



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr P Nicholas

v

Capita (Regional Enterprise)

PRELIMINARY HEARING

Heard at: Watford

On: 17 December 2019

Before: Employment Judge Bedeau

Appearances:

For the Claimant: Mr N Toms, Counsel

For the Respondents: Mr D Maxwell, Counsel

RESERVED JUDGMENT

1. At all material times the claimant was a disabled person suffering from a mental impairment.
2. The claimant's application to amend his claim form by adding further factual allegations to his failure to make a reasonable adjustment claim and by adding the new claim of discrimination arising in consequence of disability, is refused.
3. The case is listed for a further preliminary hearing on **3 June 2020**, for **one day**, before me or any other judge, to hear and determine the respondent's application to strike out and/or a deposit order, in respect of the failure to make reasonable adjustments claim.
4. The case is listed for a final hearing over **three days** from **Wednesday 11 to Friday 13 November 2020**, before a full tribunal if the respondent is unsuccessful at the preliminary hearing on 3 June 2020.

REASONS

Background

1. By a claim form presented to the tribunal on 8 January 2018, the claimant claims failure to make reasonable adjustments. He asserted that his disability, was at all material times, obsessive compulsive disorder and the respondent did not make reasonable adjustments.
2. In the response presented to the tribunal on 13 March 2018, it is averred that the claimant resigned on 29 September 2017, with his last day of employment being on 6 October 2017. It was not aware that he had a disability and denies the claim.
3. In a further claim form presented to the tribunal on 3 February 2018, the claimant alleges further failures to make reasonable adjustments as well as discrimination arising in consequence of disability. In the response presented to the tribunal on 23 March 2018, the claims are denied.
4. The respondent applied for both claims to be consolidated.
5. Both cases were listed for a preliminary hearing, in private, on 12 July 2018, before Employment Judge Manley, who set the case down for a preliminary hearing, in public, on 12 February 2019, for an Employment Judge to hear and determine: whether the second claim was presented in time and whether it would be just and equitable to extend time; if any applications to amend the claim were made, whether they should be granted; was the claimant a disabled person at the material time between 21 August 2017 and 6 October 2017; do any of the claims have no reasonable prospect of success and should be struck out; and do any of the allegations or arguments have little reasonable prospect of success and deposits ordered?
6. On 23 August 2018, the claimant's current solicitors applied to the tribunal, on notice to the respondent, to amend the claim by adding further factual allegations of failure to make reasonable adjustments and a new claim of discrimination arising from the consequence of disability.
7. At the hearing on 12 February 2019, before Employment Judge Henry, it was considered that medical evidence on the claimant's disability should be obtained and served prior to determining the preliminary issues. Consequently, the hearing was adjourned to 26 July 2019. At that hearing both counsel in this instant hearing, were present. According to Mr Maxwell, counsel on behalf of the respondent, Mr Toms, counsel on behalf of the claimant, withdrew the second claim and the Judge acknowledged the withdrawal but there had been no order dismissing those proceedings.
8. Mr Toms do not recall applying to withdraw the second claim but acknowledged that in subsequent correspondence there are references to the withdrawal. He told me that the second claim was withdrawn as it amounted to an abuse of

process because both the further particulars of reasonable adjustments and the claim of discrimination arising in consequence of disability, should have been included in the first claim. He told me this is in line with the principle that all claims should be included in the initial claim form, and that was the reason why the second claim was withdrawn. I was also told that the reason why the second claim was withdrawn was that the claimant did not give instructions to his legal representatives at the time, Morris Legal (Solicitors) Ltd, to issue a second claim.

9. I must confess that I was not clear about the precise reason for withdrawing the second claim form. Be that as it may, no judgment was issued dismissing the claims in the second claim form.
10. The parties obtained a joint medical report from Dr Jonathan Ornstein, Consultant Psychiatrist, dated 18 April 2019, following the orders given by EJ Henry. In that report Dr Ornstein concluded that the primary mental impairment was Post-Traumatic Stress Disorder "PTSD". He also referred to several other mental impairments including Obsessive Compulsive Disorder which could be derived from symptoms of PTSD.
11. Following receipt of the report, the claimant's solicitors applied to the tribunal on 25 July 2019, to amend the claim by adding PTSD as a disability.
12. In response to the application the respondent's legal representatives opposed it as it had been made late in the proceedings, two years since the claimant worked for the respondent. In addition, the claimant stated that the respondent was unaware he was suffering from PTSD.
13. The preliminary hearing to determine the issues listed on 26 July 2019, did not take place because no judge was available.
14. At the hearing on 12 February 2019, EJ Henry also listed the case for a final hearing, over three days, from 17-19 December 2019. As the preliminary issues, including the application to amend, were not determined on 26 July 2019 as listed by EJ Henry, the tribunal wrote to the parties inviting them to consider whether or not the issues could be considered at the start of the final hearing and to add a further day to the hearing, that being 20 December 2019. Unfortunately, as it turned out, there was again no judicial time available to hear this now four-day case. The parties were directed by this judge to attend on the first day for me to hear and determine only the preliminary issues because I was not able to conduct the final hearing due to other judicial commitments.

The evidence

15. I heard evidence from the claimant. In addition, the parties adduced a joint bundle of documents comprising of 345 pages. References will be made to the documents as numbered in the joint bundle.

Findings of fact

16. The respondent is part of the Capita Group and is a joint venture, owned by Capita Group plc and the London Borough of Barnet, employing approximately 331 people across one site in Barnet, providing a range of regulatory services, including planning and building control, highways operations, and environmental health and regeneration.
17. The claimant commenced employment with the respondent on 21 August 2017, as a Building Control Officer. Prior to starting, he completed and returned a personal details form in which he stated when asked:

“The Equality Act 2010 defines a disability as ‘a physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities’, taking into account the definition above do you consider yourself to have a disability”.

18. He answered “No”. [124 of the joint bundle]
19. According to the terms and conditions of his employment, he was subject to a six months’ probationary period requiring either party to give one week’s notice of termination, and that

“Throughout the probationary period an ongoing assessment will be made of your work performance and if satisfactory you will be confirmed in post. The company may extend your probationary period or terminate your employment at any point during the probationary period. This does not prejudice the company’s right to dismiss in accordance with the notice provisions during the probationary period, should this be necessary.” [113]

20. He was required to inspect commercial and domestic properties and was responsible for deciding on all aspects of dangerous structures. He ensured that unauthorised work was brought into compliance. He provided guidance to customers of the respondent and gave recommendations on building regulation queries.
21. He said in evidence that throughout his employment with the respondent, which was over a comparatively short period, he informed his managers that he was suffering from Obsessive Compulsive Disorder “OCD”, but no reasonable adjustments were made to take account of this disability. On the other hand, the respondent contends that the claimant’s attendance and performance were cause for concern and a probationary review meeting was held on 28 September 2017 but before an outcome was considered, the claimant resigned the following day.
22. Mr Toms withdrew the application to add PTSD as a disability, acknowledging that the respondent was unaware of that diagnosis at any time during the claimant’s employment. He, nevertheless, asked that the symptoms of PTSD be considered as part of the symptoms of OCD.
23. In a report dated 3 October 2014 prepared by Dr Keerthiga Yohanathan, Consultant Psychiatrist, on behalf of Barnet, Enfield and Haringey Mental Health

Trust, the doctor noted that the claimant was born on 2 December 1956 and had been diagnosed with diabetes in 1988. He had been on insulin therapy for the previous 10 years. It was also noted that he experienced panic attacks when in queues and in traffic which would happen two or three times a month. It was further noted:

“Mr Nicholas went on to mention that he has an obsession with washing glasses numerous times before drinking out of it and he cleans the house excessively.”

24. Dr Yohananthan diagnosed the claimant as suffering from moderate depression with health anxiety. The plan was to put him on Citalopram and Fluoxetine 20mg and to refer him to the Complex Care Team. [272-274]
25. In an earlier health report dated 8 May 1998, it was noted by Dr M Devine, Consultant Psychiatrist, that on 6 September 1997, the claimant was involved in a fatal car accident. A pedestrian stepped out in front of his car and ended up, head-first, through his windscreen, landing on the floor of the car. He died instantly. The report dealt with the effects this incident had on the claimant. He was diagnosed at the time as suffering from PTSD, anxiety, panic attacks, insomnia, nightmares and flashbacks since the accident. He had become irritable and no longer worked as a driving instructor which was his job at the time of the accident. [243-245]
26. On 11 September 2017, in the summary of a meeting the claimant attended, Ms Jessica Ferrie, Building Control, Technical Manager, recorded the following:

“The first issue he informed me of was his issue with not being allocated with a desk and referred to his previous role that he had his own desk. He was unhappy that his “pieces of paper with notes on” were being moved when he was not in the office. He then explained that he had OCD and did not like the wires being all over the table. I explained to him about the hot-desk/clear-desk policy that is upheld within the office and that all paperwork should be put in his locker at the end of the day.” [134]
27. In an email by the claimant dated 15 September 2017, sent to Ms Paula O’Dumody, Business Manager-Development and Regulatory Services, he complained that it was unreasonable to expect him to arrange representation at a meeting at short notice. In relation to his alleged unauthorised absence, when he did not return from a medical appointment, he stated that he had attempted to contact Mr Jaffer Merghani, Principal Surveyor, and his line manager, to say that he would not be returning to work from his hospital appointment. He then wrote:

“I have produced it at our last meeting but was not expecting this line of questioning. I believe the meeting was to discuss my IT and OCD needs. You have no facilities for people like me and do not care. I have contacted a disability lawyer and I have a meeting with him next week. The Council has a duty to make reasonable adjustments for people with conditions like mine.” [150]
28. The respondent say that this was the first time it was informed by the claimant that OCD was his disability.
29. In an email dated 22 September 2017, sent by the claimant to Mr Alan Parfitt, Operations Director, the claimant wrote:

“Dear Mr Parfitt,

I would like to inform you of my experience of working for RE. I started my employment on 21 August of this year. I have OCD but it is not generally considered to be a disability as such. After a few days I was finding it very difficult to cope with “hot desking”. Dealing with the mess of wiring and trying to find a desk was causing me great stress. I mentioned my OCD to my line manager and his response was “what is that”. I was amazed at his ignorance. I then mentioned it to someone called Jess and she insisted that there was no way that I would be allocated my own desk. I know that the council has a duty to make reasonable adjustments in cases such as mine. I was looked upon as someone from another planet. I then decided to escalate my complaint to Fiona Webb. She advised me she would help by providing me with some in/out trays and would look into the possibility of my own work space. I would find my work and messages on the floor the next morning due to another surveyor using my desk. I have worked from my home office for the last five years and was finding it hard to adjust. Fiona Webb misled me as to the nature of a meeting with Jaffer my line manager and someone called Paula. The meeting got heated as I was accused of not informing my line manager of not returning to work after a hospital appointment had overrun.” [175-177]

30. In the minutes of the meeting held on 28 September 2017, entitled a “Probationary Review Meeting” at which the claimant was represented by Mr Mark Fletcher, Unison, the following is an account of the discussion. Reference to “JM” is to Mr Merghani, “PN” is to the claimant, and “POD”, is Ms Paula O’Dumody:

“JM Tuesday 12th did you come into work?

PN No. I told you I wasn’t coming back. I had a bereavement of a close family member. I spoke to Aisha and told her.

JM I don’t remember if you called the office or not.

PN I would not, come to the office without letting someone know. I spoke to Jessica and said I struggled with OCD. No-one asked if I had OCD.

POD It isn’t a normal question for us to ask, do you have OCD?

PN It was the straw that broke the camel’s back. I’m going to say this now even if you give me my office space I can’t work with this guy?

JM I’m here to hear what I have to.

PN Constructive dismissal. Why can’t you just give me a desk then it will be alright. Paul Stephens even said look at PN he has been here five minutes and is already making demands. It’s going to be really difficult because of bad feeling.

JM There’s no bad feeling.

PN I’ve come across a situation I’ve never experienced before. I asked for help and you never came back to me. No-one has bothered.

JM When were you diagnosed and by whom?

PN By a GP, 25 years ago.

JM What are the symptoms?

PN No symptoms. I don't like mess. Washing hands, cleaning, checking the door, I bring water because I can't use milk other people have used.

JM Are you disabled?

PN Yes, I suppose I am. Mark told me it was listed...." [199-200]

31. In a letter from Dr K Yohanathan, Connaught Surgery, dated 23 October 2017, he wrote:

"This is to inform you that the above-named patient stated he has difficulty working on a "hot desk" as it causes him anxiety given his background of OCD. He prefers to have his own desk to work on. He has been referred to get help with his mental health problems." [225]

32. In a further medical report dated December 2017, sent to the claimant, the author of which is unknown, but it is from Barnet, Enfield and Haringey Mental Health NHS Trust, it states:

"Dear Paul,

Following our meeting on 29 November, I am writing to you to outline the plan. You described how your OCD has become worse since the recent work dismissal and has scored 118 on the excessive compulsive inventory where a cut-off of 40 suggests OCD."

33. The author stated that the claimant would be referred to therapy for his OCD and would be placed on a waiting list. He had been advised to try the OCD group first and, if he still felt that he needed individual therapy, he could self-refer to the Improving Access to Psychological Therapies. [228]

34. Dr Ornstein, in his report had before him the claimant's medical records and met with the claimant on 18 April 2019. The doctor describes a complex, long, mental history in which the claimant suffered periods of PTSD, depression and anxiety. He also considered what the claimant wrote in a witness statement, undated, about his OCD, and noted that his OCD was only mentioned in one report. [Paragraph 125 Dr Ornstein's report]. Dr Ornstein wrote:

"126 He gives a good account of obsessive compulsive symptoms and this appears believable from his description.

127 In particular he has compulsive thoughts about not being safe and this leads to him having compulsive actions of regular checking. He also finds disordered environments extremely distressing.

128 There is a strong link between dramatic events and obsessive compulsive symptoms and so this gives further credence to this diagnosis."

35. In answering the question put to him by the parties of when the impairment began and its duration, Dr Ornstein stated that he had to take into account the context of the claimant's overall psychiatric history. PTSD appeared to have been present since 1997. From the available records the claimant had

experienced depression since 2013 but certainly there was evidence that it had pre-dated that date.

36. The doctor's opinion was that PTSD appeared to have been present since 1997, for some time. In relation to OCD, he wrote:

“135 I am reliant on his own recollection of OCD, as there is no clear record of this in his medical notes.

136 It is possible that this has not been as severe as he is stating but it is also, in my opinion, more likely that he has been suffering from these difficulties but has not described them to professionals.

137 He was unable to say when this started but it certainly pre-dates the events of 2017.

138 I am unable to give a clearer answer to this.

139 In terms of duration he described the symptoms as still present at the time of interview.”

37. In relation to the nature of the impairment and consequences, Dr Ornstein was clear about the claimant suffering from PTSD and depression. In relation to OCD he stated:

“144 OCD can be very mentally impairing in that it is exhausting to have regular compulsions running through a person's mind. These can be distracting and prevent a person from being able to focus and concentrate.

145 Anything that triggers the OCD will also lead to increased mental distress and anxiety, so further any impairment.

146 It is my opinion that he has been experiencing mental health difficulties since at least 1997. The level of severity and disfunction has fluctuated over this time. The notes do not fully document this but I find his explanation is reasonable. Nonetheless, there must be an element of doubt given the lack of corroborating information. On the balance of probabilities, I believe his description of events to be appropriate and believable.”

38. Dr Ornstein recommended psychological therapy to address PTSD, depression, anxiety and OCD. He further stated that the claimant can be seen to have chronic mental health problems which have never really properly been addressed. [319-343]

39. In the claimant's disability impact statement, he wrote in relation to his OCD, the following:

“6 My OCD at times feels like it can take over my life, for example, I walk in and out of my house 10-15 times every time I leave checking doors; windows; gas; electric and also ensuring I have the right keys etc.

7 My compulsive behaviour arises as a way of trying to reduce or prevent anxiety caused by the obsessive thoughts. I realise that such compulsive behaviour is irrational and makes no logical sense but I cannot stop acting on it and feel I have to

do it. People such as colleagues who witness this behaviour for the first time can feel threatened and uncomfortable by it.

- 8 As a result of my OCD, I have a habit of continually checking; ordering and arranging; asking for reassurance; repeating words in my head and avoiding places and situations that could trigger obsessive thoughts. I have never been dangerous or physically threatening, just simply anxious.
 - 9 My OCD makes me feel incredibly anxious especially when in new surroundings.
 - 10 I have difficulty socialising as a result of my OCD. I cannot go out with family and friends much and certainly cannot go out to eat or visit places that I am unfamiliar with because it immediately triggers my OCD. For example, I went to visit my sister recently which I thought I could do, however, I found myself becoming very anxious as I was not familiar with the area, to such extent that I have explained to my solicitor that I will not be able to attend his offices again because that's how bad it got. I also find being on a train when it stops in a tunnel very difficult. I have been known to have a panic attack on a train.
 - 11 In view of these difficulties, people find it difficult to be around me – I don't have many friends because of my obsessive thoughts and compulsions.
 - 12 In addition, obsessive thoughts make it difficult for me to concentrate, which can leave me feeling exhausted.
 - 13 I have always sought to manage my OCD privately.”
40. The claimant was not cross-examined on that statement. The respondent's position being that he has simply recounted symptoms of PTSD.
 41. After his resignation the claimant contacted his house insurers to see if he was covered for legal advice and expenses. They put him in contact with Lyons Davidson Solicitors and the person he spoke to agreed to take on his case. He gave an account of his experiences while working for the respondent, filled out a form that was returned to them. He was advised, in relation to his claim form, that time was of the essence. His contact with them was by emails and phone.
 42. In answer to a question I put to him, the claimant said that he was satisfied that he gave Lyons Davidson a full account of what occurred while he was working for the respondent and had sent all relevant documents to them. He thought that they were the experts in employment law and relied on their knowledge and experience. He said that they were not answering his calls or responding to him. Following advice he received, he decided to change solicitors.
 43. He contacted Mr Dean Morris, of Morris Legal Solicitors, whom he found online, who wrote down the details of his case and were later sent all relevant documents.
 44. I was satisfied that the claimant had given them a clear account of his experiences while working for the respondent and provided relevant documents. Accordingly, they presented the second claim on 27 March 2018.

45. The claimant's current legal representatives, Rahman Lowe Solicitors, met with him on 12 July 2018. It is clear that their amended further and better particulars include further acts of failure to make reasonable adjustments, as set out in paragraphs 24-27 inclusive. In addition, they acknowledge that the s.15 claim as set out in paragraphs 28-30, is a new claim.
46. During Mr Toms' submissions he invited me to stand the case down for a short while to enable him to contact his instructing solicitors to find out what was the reason for the delay in making the application to amend on 23 August 2018. I agreed and following his return he informed me that his instructing solicitors were first instructed on 11 July 2018, the day before the preliminary hearing. They did not at the time have all the claimant's papers. In any event, the application was made six months prior to the hearing listed on 12 February 2019.
47. Those are my material findings of fact.

The law

48. The Section 6 and Schedule 1 of the Equality Act 2010, "EqA." defines disability. Section 6 provides;
 - “(1) A person (P) has a disability if –
 - (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
 - (2) A reference to a disabled person is a reference to a person who has a disability.
 - (3) In relation to the protected characteristic of disability --
 - (a) a reference to a disabled person is a reference to a person who has a disability.
 - (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.”
49. Section 212(1) EqA defines substantial as “more than minor or trivial”. The effect of any medical treatment is discounted, schedule 1(5)(1).
50. There is no requirement that the mental impairment be clinically well recognised.
51. Under section 6(5) EqA, the Secretary of State has issued Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011), which an Employment Tribunal must take into account if “it thinks is relevant.”
52. The material time at which to assess the disability is at the time of the alleged discriminatory act, Cruickshank v VAW Motorcast Ltd [2002] IRLR 24

53. In Appendix 1 to the Equality and Human Rights Commission, Employment: Statutory Code of Practice, paragraph 8, with reference to “substantial adverse effect” states,

“A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.”

54. The time taken to perform an activity must be considered when deciding whether there is a substantial effect, Banaszczyk v Booker Ltd [2016] IRLR 273.

55. Appendix 1, paragraph 7, EHRC Employment Code states that:

“There is no need for a person to establish a medically diagnosed cause for their impairment. What is important to consider is the effect of the impairment, not the cause.”

56. I have taken into account the submissions by Mr Toms, counsel on behalf of the claimant and by Mr Maxwell, counsel on behalf of the respondent. In addition, I have then taken into account the cases which they have referred me to.

57. In the case of the Ministry of Defence v Hay [2008] ICR 1247, the EAT held that an employee at the ring respiratory impairments, including tuberculosis, which led to his absence from work from June 2004 until this dismissal at the end of March 2006, was disabled. Although expert medical evidence indicated that the impairments attributable to the tuberculosis alone would have had a substantial adverse effect on his day-to-day activities for less than 12 months, the employee was nonetheless disabled by reason of ‘a constellation of symptoms’ that lasted more than a year even though they were not all medically attributable to the tuberculosis. Someone who suffered from a combination of impairments with different effects, to different extents, over periods of time which overlapped could be regarded as disabled.

58. In the Guidance on the definition of disability, paragraph B6 states the following:

“A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person’s ability to carry out normal day-to-day activities.”

59. I have considered the cases of Aderemi v London and South Eastern Railway Ltd UKEAT/0316/12/KN, and Abercrombie and Others v AGA Rangemaster Ltd [2013] EWCA Civ 1148.

Conclusion

Disability

54. There is no requirement that there should be a medically ascribed diagnosis to the mental impairment. What is important are the effects of the impairment on normal day to day activities.
55. In the letter from Dr Yohanathan, dated 3 October 2014, it records the claimant as saying that he had an obsession with washing glasses numerous times before drinking out of them and that he cleans his house excessively. He emailed Mr Parfitt on 22 September 2017, stating that it was very difficult for him to cope with hot desking and to deal with the mess of wiring and that trying to find a desk was causing him great stress. In Dr Ornstein's report, at paragraph 127, notes that the claimant finds disordered environments extremely distressing.
56. In his disability impact statement, paragraphs 6-13, the claimant describes his obsessive compulsive behaviour as checking doors, windows, gas, electric and ensuring that he had the right set of keys. These resulted in him having difficulties socialising with others. His obsessive compulsive behaviour results in him taking longer than a non-disabled person, in carrying out normal day to day activities.
57. I am satisfied, based on Dr Ornstein's report, that the claimant had been suffering from a mental impairment prior to, after the car accident in 1997, and currently. His mental impairment had and continues to have, an adverse effect on his normal day to day activities, which is more than minor or trivial and has been long term.
58. Dr Ornstein also describes the symptoms of OCD as mentally impairing leading to increased mental distress and anxiety and that the claimant has been experiencing mental health issues since 1997. He further states that the claimant has chronic mental health problems which have never been satisfactorily addressed.
59. The claimant has a "constellation of symptoms" and it is immaterial whether the mental impairment is given the label of OCD. I am satisfied he does have a mental impairment as defined under s.6 Equality Act 2010, as a disabled person.

Application to amend

59. I agree with Mr Maxwell, counsel for the respondent, that reliance on additional factors in support of the failure to make the reasonable adjustments claim, gives rise to a new claim. He took me through the application and identified by reference to paragraph 26, those matters which I agree are new factual allegations.
60. In respect of the s.15 claim, the parties are agreed this is a new claim.
61. Applying Selkent Bus Co Ltd v Moore [1996] ICR 836 a judgment of the EAT, endorsed by the Court of Appeal in Ali v Office of National Statistics [2005] IRLR

201. I have to consider: the nature of the amendments; the applicable time limits; and the timing and manner of the application.
62. In relation to the amendments, I am satisfied that they amount to new claims.
62. In relation to the applicable time limits, time should not be extended as a matter of course as it is an exceptional step to take, Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, Court of Appeal. The application was made more than six months after expiry of the extended time limit. I was not satisfied that the claimant provided me with a good reason for the delay. It was open to his two previous solicitors to put in a timeous application to amend but failed to do so. The second claim was presented in time as the extended period expired on 11 February 2018.
63. I am told by Mr Maxwell that an important witness, Mr Paul Stephens, has left the respondent. Consequently, the respondent is prejudiced in having to address these further acts in the new claim. In any event, the claimant is not prejudiced as he is relying on his resignation as part of his failure to make a reasonable adjustments claim. Also, he is relying on his dismissal as part of s.15 claim.
64. Having considered the application and submissions, I have come to the conclusion that the claimant should not be allowed to amend his first claim by adding further particulars to his failure to make reasonable adjustments and the new s.15, discrimination arising in consequence of disability.
65. The case is listed on 3 June 2020 for one day, in public, to consider the respondent's strike out and deposit order applications, as well as any other applications made by the parties.
66. The case is provisionally listed for a final hearing over three days from 11 November 2020 before a full tribunal.

Employment Judge Bedeau

.....20.03.2020....

Sent to the parties on:

.....20.03.2020.....

For the Tribunal:

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