



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs J Meech

v

H M Revenue & Customs

PRELIMINARY HEARING

Heard at: Watford

On: 17 April 2018

Before: Employment Judge Wyeth

Appearances:

For the Claimant: In person (assisted by Mr Mayles of PCSU)

For the Respondent: Mr C Milsom, counsel

PRELIMINARY HEARING JUDGMENT

1. The rule 21 Judgment of EJ Smail dated 12 March 2018 is revoked.
2. The respondent is permitted to file the ET3 and Grounds of Response (provided in draft with its application of 22 March 2018) by no later than 24 April 2018.

CASE MANAGEMENT SUMMARY

Listing the hearing

1. After all the matters set out below had been discussed, we agreed that the hearing in this claim would be completed within four days **including remedy if appropriate**. It has been listed at Watford Employment Tribunal, Radius House, 51 Clarendon Road, Watford WD17 1HP to start at 10am or so soon thereafter as possible on **19 November 2018 to 22 November 2018**. The parties are to attend by 9.30 am. The hearing may go short, but this allocation is based on the claimant's intention to give evidence and call one further witness and the respondent's to call three witnesses. The time will be used as follows:-

- 1.1 Half a day for tribunal reading time;

- 1.2 Maximum 1.5 days for oral and other evidence on liability;
- 1.3 A maximum total of two hours (half each) for submissions on liability;
- 1.4 Approximately half a day for the tribunal to determine the issues which it has to decide and reach its conclusions;
- 1.5 Two hours for the tribunal to give judgment, with reasons if possible;
- 1.6 One day 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.

The complaint(s)

2. By a claim form presented on 6 November 2017, the claimant brought a complaint of discrimination arising from disability (s15 Equality Act 2010) or failure to make reasonable adjustments (s20-22 of the Equality Act 2010) in the alternative. The respondent defended the claims. After some discussion the claimant accepted that her claim on the facts was one of discrimination arising from disability rather than a claim for failure to make reasonable adjustments and that it was better framed in accordance with s15. Nevertheless, I have allowed the claimant the opportunity to seek further advice as to whether she wishes to proceed with the 'reasonable adjustments' complaint as an alternative to the section 15 complaint but only on the same factual basis identified in the s15 issues below. I have also allowed the respondent to clarify, if it wishes to do so, the basis upon which it says any steps taken in relation to the alleged s15 complaint were a proportionate means of achieving a legitimate aim.

The issues

I now record that the issues between the parties which will fall to be determined by the tribunal are as follows:

3. Disability

- 3.1 It is accepted by the respondent that the claimant is a disabled person for the purposes of the Equality Act 2010 because of her impairments of bronchiectasis, arthritis and cervical spondylosis.
- 3.2 The respondent is to indicate whether it accepts that each of those three separate impairments amount to a disability individually for these purposes or clarify the alternative basis for the concession (see Orders below).

4. Section 15: Discrimination arising from disability

- 4.1 The allegation of unfavourable treatment as "something arising in consequence of the claimant's disability" falling within section 39 Equality Act is:

4.1.1 The claimant being at greater risk of absence monitoring following sick absence because the respondent:

4.1.1.1. has only extended her sickness trigger point to 16 days in a rolling year; and/or

4.1.1.2. has refused to adopt a flexible approach to any trigger factor;

4.1.2 The claimant being given a warning for her absence record on 31 January 2017.

No comparator is needed.

4.2 Does the claimant prove that the respondent treated the claimant as set out in paragraph 4.1 above?

It is accepted by the respondent that the claimant was issued with a warning for absence on 31 January 2017 and that the respondent has offered to increase the trigger point to 16 days of absence.

4.3 Did the respondent treat the claimant as aforesaid because of the “something arising” in consequence of the disability?

4.4 Does the respondent show that the treatment was a proportionate means of achieving a legitimate aim? The respondent relies on the following:

4.4.1 As to the business aim or need sought to be achieved: ensuring reliable attendance at work and operational effectiveness.

4.4.2 As to the reasonable necessity for the treatment: ensuring reliable attendance at work and operational effectiveness.

4.4.3 As to proportionality: applying the approach adopted was the most effective and least intrusive method of achieving the legitimate aims.

5. Time/limitation issues

5.1 The claim form was presented on 6 November 2017. The claimant commenced ACAS EC on 15 August 2017 and a certificate was issued on 1 September 2017. Accordingly and bearing in mind the effects of ACAS early conciliation, any act or omission which took place before 21 July 2017 is potentially out of time, so that the tribunal may not have jurisdiction.

5.2 Does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

5.3 Was any complaint presented within such other period as the employment tribunal considers just and equitable?

6. Remedies

6.1 If the claimant succeeds, in whole or part, the tribunal will be concerned with issues of remedy.

- 6.2 There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings and injury to feelings and/or the award of interest.

Judicial mediation

7. I raised the possibility of this case being considered for an offer of judicial mediation. I explained how the process operates and provided a note giving a full explanation of the judicial mediation scheme. I emphasised that this was just an enquiry as to whether the parties would be interested in the Regional Employment Judge considering whether the case would be suitable for an offer of judicial mediation.
8. The claimant expressed interest in this matter being dealt with by way of judicial mediation. If that view changes, the tribunal is to be notified within seven days of this preliminary hearing. The respondent wished to consider the possibility of judicial mediation and will let the tribunal know within seven days of this preliminary hearing if it is interested in participation.
9. Both parties will receive further notification from or on behalf of the Regional Employment Judge.

Other matters

10. I made the following case management orders by consent.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Amended response/Further information
- 1.1 The respondent is ordered to file and serve its response in identical form to that of the draft accompanying its application of 22 March 2018 so as to arrive with the tribunal and the claimant on or before **24 April 2018**.
- 1.2 The respondent is ordered to indicate to the claimant and the tribunal whether it accepts that each of the claimant's three separate impairments referred to above amount to a disability in accordance with the definition in the Equality Act 2010 or clarify the alternative basis for the concession on or before **1 May 2018**.
- 1.3 On or before **1 May 2018** the respondent is to clarify if it wishes to do so, the basis upon which it advances a defence of a proportionate means of achieving a legitimate aim in response to the alleged s15 complaint.
- 1.4 The claimant is to indicate on or before **1 May 2018** whether she intends to proceed with a claim for failure to make reasonable adjustments in the alternative to her section 15 complaint. If so, the claimant is to identify the

PCP relied upon and the proposed or suggested adjustments she alleges should have been made. When considering the appropriateness of this, the claimant will want to consider the guidance contained in Griffiths v Secretary of State for Work and Pensions [2017] ICR 160 and General Dynamics Information Technology Ltd v Carranza [2015] ICR 169.

2. Disclosure of documents

- 2.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **19 June 2018**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
- 2.2 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.
- 2.3 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. Statement of remedy/schedule of loss

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

4. Bundle of documents

- 4.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 4.2 To this end, the claimant is ordered to notify the respondent on or before **3 July 2018** of the documents to be included in the bundle at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing.
- 4.3 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **17 July 2018**.
- 4.4 The respondent is ordered to bring sufficient copies (at least five) to the tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

5. **Witness statements**

- 5.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 5.2 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.
- 5.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 5.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 5.5 It is ordered that witness statements are exchanged so as to arrive on or before **22 October 2018**.

6. **Other matters**

- 6.1 The respondent is ordered to prepare a cast list, for use at the hearing. It must list, in alphabetical order of surname, the full name and job title of all the people from whom or about whom the tribunal is likely to hear.
- 6.2 The respondent is ordered to prepare a short, neutral chronology for use at the hearing.
- 6.3 These documents should be agreed if possible.

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 Wyeth

Date: 25 April 2018

Sent to the parties on:

For the Tribunal:

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