



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE K ANDREWS
MEMBERS: Ms B Leverton
Mr J Gautrey

BETWEEN:

Mr C Ishola Claimant

and

Transport for London Respondent

ON: 7 January 2021

Appearances:
For the Claimant: In person
For the Respondent: Mr A Allen, Counsel

WRITTEN REASONS FOR JUDGMENT
FOLLOWING REMISSION FROM EAT
(provided at the request of the claimant)

1. A Judgment on liability in this matter was sent to the parties on 30 November 2017. The claimant successfully appealed that Judgment in one respect and in a Judgment dated 16 November 2018 the Employment Appeal Tribunal (EAT) remitted the matter to the original Tribunal.
2. The EAT identified that the Tribunal had asked itself the wrong question in relation to the issue of group disadvantage in respect of the reasonable adjustments claim at allegation 2 of the original list of issues. It further identified by contrast that in respect of a different allegation of a breach of reasonable adjustments claim, we had asked ourselves the correct question.
3. The EAT specified that the correct question to ask in respect of allegation 2 was whether the payroll malfunction had the same degree of adverse effect on those employees on sick pay due to a mental health disability as on those employees on sick pay (whether or not disabled in the statutory sense) for a different reason not due to a mental health disability.
4. In considering this issue again we have been assisted by and take note of

the claimant's written submissions as well as his note of evidence relevant to the remitted matter, the respondent's comments on that note of evidence and the specific documents referred to by the respondent. The only significant difference between the parties in relation to the evidence is in relation to the claimant's assertion that the operation of payroll led to him being unable to plan his finances which in turn, and this is the disputed part, led to an exacerbation of his health condition.

5. The respondent, whilst not formally conceding liability, has elected to not present any argument in respect of the remitted issue.
6. We remind ourselves that the claimant's disability was depression and migraines and that the respondent had conceded that the claimant was disabled at all times. We also noted in our Judgment that the claimant was at that time continuing to suffer from mental health issues.
7. Having considered our original findings of fact, which very clear that the PCP of erratic payment of sick pay was made out, together with the guidance from the EAT as to the correct question to ask ourselves, we conclude that the necessary substantial disadvantage has been made out by the claimant.
8. We recognise that we have not heard any medical evidence specifically in relation to the impact of such a PCP on someone with mental health issues. However in our view it is common sense and self-evident that the undoubted difficulties that the claimant incurred of not being able to plan his finances as a result of the erratic payment of sick pay, did have more of an impact on him as somebody with a mental health disability than it would have on another employee on sick pay for a different reason not due to a mental health issue.
9. Accordingly the breach of reasonable adjustments claim in respect of allegation 2 succeeds and falls to be considered within the remedy part of this hearing.

Employment Judge K Andrews
Date: 4 February 2021