



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Marley

**Respondent:** SD Taylor Limited

**Heard at:** Newcastle Hearing Centre  
on 26 27 28 29 October 5 and 6 November 2020

**By:** Cloud Video Platform (CVP)

**Before:** Employment Judge Speker OBE DL

**Members:** Mr D Morgan  
Miss B Kirby

***Representation:***

**Claimant:** In Person  
**Respondent:** Mr T Perry

## JUDGMENT

The unanimous decision of the Tribunal is as follows:

1. The claimant was unfairly dismissed.
2. The respondent did not follow ACAS guidelines and there should be a 25% increase in compensation.
3. The claimant did not follow ACAS guidelines in failing to appeal and there should be a 25% reduction in his award.
4. The claimant was not a disabled person at the relevant time within the meaning of Section 6 of the Equality Act 2010 and his claims of disability discrimination are dismissed.
5. A remedies hearing will take place by CVP on Tuesday 15<sup>th</sup> December 2020, one day allowed.

## REASONS

1. These are claims brought by Philip Marley against SD Taylor Limited trading as Loans at Home. The claimant alleges that he was unfairly dismissed and that he suffered discrimination on the ground of the protected characteristic of disability. The respondent denies unfair dismissal and claims that the claimant was fairly dismissed for some other substantial reason. The respondent also maintains that the claimant was not a disabled person within the statutory definition at the material time and that if he was to be found to be a disabled person then the respondent did not and could not reasonably have been expected to know that he was a disabled person at the material time.
2. Due to the Covid-19 pandemic, this hearing has been conducted remotely through the Cloud Video Platform. Whilst I am sitting at the Newcastle Tribunal Centre, the two non-legal members have participated by computer link from elsewhere as have the parties, representatives, witnesses and observers.
3. At a preliminary hearing on 20<sup>th</sup> December 2019 the issues to be resolved were identified in relation to unfair dismissal and disability discrimination. During this hearing we have heard from four witnesses on behalf of the respondent namely Kevin Kelly the HR lead for the respondent, Andy Lockard general manager, Gordon Withers general manager and Philip Martin regional manager. These titles changed during the history of the claimant's employment. There is no evidence before the tribunal from Mike Parker former COO of the respondent company who was the dismissing officer and also heard the claimant's grievance appeal.
4. The claimant gave evidence on his own account and referred to three unsigned statements of witnesses who did not give oral evidence namely Nicola Graham, Geoffrey Stephenson and Janet Russell. I must record that in accordance with our standard practice, whilst we can look at unsigned or signed statements without the attendance or involvement of witnesses, we necessarily will attach less weight to statements where the witnesses are not in attendance and therefore not available to be cross examined. We were also provided with a bundle of documents running to 736 pages.
5. On the basis of the evidence we found the following facts:
  - 5.1 The respondent is a financial company which trades as Loans at Home. It is regulated by the financial conduct authority and offers small short-term loans of up to £600 to individuals. As the name Loans at Home implies, the loans are taken out by customers from their homes. The company's agents travel to meet customers at their homes. The respondent has a network of sixty-three branches across the UK and employs in the region of three-hundred and forty staff organised into regions or divisions. As at the time of the claimant's dismissal on 19<sup>th</sup> August 2019 there were eight regions and four divisions. At that stage each division was led by a divisional manager assisted by two divisional support managers.
  - 5.2 The claimant commenced employment with the respondent on 11<sup>th</sup> August 2014 and held a number of roles. Initially he was a branch manager and

then promoted to area manager and as a result of successful performance he was seconded as a regional manager and confirmed in that role as from 1<sup>st</sup> January 2018. The claimant was highly regarded within the company by many who worked with him and there was testimony as to his ability, knowledge and professionalism. To this was attributed what was regarded as a fast and successful promotion within the ranks of the company to the post of divisional manager.

- 5.3 Around the end of 2018 there was a restructuring of the company involving compulsory redundancies. The claimant was selected for redundancy after a matrix assessment and he lost his position as regional manager. However he was then offered a position as area manager, a lower situation, although one he had previously occupied. This was at a substantially lower salary. It was created by the company having engaged in what is described as 'bumping' which means removing another person from their position. The claimant was pleased to be able to accept this new role despite the change in status and reduction in salary and he thanked those in the company who had facilitated this and provided this opportunity for him to stay in employment and in the company.
- 5.4 In the new position the claimant was responsible for Stockton and Newton Aycliffe and had a new line manager Andy Lockard for whom he had not worked before. Philip Martin was in the role of divisional support manager working under Andy Lockard and this was in a managerial role over Mr Marley although Mr Marley and Mr Martin had previously been peers working at the same level. From the outset the relationship between Mr Marley, Mr Lockard and Mr Martin showed signs of difficulty. By 8<sup>th</sup> February the claimant had been confirmed in his role following a trial period.
- 5.5 On 25<sup>th</sup> April 2019 Philip Martin visited the claimant's office in Stockton and carried out various supervisory checks including oversight. He said he might be issuing Mr Marley with a letter of concern, which is a term of art in the company, as to oversight. Early the next day, the claimant e-mailed Kevin Kelly at HR to say that he was proposing to lodge a grievance as to how he was being managed. Philip Martin, following his visit, prepared a letter expressing issues which he felt needed to be addressed but did not in fact prepare a formal letter of concerns.
- 5.6 On 2<sup>nd</sup> May the claimant lodged with HR his formal grievance and added further matters to this including that he said he had been bullied by Andy Lockard in a discussion about supervision. Kevin Kelly at HR informed the claimant that he had passed on to Mike Palmer, Chief Operating Officer of the company, the details of the issues with the working arrangements. Gordon Withers was appointed to consider the claimant's grievance and the claimant attended a grievance hearing with him in Leeds head office on 16<sup>th</sup> May 2019. The claimant chose to be unaccompanied. Gordon Withers told the tribunal that he had regard for the claimant's abilities in his job and at work.

- 5.7 The notes of the grievance meeting were sent to the claimant for revision and following the meeting Gordon Withers undertook investigation and discussed issues with various people involved. There was some delay because Gordon Withers then had annual leave. On 11<sup>th</sup> June 2019 the grievance outcome letter was sent to the claimant. None of the issues he had raised were upheld.
- 5.8 Within the time permitted, the claimant lodged an appeal by letter on 18<sup>th</sup> June. The following day 19<sup>th</sup> June Philip Martin e-mailed the claimant expressing concerns about oversight and there was also an incident as to journey J871 which was in the area over which the claimant had responsibility. The grievance appeal was heard by Mike Palmer COO on 18<sup>th</sup> July 2019 and the claimant was accompanied by Geoff Stephenson.
- 5.9 The claimant was then off work on the sick from 10<sup>th</sup> July to 23<sup>rd</sup> July 2019 the doctor's note referring to work-related stress and anxiety. Following the appeal hearing Mike Palmer interviewed Mr Lockhard, the team at Stockton and others. The claimant chased up the appeal outcome. On 6<sup>th</sup> August 2019 Mike Palmer sent to the claimant the grievance appeal outcome letter which was extremely long. That same day IT drew attention to the fact that the claimant had transferred a large number of documents from his company e-mail to his personal e-mail address. The claimant's IT account was then suspended. Also on 6<sup>th</sup> August a request was sent to the claimant for a medical report and that he complete a stress questionnaire. On 7<sup>th</sup> August Mike Palmer wrote to the claimant inviting him to a concerns meeting to be held on 12<sup>th</sup> August under the company's dismissal procedure referring to a breakdown in relationships. The claimant was asked on 8<sup>th</sup> and 9<sup>th</sup> August if he would be attending and the claimant replied that he would not be attending, he was on the sick at the time having lodged the sick note.
- 5.10 The date of the proposed meeting was changed from 12<sup>th</sup> to Friday 16<sup>th</sup> August. The claimant responded in detail saying he would not be attending. He was told the meeting may go ahead in his absence. On 15<sup>th</sup> August some documents which the claimant had been requesting for some time was sent to him. The meeting proceeded on 16<sup>th</sup> August in the claimant's absence. Mr Palmer as accompanied by Kevin Kelly, HR. On 19<sup>th</sup> August Mike Palmer wrote to the claimant informing him that his employment was being terminated due to breakdown in the working relationship. The claimant replied on 23<sup>rd</sup> August challenging the letter but stating that he would not be appealing and setting out his reasons.

### Submissions

6. On behalf of the respondent Mr Perry provided detailed written submissions running to thirty-eight pages as well as copies of the reports from three cases Hawkes v Ausin Group (UK) Ltd UKET/0070/18, Robinson v Combat Stress UKEAT /0310/14 and Gallacher v Abellio Scotrail Limited UKEATS/0027/19. He submitted that the reason for dismissal was SOSR (Some Other Substantial Reason) and referred to the comments in the Robinson case as to the tribunal

determining the actual reason even though there may be a number. He also referred to the cases of *Perkin v St George's Healthcare NHS Trust* [2005] IRLR 934 as to SOSR dismissals and as to the range of reasonable responses test set out in the case of *Iceland Frozen Foods Limited v Jones* [1982] 439 and approved in *HSBC v Madden* [2000] ICR 1283 as well as other cases. He argued that the facts in the case showed that the reason for dismissal was SOSR. However he conceded the possibility of this being a conduct dismissal and referred to the well-known case of *British Home Stores v Burchell* and the three-prong test as to conduct dismissals, as well as the application of the range of reasonable responses test.

7. On behalf of the respondent Mr Perry submitted that Mr Palmer dismissed the claimant on the basis of the matters listed in the statement of Kevin Kelly including breakdown in the working relationship with Andy Lockard and Philip Martin, the claimant's refusal to mediate, the claimant's request for a transfer, the claimant making misleading and untrue allegations during the grievance and grievance appeal, poor morale in the team at Stockton and other issues with regard to the claimant's attitude. He described the claimant's version of his allegations and statement of grievance as paranoia and suggested that these were attributable to the claimant's ego following his effective demotion and his reluctance to be managed particularly by former peers.
8. Mr Perry reminded us of the grievance issues of the claimant and the evidence given by the respondent's witnesses as to these and how they were dealt with in the grievance hearing and the grievance appeal. The respondent's case was that there was a complete breakdown of trust and confidence in the claimant and this was the focus of the letter of dismissal. He conceded that certain aspects of the allegations, the claimant's work conduct and low morale pointed to performance. He argued that a dismissal for conduct would also have been fair but the main force of the respondent's case was that this was dismissal for SOSR and that dismissal was fair in all the circumstances and that the processes adopted were fair. A failure to provide the claimant with copies of the Stockton interview statements was a procedural error but this related to a subsidiary issue.
9. In the event of a finding of unfair dismissal, Mr Perry argued that there had been contributory fault by the claimant and referred to the case of *Nelson -v- BBC 1979*. He also relied upon the *Polkey* case on the basis that in the finding of procedural unfairness the claimant would have been dismissed in any event by a fair procedure and he argued for a *Polkey* reduction. He also submitted that the respondent had complied with the ACAS Code but the claimant had not done so by failing to appeal and that therefore there should be a 25% reduction in any award if the claimant succeeded.
10. As to disability discrimination, Mr Perry argued that the claimant was not disabled within the statutory definition at the material time and that the details provided in relation to him did not amount to a sufficient impairment and was not likely to have been long-term. Furthermore, he averred that the respondent did not and could not reasonably have been expected to know that the claimant was a disabled person.

11. As to discrimination arising from disability under Section 15 of the Equality Act, it was argued that there was no PCP [Policy, Criterion or Practice] established but in any event it was clear that the actions taken by the respondent could amount to a proportionate means of achieving a legitimate aim, the statutory defence. Similarly as to a claim for failing to make reasonable adjustments for the claimant, Mr Perry again argued that there was no identified PCP.
12. On his own behalf Mr Marley also provided the tribunal with written submissions. He argued that he had raised his grievance in good faith and had wanted to remain in his job in the company. He was seeking to deal with problems with line management including by asking for a move as a possible solution. He had been willing at all times to accept being managed. He argued that the dismissal was in response to his having raised a grievance and having appealed. His grievance had not been fully investigated and nor had his appeal. He said that mediation had only been mentioned to him once and if he had known that his job was at risk, he would have certainly have participated in it. He argued that there was an agenda to remove him. As soon as he raised his grievance, things turned against him. After the grievance appeal was refused, Mr Palmer immediately moved to have him dismissed. He was off sick at the time and could not attend the final hearing. It should not have gone ahead in his absence. If he had been able to meet Mike Palmer, he would have been able to discuss alternatives including mediation. He had left the job which he had loved and had never wanted to leave. The company showed no regard for his welfare and lacked concern at his being off sick.

#### The law

13. The relevant statutory law involved is  
Employment Rights Act 1996 Section 98 (1) and Section 98 (4)  
Equality Act 2010 Section 6 (the statutory definition of disability)  
Section 15 Discrimination arising out of disability and  
Section 20 Reasonable adjustments.

#### Findings

14. This has been a complex case involving consideration of detailed evidence in very many issues with lengthy documents. We have considered all of the evidence and taken everything into account. It was clear from the outset that we were not to hear evidence from Mike Parker who was the dismitter of the claimant. This is unusual in an unfair dismissal case. Some reasons for his non-attendance were broadly explained to us including his no longer being in the Respondent's employment. As to disability, apart from the claimant's GP records, there was an expert report by Doctor Max Henderson an independent psychiatrist. This had been commissioned by the respondent's solicitors. Doctor Henderson did not see the claimant or examine him. He did not attend the tribunal to give evidence and his report in evidence could not be subjected to scrutiny or cross examination. It was not formally presented by any of the respondent's witnesses and it was unclear to what if any extent the respondent was relying upon it.

#### Unfair dismissal

15. Under Section 98 (1) of the Employment Rights Act 1996, in determining whether a dismissal is fair or unfair, it is for the employer to show the reason and if more than one the principal reason, for the dismissal and that it is either a reason falling within subsection (2) capability, qualifications, conduct, redundancy, contravention of statute or duty, or that it is some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. As the onus of establishing the reason is upon the employer, it was for the tribunal to consider carefully the reason advanced by the employer where, as here, and as conceded, there is more than one potential reason. We are required to assess whether the respondent has persuaded the tribunal that that reason stated was the reason for dismissal and assess fairness in relation to that reason.
16. As stated, there were issues of conduct and performance in what was set out in the letter of dismissal from Mike Palmer. Normally we would hear evidence from the dismitter whose evidence can be subjected to cross examination and a judgment reached as to whether the employer, through the dismitter, acted reasonably. As mentioned, Mr Palmer has not given evidence and the tribunal is hampered in assessing the decision-making process. We must rely upon the account given by Mr Kelly and others and consider from the documents what Mr Palmer decided and why, what he took into account and what he did not, the weight he attached to various factors and others, the options and alternatives available and why these were not considered appropriate.
17. We took into account the timing of events. Mr Marley from early in 2019 felt that the way he was being managed was unfair and oppressive. He raised a formal grievance as is the right of every employee. This is the reason why all employers have grievance procedures. In raising a grievance, an employee should be entitled to be open, frank and forthright. If he cannot be so, then where is the point of such a process. Mr Marley raised all of his concerns. He was entitled to have his grievance properly and promptly investigated. There was some delay in getting the outcome from Gordon Withers. Mr Marley then received the outcome to the effect that none of his grievances were upheld. He was clearly disappointed and he appealed as indeed was his right.
18. The appeal was heard by Mike Palmer and there followed an investigation, not all the details of which were shared with the claimant. The letter of outcome of the grievance appeal stated that none of the grievances were upheld and that exception was taken to various issues raised and to comments and statements made by the claimant. It appears that the claimant saw the writing on the wall. He was thinking about finding another job in case he did not have a future with the company and he also wanted to ensure that he had personal documents from the company.. Within a day of the appeal letter on 6<sup>th</sup> August, Mr Marley received a letter dated 7<sup>th</sup> August from Mike Palmer inviting him to a concerns meeting with the risk of dismissal. By this time he was on the sick. He did not attend and the meeting went ahead in his absence and he was dismissed.
19. Coming to the important issue of the reason, the tribunal concludes that the reason for dismissal was not breakdown of relationship, labelled as some other substantial reason, but in fact was due to the claimant's conduct, namely his attitude towards

certain of the managers, his forthright comments on them and about the actions taken against him which he felt were oppressive and unjustified. We find that his grievance and the energetic pursuit of his appeal were the trigger that instigated and fuelled the animosity against him and led to his dismissal. As to the series of incidents which occurred, the respondent concluded against the claimant on all of these. When he persisted with his grievance and the appeal and with his statements of dissatisfaction as to how he was being treated, the company decided that it wanted to get rid of him. This included taking a view that he had acted in a seriously reprehensible manner by transferring the e-mails referred to. However in relation to this, the company was unable to identify any documents which were sensitive or should not have been so transferred or point to any rule in their many policies to show that he acted wrongly and in breach of any express rule or instruction.

20. It was significant that the respondent had sought to rely on a breakdown in relationships when this was the difficulty which from the outset Mr Marley was seeking to resolve by raising his grievance and complaining of being managed unfairly, by being excluded and generally unfairly treated. He was trying to secure an improvement in working relationships and possibly by a change of line manager. The respondent did not, prior to dismissal, put to the claimant the statement of charges against him. Their approach to him ignored his good standing in the company, his rise through the ranks of the company, the high regard that there was for him in relation to his know-how and experience. He was spoken of very highly by many in the company. We find that the reason that the company dismissed him was continuing to press energetically his grievance and appeal and for continuing to hold the views that he had about the managers.
21. We have considered this under the statutory test of fairness in Section 98 (4) of the 1996 Act and we have applied the balance of reasonable responses test. We find that to dismiss the claimant for this reason and in these circumstances dismissal was not within the band of reasonable responses open to a reasonable employer. The circumstances include the good record of the claimant and the clear indication that he felt there was in fact an agenda against him. There should have also been reasonable regard to his need to adjust following the reorganisation and to his effective demotion. For these reasons we find the dismissal was substantively unfair.
22. We have also considered the procedure undertaken by the respondent and find it defective in the following respects:
  1. Speedily rushing to a disciplinary hearing set up one day after the announcement of the appeal outcome.
  2. Failing to set out the charges to be answered by Mr Marley at the hearing.
  3. Proceeding with the meeting even though Mr Marley was off sick, evidenced by a sick note and saying he would not attend.
  4. Failing to ask for any further medical evidence as to when he would be fit to attend.



5. Failing to postpone the meeting for a reasonable time.
  6. By these actions failing to ensure that the claimant had an opportunity to state his case with representation if he wanted it, this being an elementary aspect of fairness in relation to any dismissal even in some of the reported cases concerning dismissal for some other substantial reason.
  7. Incorrectly suggesting that as they were relying upon a relationship breakdown, they could ignore their own policy on dismissal procedure.
  8. Failing to adequately consider alternatives such as a move, change in line manager or mediation.
23. We find that the manner of dismissal was profoundly unfair and is the other major aspect of the dismissal being unfair. We add that the way in which mediation was effectively discounted was incorrect and unfair. We accept the account of Mr Marley that he had attempted a form of mediation through Lisa Quirke in HR earlier on and that it was Mr Lockard who was not willing to engage effectively with this. We also find that had there been a proper formal disciplinary hearing prior to dismissal, Mr Marley would have been able to give consideration to mediation. There was never in effect any 'meat on the bone' of the suggestion of mediation by the company.
24. As to contributory fact we find no basis for any finding of blameworthy conduct on behalf of the claimant. The forthright pressing of grievances and an appeal, including frank and honest statements about managerial staff, is something in which employees should be supported. If an employee speaks out bravely, he should be protected from repercussions. Therefore, we make no percentage reduction for blameworthy conduct.
25. However, we do find that as regards procedures, the respondent fell foul of the ACAS guidelines in effectively not giving the claimant an opportunity of a fair hearing and on this basis, there will be a 25% uplift.
26. Against this we find that the claimant did not act reasonably when deciding not to appeal against the dismissal. The company's policy gave him a clear right of appeal and he was informed of that right in the dismissal letter. If he was not well enough to attend at that time, he could have asked for the appeal not to be heard until he was fit, in order that he was able to participate. The appeal policy of the company gave the appellant the right to comment with regard to the person appointed to hear the appeal which in this case would have been someone at a high level, that is, above Mike Parker. It could possibly have been a director of the company or someone externally. We find that it was erroneous and contrary to guidelines not to appeal and therefore there is a 25% reduction in the claimant's award because of this failure.

Disability discrimination

27. We have not been convinced that the claimant was disabled within the statutory definition in Section 6 of the Equality Act 2010. Whilst he appeared to have some mental impairment certainly from the time he began medication, this was not immediately apparent to the respondent and nor could they reasonably have been expected to know. Not all stress in the workplace produces a disability.
28. Until late in the narrative Mr Marley was clearly able to undertake day to day activities, which was testified by his involvement in procedures and carrying on with his work. Furthermore, there was no evidence that his stress and mental problems were long-term or likely to be. We take into account all of the relevant law in reaching this conclusion. We are not persuaded otherwise by the medical report.
29. We find unanimously that Mr Marley was not disabled within the meaning of the Act at the material time and therefore there is no jurisdiction to deal with his claims in relation to disability discrimination. This is not inconsistent with our findings with regard to the fairness of the dismissal and the fact that the employer failed to take into account the fact that Mr Marley was ill, off work and on sick leave at the time when they held the dismissal hearing in his absence.

**Authorised by EMPLOYMENT JUDGE SPEKER OBE DL**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 1 December 2020**

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