas and Ms Rusheen Hemley. The respondent's witnesses provided statements which were all taken as their evidence in chief.

4. The Tribunal was provided with a bundle of documents consisting of 194 pages.
5. The claims and issues that the Tribunal is to consider are set out in paragraphs 6, 7, 8 and 9 of the case management summary and orders of 21 June 2017. Paragraph 8 is no longer relevant.

**Unauthorised deduction from wages, section 13 Employment Rights Act 1996**

6. The claimant's evidence in respect of this part of the case is that he is owed £114.40 by the respondent. In support of this claim, the claimant produced a printout of his bank statement dated 16 February 2017. This shows that on 5 January 2017, a payment was made to the claimant by BACS transfer in the sum of £114.40.
7. The claimant also produced a pay statement for the pay date 12 January 2017. This was the claimant's final pay statement. This pay statement shows under the heading of 'Deductions' the advance recovery of £114.40. The claimant says that this is evidence of a deduction from his wages which ought not to have been made.
8. The claimant also provided a document which is headed 'Payroll Advance Request' – this shows a payment being made to the claimant by BACS transfer in the sum before tax of £168.24. This is dated 4 January 2017.
9. From the documents produced, the claimant says it can be seen that the respondent owe him £114.40.
10. Mr Ian Parker was able to provide explanations for the various documents, he says that they show that the claimant is not owed any wages by the respondent. Mr Parker explained that when the claimant was suspended from work by the respondent there was, in relation to his December pay, a shortfall of £114.40 net. It was necessary for the respondent to pay this sum to the claimant.
11. The respondent caused a BACS transfer to be made to the claimant in the sum of £114.40. The Payroll Advance Request dated 4 January 2017 it is said shows the payments that were due to the claimant in respect of a basic night rate for 15 hours and a basic rate for 15 hours totalling £168.24. Mr Parker told that when paid to claimant as a net amount is £114.40 in the claimant's bank.
12. In respect of the pay statement dated 12 January 2017 Mr Parker explained that the payment to the claimant on 5 January 2017 was made as a result of the BACS transfer request indicated on 4 January 2017. This was not paid in accordance with the respondent's payroll. It was therefore necessary to account for this on the claimant's pay statement. The section headed 'Payments' on the claimant's pay statement shows the basic rate,

the bank holiday, the holiday night rate and the night rate and arrives at the total payment due of £376.22. Mr Parker pointed out that the number of units paid to the claimant in respect of these periods is in excess of that to which the claimant was entitled. This is explained by Mr Parker on the basis that what has happened is that the claimant has been credited for the payment of £114.40 in this pay slip. However, as this already been paid to the claimant, the amount due of £376.22 needs to be adjusted to reflect the £114.40 which had been paid to the claimant on 5 January and therefore under the heading of 'Deductions', the advance recovery is made of the sum of £114.40.

13. The final payment made to the claimant of £202.27 is therefore the amount that the claimant is actually due and should be viewed as containing the additional sum of £114.40 which was paid to the claimant on 5 January. It was necessary to make the deductions in that way on the pay statement so as the pay statement can accurately reflect the payments that the claimant has received.
14. The Tribunal is satisfied that the explanation given by Mr Parker is a credible one. Attempting to do the best we can, we note that although there is some mismatch in respect of gross sums and net sums, the figures appear to work out correctly. There appears to be a correlation between the amounts which support the explanation which has been given by Mr Parker. Bearing that in mind and taking into account the claimant's evidence, we are satisfied that Mr Parker's account explains why the payment was made on 5 January and why the deduction appears on the pay statement.
15. In all the circumstances, we are satisfied that there has not been any deduction from the claimant's wages at all. There has simply been an accounting in the pay statement of the sums paid to the claimant and an adjustment made in order to ensure that there was no overpayment made to the claimant. The claimant's claim for an unlawful deduction from wages is not well founded and is therefore dismissed.

#### **Failure to make adjustments pursuant to section of the Equality Act 2010**

16. The claimant's complaint about a failure to make adjustments pursuant to section of the Equality Act 2010 is set out in paragraph 7 of the case management summary and orders. Paragraph 7 reads as follows:
  - 7.1 *The relevant provision, criterion or practice was the requirement to carry out duties using a scanner, computer, write up notes and direct drivers.*
  - 7.2 *The substantial disadvantage to which the Claimant was put as a result of the provision, criterion or practice was that he had difficulty using a scanner (due to epilepsy), computer (due to epilepsy and dyslexia), write up notes (due to dyslexia) and direct drivers (due to dyslexia).*
  - 7.3 *The reasonable adjustment required to avoid the disadvantage was to not require the Claimant to carry out these duties and / or provide*

*a computer screen filter and / or provide appropriate training.*

7.4 *The Claimant claims that he told his managers Mr Kamaldeep Minhas and Mr Ian Parker about these difficulties in August 2016 (on his return to work) and in September 2016. They both told him that if he couldn't do these things he should resign.*

7.5 *The Respondent will claim that these matters were presented to the Tribunal out of time and there is no jurisdiction to consider them.*

17. The Tribunal notes that in paragraph 6, it states that the following claims and issues will be considered by the employment tribunal at the full merits hearing and *"no other claims or issues will be considered without the permission of the tribunal"*.

18. The claimant makes a complaint of unlawful disability discrimination and he claims that at all material times he was a disabled person by reason of epilepsy and dyslexia. The respondent accepts that the claimant is a disabled person by reason of epilepsy but does not accept that he is or was a disabled person by reason of dyslexia for the purposes of section 6 of the Equality Act 2010 and puts him to proof of the same.

19. The claimant was ordered to provide to the respondent by no later than 12 July 2017 a statement signed by the claimant setting out the impairment relied on, the precise nature and extent of the effects the impairment has or had on the ability to carry out normal day to day activities, the periods over which those effects have lasted, and whether or not there has been treatment of the impairment and what difference, if any, such treatment has had on the effects of the impairment. The claimant did not provide such a statement.

20. On 13 July 2017, the respondent's solicitors wrote to the employment tribunal asking that the claimant be ordered to provide an impact statement pursuant to the order. The respondent chased up the request for an Unless Order with a letter dated 25 July 2017 to the employment tribunal. The respondent's solicitors wrote again on 9 August 2017 pointing out that the claimant has failed to provide any impact statement or medical information in respect of his alleged dyslexia.

21. On 9 August 2017, the claimant copied to the employment tribunal and to the respondent a letter dated 6 July 2017 from Long Barn Lane Surgery signed by Dr S Kander. The letter reads as follows:

*"To whom it may concern re Justin Norgate 7/4/1994 46 Wincanton Road, Reading RG2 8PB.*

*This patient has a history of epilepsy and is currently taking medication for it. He tells me that the epilepsy is affecting his day to day life in that he cannot drive, swim, close the door of the toilet or the bedroom or watch TV or the computer screen as this precipitates the attack of epilepsy. If you require any further information please do not hesitate to get in touch."*

22. On 18 September 2017, the respondent wrote to the employment tribunal

indicating that it still had not received any response to their request for an Unless Order which was contained in correspondence dated 13 and 25 July 2017. On 20 October, Employment Judge Vowles wrote to the claimant indicating he was considering striking out the claimant because the claimant had failed to respond to the employment tribunal's letters sent on 19 August 2017 and because the respondent says the claimant has failed to comply with the case management orders of 21 June 2017.

23. On 20 October, the claimant sent an attachment containing text messages and also made reference to the fact that he had sent further information on 19 September. The employment tribunal wrote to the claimant indicating that the contents of his email were not understood.
24. On 10 December, the claimant wrote to the employment tribunal saying that he did not think that his case should be struck out because he did reply to the letter on 19 August and sent the information needed in the agreed at the preliminary hearing on 21 June. There was further correspondence in January which related to the exchange of witness statements and on 24 January 2018, the respondent wrote to the employment tribunal indicating that the claimant continued to fail to comply with the order of the employment tribunal and asked that the claim be struck out due to persistent failure to comply with orders. A further application in similar terms was made on 5 February 2018. On 7 February 2018, an Unless Order was made by Employment Judge Jenkins requiring the claimant to comply with the case management order issued on 25 July 2017 to exchange statements otherwise his claim will stand as dismissed.
25. It is not clear whether Mr Norgate provided a copy of his witness statement in accordance with the order made by Employment Judge Jenkins. However, the claimant did provide the short statement referred to earlier. That statement reads as follows:

*"I was forced into an office job, I couldn't do due to my dyslexia, epilepsy and I have a cyst on the brain, which affects my physical ability to be able to sit at a desk, because I am unable to stay still and concentrated. Also, I cannot look at a computer screen for too long, as they wanted me to write notes and look at maps for drivers. They refused to buy me a computer screen to suit my disability, and no training was provided for me.*

*My wages were paid into my account, and then the following week, they deducted the amount that I was paid for my wages. Also, I never received three days' worth of wages. I never received any sick pay, I always had to use my holiday, I also gave in certificates from the doctor but never got sick pay.*

*I was not allowed to do any overtime over the Christmas period, but they gave agency workers plenty of hours, I was told there was no night work available, but there was and those shifts were given to agency workers as well, I was also not allowed to work on a Saturday. I was only given one day's notice for a disciplinary hearing, I also put in for appeal against his decision to summarily dismiss me and that took six weeks.*

*I have evidence to back this statement up in court.*

*The documents I was sent, there were some pages missing in my bundle and I was unaware that I had to provide a witness statement.”*

26. It can be seen from the claimant's statement that only the first two paragraphs are directly relevant to the issues to be decided in this case.
27. In the second paragraph, the claimant deals with the deduction made from his wages which has been dealt with above. In the first paragraph, the claimant refers to dyslexia and epilepsy and having a cyst on his brain. However, the claimant has failed to comply with the requirements of the order made on 21 June to set out the impairment relied on, the precise nature and extent of the effects the impairment has had or had on the ability to carry out normal day to day activities, the periods over which those effects lasted, and whether or not there has been treatment for the impairment and what difference, if any, such treatment has had on the effects of the impairment.
28. The conclusion of the Tribunal therefore is that in respect of the claimant's claim about a failure to make reasonable adjustments arising from dyslexia, the claimant has failed to adduce evidence from which the Tribunal could conclude that the claimant was suffering from dyslexia. Further, the claimant has failed to produce evidence from which the Tribunal is entitled to conclude that the claimant's dyslexia was a disability within the meaning of section 6 of the Equality Act 2010. The evidence that the claimant has adduced of dyslexia is a simple assertion that he suffers from dyslexia.
29. Turning then to the claimant's claim about the failure to make reasonable adjustments based on a complaint arising from his epilepsy which the respondent accepts is a disability for the purposes of section 6 of the Equality Act 2010. The relevant provision, criterion or practice in relation to the claimant's epilepsy is using a scanner and computer.
30. The claimant's witness statement makes no reference at all to the scanner. During his oral evidence, the claimant explained that as part of the duties that he performed as a warehouseman, he was required to use a scanner. In respect to using a scanner, what the claimant said was that scanning was *“sometimes a problem and sometimes not a problem to me”*. The claimant was cross-examined about the extent to which scanning caused him difficulties. In one part of his evidence, the claimant appeared to say that scanning caused him no difficulties whatsoever. The claimant was cross-examined about the comments he made during his disciplinary hearing with Mr Tony Parry and he accepted that in the course of that disciplinary hearing, he made no mention of problems with the scanner. The claimant was asked about his appeal letter which appears at page 149. It was pointed out to the claimant that although there is reference made to the claimant's epilepsy and dyslexia, this was the first mention made of 'flashing scanner guns' which he found disturbing and stressful. This is not something which the claimant repeated during his evidence. When asked about this appeal letter during his evidence, what the claimant said was *“sometimes scanner guns did affect me, sometimes they didn't. Some days it would affect me, sometimes it wouldn't”*.

31. What the claimant has not done in the evidence which has been given in this case, either in the evidence in chief or alternatively in the evidence that was elicited from him during questioning from Counsel for the respondent, is set out the substantial disadvantage that he suffered as a result of the provision, criterion or practice of having to use a scanner.
32. The claimant appears to assert that the use of the scanner results in him suffering from epilepsy. However, the evidence that the Tribunal has heard does not appear to support that conclusion. In addition we note that there is no other independent evidence which has been given which supports such a conclusion.
33. On the evidence that we have heard, the Tribunal has not been able to understand how the use of the scanner is something which causes the claimant to have a substantial disadvantage in comparison with somebody who is not disabled.
34. The claimant's evidence in respect of the use of the computer appears to be that the extended use of the computer results in causing him difficulties in respect of his epilepsy and that leads to an increased risk of him suffering an epileptic fit. Again, this is an assertion which is made by the claimant. The claimant accepts that in order to resolve this issue, a screen visor would be required as a possible adjustment. The evidence that has been presented to the Tribunal indicates that it was not until 1 December 2016 that the claimant indicated that an adjustment was required in relation to his use of the computer and this appears to arise from a suggestion which was made by the general manager from another depot, Mr Tony Parry, during the course of the claimant's disciplinary hearing.
35. The claimant complains that in the period following his disciplinary hearing the respondent failed to provide him with a screen visor for use on his computer. For part of this period the claimant was suspended pending training being provided to the claimant. The claimant was suspended for a second time on 22 December 2016 before his eventual dismissal on 10 January 2017.
36. There is no evidence that in the period between the disciplinary hearing on 1 December 2016 and the date of suspension on 22 September 2016 that the claimant was required to perform work which involved extensive use of a computer screen. In any event, it was indicated by the claimant that his difficulties arose in circumstances where he was required to use the computer screen extensively and in order to manage this situation, a way around the problems would be to provide him with regular breaks. The claimant has not asserted that he was denied regular breaks or prevented from taking regular breaks.
37. The claimant has failed to explain in the course of his evidence how, in the relevant time, the claimant suffered a substantial disadvantage as a result of the use of the computer screen.
38. The conclusion of the Tribunal is that the claimant has not adduced evidence from which we could conclude that there was a substantial disadvantage to the claimant as a result of using the computer which

arose from his epilepsy. The conclusion of the Tribunal is therefore that the claimant's complaints in relation to a failure to make reasonable adjustments are not well founded and are dismissed.

- 39. The Tribunal however wish to make some observations about this case.
- 40. The Tribunal heard evidence from the respondent's witnesses about their dealings with the claimant. This dealt with the history of the claimant's employment. What the evidence appeared to demonstrate to the Tribunal is an employer who took its responsibilities as an employer of somebody with a disability seriously. It is noted that following the claimant's epileptic fit at work, the respondent referred the claimant to occupational health.
- 41. The respondent acted upon the advice which was given by occupational health. The respondent acted upon advice and limitations suggested by the claimant's doctor in relation to the hours that the claimant worked and in relation to the shifts that the claimant worked. There was evidence of a number of meetings at which there were enquiries made by the respondent's managers of the claimant as to what the respondent could do in order to assist and facilitate his being able to work in a safe and efficient manner.
- 42. There are regrettably numerous instances of the claimant displaying insubordinate and offensive behaviour towards work colleagues and managers. Notwithstanding the claimant's attitude, the respondent's managers continued to discharge their duties towards him diligently and fairly. We note many of these meetings were noted and a record made. The claimant has not disputed the content of these extensive notes which were made by the respondent's employees in respect of their dealings with the claimant.
- 43. The conclusion of the Tribunal is that the claimant's claim of an unlawful deduction from wages is not well founded; the claimant's complaint that the respondent was in breach of its duty to make reasonable adjustments is not well founded; the claimant's complaint about breach of contract in relation to notice pay is dismissed upon withdrawal.

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Employment Judge Gumbiti-Zimuto

Date: 19 March 2018

Reasons sent to the parties on

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For the Tribunal office