



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Clarke

**Respondent:** Greater Manchester Mental Health NHS Foundation Trust

## JUDGMENT

The claimant's application dated 23 February 2018 for reconsideration of the deposit order sent to the parties on 12 February 2018 is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked.

1. At a hearing on 5 February 2018 I made deposit orders providing for the claimant to pay sums of £250 in respect of each of two claims. One was in respect of unfair dismissal and the other in respect of discrimination arising from disability.

2. The claimant applied for reconsideration on 23 February 2018 and it has been agreed that the application will be dealt with without a hearing. I have received written representations from both parties.

3. Having received those written representations I invited each party to make any further submissions they deemed appropriate following the judgment of the Court of Appeal in **City of York Council v P J Grosset [2018] EWCA Civ 1105** in which section 15 of the Equality Act 2010 was considered.

4. At paragraph 36 quoting from the judgment of Lord Justice Sales:

"36. On its proper construction section 15(1)(a) requires an investigation of two distinct causative issues:

(i) Did A treat B unfavourably because of an (identified) 'something'? and

(ii) Did that 'something' arise in consequence of B's disability?

37. The first issue involves an examination of A's state of mind, to establish whether the unfavourable treatment which is an issue

occurred by reason of A's attitude to the relevant 'something'. In this case it is clear that the respondent dismissed the claimant because he showed the film. That is the relevant 'something' for the purposes of analysis. This is to be contrasted with a case like *Charlesworth v Dransfields Engineering Services Limited EAT* in which the reason the claimant was dismissed was redundancy, so that no liability arose under section 15 of the Equality Act even though the redundancy of the claimant's job happened to be brought into focus by the ability of the defendant employer to carry on its business in periods when he was absent from work due to a disability. In that case therefore, the relevant 'something' relied upon by the claimant was the claimant's absence from work due to sickness, but he was not dismissed because of that but because his post was redundant.

38. The second issue is an objective matter, whether there is a causal link between B's disability and the relevant 'something'. In this case, on the findings of the ET there was such a causal link. The claimant showed the film as a result of the exceptionally high stress he was subject to, which arose from the effect of his disability when new and increased demands were made of him at work in the autumn term of 2013.

13. In my view, contrary to Mr Bowers' argument, it is not possible to spell out of section 15(1)(a) a further requirement that A must be shown to have been aware when choosing to subject B to the unfavourable treatment in question that the relevant 'something' arose in consequence of B's disability (i.e. that A should himself be aware of the objective causation referred to in issue (ii) above)."

5. In this case the "something" was the claimant accessing the confidential medical records of BE, a patient of the Trust. The respondent therefore treated the claimant unfavourably because of this "something" but did it arise in consequence of the claimant's disability?

6. I was not satisfied when I heard the application for the deposit order that the claimant had shown any causative connection between his disability and the "something".

7. In support of the application for reconsideration the claimant has produced a letter from his General Practitioner, Dr K P Patel, dated 25 May 2018. Dr Patel has known the claimant for over 20 years and confirms that he has suffered from generalized anxiety disorder throughout that time following a formal diagnosis in 1996.

8. Dr Patel writes that:

"Unfortunately during one of these crises where he became anxious about the health of a family friend, he accessed their records to ensure himself of their wellbeing. This has led to disciplinary procedures which he is contesting on the grounds that his generalised anxiety disorder contributed to him to do something he knows was inappropriate. Given his medical condition I feel that this is an entirely plausible explanation for his actions."

9. Having read this letter the respondent submits that:

“The attached evidence from the claimant’s longstanding no doubt sympathetic GP lacks both the impartiality and specialist clinical expertise to be relied upon as evidence on this point. It is equally unclear how much of the opinion expressed is derived from the claimant’s own (and therefore necessarily biased) report of the circumstances which led to his dismissal; there is no critical analysis at all nor clarity as to what information has been provided to the GP in making the assessment...The respondent’s primary case...is that whatever the medical history of the claimant, and whatever the reason for his actions, the claimant admitted the conduct alleged. That admitted conduct is plainly characterised as gross misconduct for which dismissal would always be a sanction which was both proportionate and within the band of reasonable responses available to the respondent.”

10. Having reviewed the submissions received from both parties it seems to me that the claimant has still not provide any substantial evidence of a link between the “something” and it having arisen in consequence of his disability.

11. The position with regard to the unfair dismissal claim does not appear to me to be any different from how matters were put before me at the hearing on 5 February 2018.

12. In these circumstances the two bases upon which the deposits were ordered still seem to me to apply and for this reason I confirm the deposit orders.

13. The **payment** of the deposits is now extended to **12 October 2018**.

Employment Judge Sherratt

27 September 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

28 September 2018

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FOR THE TRIBUNAL OFFICE