



EMPLOYMENT TRIBUNALS

Claimant: Mr L Grubb
Respondent: City Electrical Factors Ltd & Others

Heard at: Bristol **On:** 7 June 2017
Before: Employment Judge Mulvaney

Representation
Claimant: Ms J Moreno, Solicitor
Respondent: Mr F Currie, Counsel

JUDGMENT

The Judge was not satisfied that the claimant was at the material times a person with a disability as defined under the Equality Act 2010 and the claim of disability discrimination is dismissed.

Judgment having been given orally at the hearing on the 7 June 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2-13, the following reasons are provided:

REASONS

1. This preliminary hearing was listed to determine two issues. Firstly whether the claimant was a disabled person as defined by the Equality Act 2010 at the material times and secondly whether the respondent knew or ought reasonably to have known that the claimant was so disabled. The condition relied on by the claimant as amounting to a disability was dyslexia.

2. I heard evidence from the claimant, from his father, Mr Ellis Grubb and from his partner, Ms M Walters. I also heard evidence from Mr Tilling who is Group Manager for the respondent.
3. The claimant had been directed by Employment Judge Pirani on the 9 March 2017 to provide copies of any medical notes, reports or other evidence in his possession on which he relied for the purposes of establishing that he was dyslexic at the material times together with a statement setting out the effect of the condition on his ability to carry out day to day activities. These were to be provided by the 23 March 2017.
4. At a Preliminary Hearing before Employment Judge Roper on the 30 March 2017, a further direction for the information set out above was given, the previous direction not having been complied with. The information was to be provided by the 5 May 2017. On the 5 May 2017, the claimant emailed to the respondent a statement detailing the effect of his condition on his ability to carry out day to day activities and a self-completed Adult Checklist for dyslexic adults. No independent medical evidence was provided confirming a diagnosis of dyslexia.
5. On the basis of the information provided, and in the absence of any independent medical evidence, the respondent informed the claimant that it did not concede that he had a disability.
6. On the 26 May 2017 the claimant's representatives, who had been representing the claimant throughout, wrote to the Tribunal seeking a postponement of the hearing listed for today, 7 June 2017, to enable an independent dyslexia assessment to be carried out. Employment Judge Harper who considered that application refused it on the basis that the claimant had had sufficient time to provide the information as directed.
7. That application was not renewed today and no independent medical evidence was provided to the Tribunal to confirm that the claimant had dyslexia. I considered the oral and written evidence provided by the claimant as to his condition but indicated at the outset that without any independent medical report, he would face some difficulty in establishing a mental impairment amounting to a disability.
8. I made the following findings of fact in relation to the question of disability which I dealt with first:
9. The claimant's evidence was that as an infant prior to adoption he suffered from developmental delay due to neglect by his birth parent. Mr Grubb snr., the claimant's adopted father, gave evidence that the claimant was approximately two years behind his peers in his development when he was adopted as an infant but by the age of 7 or 8 he had caught up with his peers. Mr Grubb snr. said that the claimant had behavioural issues and speech difficulties as a child and had had a speech therapist. The claimant's speech at the Tribunal hearing was still hesitant on occasion particularly when he was under pressure but it appeared that he had overcome that difficulty to a significant extent.

10. The claimant's evidence was that he suffered from dyslexia in addition to the other difficulties that he had as a child. However it appeared that no formal diagnosis had been made or provided to the claimant or to his parents either as a child or as an adult. The claimant had tried to obtain evidence relating to his dyslexia from his primary and secondary schools, asking for details of any assessment carried out during his school years. Due to the length of time since the claimant had left school (the claimant now being 35 years of age) records were no longer in existence.
11. The claimant's evidence was that at primary and secondary school he was provided with a learning support assistant for key subjects and extra time during exams as a result of an assessment that was carried out. The claimant was unclear whether a formal diagnosis of dyslexia had ever been made but he and his father believed that he had learning difficulties and that dyslexia was the correct term to be applied to those difficulties. Mr Grubb snr. had been diagnosed with the condition at some stage and he believed that the difficulties that the claimant experienced were similar to his own.
12. Ms Walters, who was a teacher with experience of children with learning difficulties, gave evidence that the claimant would not have been provided with a learning support assistant and assistance with exams unless he had been assessed as having special educational needs at the time. I accepted that that evidence was likely to be correct. However I had no independent evidence that those needs derived from a condition that would necessarily persist into adulthood.
13. The claimant gave evidence as to the impact of his condition on his ability to carry out day-to-day activities. He said that his condition impacted on his ability to read, write and work with numbers. He had completed a self-assessment for dyslexic adults on a dyslexia website in preparation for this hearing and his assessment scores indicated a diagnosis of moderate to severe dyslexia.
14. The claimant's evidence was that he has difficulty with reading words and numbers and recalling them in the correct formation. He has to check and recheck to ensure that he does not make mistakes. He can jumble words and numbers or use the wrong words. He has problems remembering his PIN number as well as larger numbers and has had to have a new bank card provided on several occasions. He struggles with writing and with spelling and will write out letters and texts on paper before typing them up. He has difficulty concentrating and does not undertake household tasks, budgeting or calculating bills and payments leaving it to his partner.
15. Ms Walter's evidence was that the claimant did have difficulty with everyday tasks such as writing emails or reading letters and that these tasks became more difficult when he was under pressure.
16. There was evidence in the bundle that the claimant made errors at work and that he could be slow to pick up new information. Minutes of an investigation meeting recorded that the claimant's line manager had said that he had guessed that the claimant might be dyslexic. The claimant said his colleagues would refer to the "Leo Grubb remix" when he got words out of order. There was no evidence, however, that the claimant's performance

had been an issue throughout his time with the respondent. The claimant had not been subject to any performance or capability procedures prior to 2016.

Conclusions

17. I accepted on the evidence that the claimant experienced some difficulty with number recollection, assimilation of information and with reading and writing. I had to decide on the basis of that evidence whether those difficulties amounted to a disability.
18. The statutory framework for determination of whether a person is a disabled person in the employment law context is contained in s6 Equality Act 2010. It provides that:

'A person (P) has a disability if:

'they have a physical or mental impairment, and

the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.'
19. The burden is on the claimant to establish that he has a disability. The claimant's case is that he has dyslexia and if not dyslexia then an unspecified learning disability.
20. There was no independent medical report provided by the claimant giving a diagnosis of the claimant's condition. The absence of a medical report defining the impairment caused me some difficulty. As an Employment Judge I do not have the specialist qualifications that would enable me to classify or identify an impairment. It appears likely on the evidence that the claimant has had a learning difficulty based on his evidence as to the assistance provided to him during his school years. I concluded that it was probable that an assessment was carried out during his school years which identified a special educational need.
21. I cannot determine however, without a medical report, what the nature of that learning difficulty was or is. It might be dyslexia but I cannot say with any confidence that that is what it is or indeed that whatever need was identified during the claimant's school years still exists. I am in no better position than the claimant's line manager who guessed that the claimant might be dyslexic.
22. I accept that a learning difficulty identified in a child might well last into adulthood but again without the assistance of a medical specialist I cannot determine whether that is the case here. I was not able to rely on the claimant's dyslexia self-assessment completed online in preparation for these proceedings. I concluded that this could not represent an objective and independent assessment.
23. I considered the question as to whether the claimant's condition had a substantial impact on the claimant's ability to carry out day-to-day activities

at the material times. Employment Tribunals are enjoined to focus on the effects of impairments relied on and not their cause (A6, Guidance on Definition of Disability) and I considered whether without a medical report defining the claimant's difficulty, the impact was such that it would be possible to conclude that even without an identifying label the claimant had an impairment that amounted to a disability.

24. It was contended on the claimant's behalf that the impact of the claimant's condition on him was substantial, being more than minor or trivial as defined in s212(1) Equality Act 2010. The Guidance referred to above states that the requirement that the effect must be substantial reflects a general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people. The respondent contended that the claimant's description of the impact on him was nothing out of the ordinary. The issues that the claimant identified; for example remembering number sequences, transposing words, difficulty with financial matters, are things that a substantial proportion of the population also experiences on a day-to-day basis.
25. The Guidance Appendix in a non-exhaustive list of factors that it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities includes '*persistent and significant difficulty in reading or understanding written material where this is in a person's native written language for example, because of a mental impairment or learning disability*'. The difficulties described by the claimant did not fit with this description. I concluded that he was able to read and understand without significant difficulty, but sometimes transposed words and did not assimilate information easily. I concluded that the claimant did not have a persistent and significant difficulty in reading or understanding language or written material. He coped well with cross examination at the hearing and was able to access and read documents in the hearing bundle without apparent difficulty. I was not satisfied on the evidence that the effect of any impairment on the claimant was substantial.
26. Within any group of people there will be a range of abilities in dealing with any particular task. Not every individual who has difficulty recalling numbers; following a verbal instruction; or easily comprehending written material will have an impairment amounting to a disability. I concluded that the claimant's difficulties as described by him in his oral evidence and in his statement did not meet the test set out in Section 6. I found the difficulties experienced by the claimant to be no more than might be experienced by a significant proportion of others in the population. They are minor issues which do not impact substantially on his ability to carry out day-to-day activities.
27. Although there was evidence of some performance issues at work, errors made in recording information, quotation and booking errors, for example, on the evidence that I heard and without the benefit of a medical report identifying an impairment or its effects I was not able to conclude that this was evidence of a substantial impairment.
28. It is likely that a medical report would have assisted not only with identifying whether there was a specific impairment but also, if so, the severity of that

impairment. A learning difficulty is one which may range from the minor to the moderate through to the severe.

29. Without a medical report specifying the claimant's condition I have considered whether the claimant's ability to carry out day-to-day activities is substantially effected such that I could assume there is such a mental impairment. I concluded that the evidence did not support that assumption. This is not a case where the impact on the claimant is clear and obvious and I have concluded that he has not proved either a specific impairment or a substantial adverse impact and so I am unable to find that the claimant has a disability as defined in Section 6 Equality Act 2010. The claimant cannot pursue his complaint of disability discrimination and that part of the claimant's claim is dismissed.
30. In the light of that finding there was no need for me to go on to consider whether the respondent had knowledge of the disability.

Employment Judge Mulvaney

Date 30 June 2017