



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Siwek

**Respondent:** Asda Stores Ltd

## PRELIMINARY HEARING

**Heard at:** Croydon (remote private hearing by video conference)

**On:** 10 February 2021

**Before:** Judge Brian Doyle

### Appearances

For the claimant: In person

For the respondent: Ms T Hand, counsel

## JUDGMENT

1. The claimant is not a disabled person at the relevant time within the meaning of section 6 and Schedule 1 of the Equality Act 2010 for the purposes of his disability discrimination complaint and accordingly the disability discrimination complaint is dismissed.
2. The complaint in respect of contractual sick pay for the period from 8 April 2019 to 27 July 2019 only (the later date being the date of presentation of the claim) may proceed to a final hearing, subject to a Deposit Order that has been separately made.
3. Subject to the claimant paying the deposit ordered, that final hearing will be listed for a hearing date with a time allocation of 1 day and subject to standard case management orders being issued.
4. The claim has not at any time contained a complaint of unfair dismissal arising from the claimant's dismissal in November 2019, either in the original ET1 or

subsequently by the presentation of a fresh ET1 or simply by virtue of the claimant's witness statement of 6 July 2020.

5. An application to amend the existing claim so as to include a complaint of unfair dismissal is refused in accordance with the principles identified in *Selkent Bus Co Ltd v Moore* [1996] ICR 836 and associated case law. The proposed complaint is a new cause of action which is out of time in circumstances where it was reasonably practicable to have presented the complaint in time, whether by means of a fresh claim or by a timely application to amend the present claim, and the balance of hardship and justice does not favour allowing a late amendment to the claim.

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Judge Brian Doyle

Date: 10 February 2021