



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100030/20

Preliminary Hearing Held in Edinburgh on 15 October 2020

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Employment Judge A Jones

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Mr G Ralston

**Claimant
In Person**

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**Forth Valley College of Further and Higher
Education**

**Respondent
Represented by
Ms K Graydon,
Solicitor, Clyde & Co
(Scotland) LLP**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The claimant was not a disabled person for the purposes of section 6 of the Equality Act 2010 during the relevant period. The claimant's claim is therefore dismissed.

Introduction

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1. Following a number of case management preliminary hearings, a preliminary hearing was set down in this case to determine a number of issues:

- (a) Whether the Tribunal has jurisdiction in terms of section 123 of the Equality Act 2010 (“EqA”) to consider all or any of the claimant’s complaints of discrimination;
- 5 (b) Whether in the event that the Tribunal has such jurisdiction, was the claimant during the relevant period a disabled person for the purposes of section 6 of EqA;
- (c) Whether in presenting the complaint the claimant was in breach of a Voluntary Severance Agreements entered into with the respondent on 25th June 2019;
- 10 (d) Whether the claims had reasonable prospects of success or should individually or in their entirety be struck out in terms of Rule 37(1)(a) of the Employment Tribunals (Constitution and Procedure Rules of Practice) Regulations 2013 (“the Rules”), or whether a Deposit Order should be made in terms of Rule 39 of the Rules in
- 15 respect of any of the claims.
2. In advance of the hearing, the respondent indicated that they were no longer seeking to make any argument in relation to the Voluntary Severance Agreement which had been signed by the claimant before the Employment
- 20 Tribunal although their position to make such arguments elsewhere was reserved. Therefore, the Tribunal was only required to determine issues of the claimant’s disability status, time bar and if appropriate strike out/deposit orders.
3. It was acknowledged by the claimant that the relevant period for the purposes
- 25 of establishing the question of disability was October 2018 to June 2019 and that 25th June 2019 was the last date of an alleged act of disability discrimination. This had been recorded in a note of a Preliminary hearing which took place on 22 July 2020. The condition upon which the claimant relied was depression and anxiety.
- 30 4. The Tribunal heard evidence from the claimant regarding the issue of his disability status and the basis on which the Tribunal should determine that it had jurisdiction to consider his claim. A bundle of productions was also lodged

which included medical records and reports concerning the claimant. Having listened to the evidence and considered the relevant documents, the Tribunal made the following findings in fact.

5 **Findings in Fact**

5. The claimant was employed by the respondent as a Sports/Physiology Lecturer from 2 October 2006 until 9 August 2019.
- 10 6. The claimant's employment with the respondent terminated following the parties entering into a Voluntary Severance Agreement after the claimant's application for voluntary severance was accepted by the respondent on 26 June 2019.
- 15 7. In June 2018, the claimant was admitted to hospital following an episode which was subsequently diagnosed as Bell's Palsy.
8. Although the claimant returned to work soon after his discharge from hospital, he was subsequently absent from work for around 12 weeks.
- 20 9. During the claimant's absence his mother had serious health issues and his partner was pregnant with their child, but living in Spain.
10. The claimant attended his GP practice on a number of occasions between
25 August 2018 and June 2019 and was reported as being 'stressed' or 'very stressed' on a number of those occasions.
11. From February 2019, the claimant's GP notes record him being stressed at work or suffering from work related stress.
- 30 12. On 3rd May 2019, the claimant's GP recorded that the claimant had a long standing mood disorder related to stress at work.
13. The claimant was referred to Occupational Health by the respondent and was
35 recorded as suffering from 'an adjustment reaction to his circumstances' in a report of 9 May 2019. The report also recorded that the claimant had become

stressed and anxious due to how he felt his line manager had interacted with him coupled with a perception on his part that he had been treated unfairly. The report also recorded that the claimant was experiencing 'a number of symptoms of depression and anxiety'.

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14. The claimant raised a grievance in relation to how he had been treated by the respondent following his diagnosis of Bell's Palsy. He was represented by a Trade Union during this process.

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15. The claimant was not aware of the process of lodging a claim with the Employment Tribunal until he contacted ACAS following the outcome of his grievance at the beginning of November 2019.

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16. Early conciliation commenced on 5 November 2019 and ACAS issued a certificate on 5 December 2019.

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17. The claimant lodged a claim with the Employment Tribunal on 4 January 2020. The claim initially recorded the respondent as 'Ken Thompson' who was the claimant's line manager. The claim was initially rejected, but on reconsideration, was accepted and treated as presented on 10 January 2020.

Evidence and submissions

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18. The Tribunal found the claimant to be a credible and reliable witness.

19. The claimant submitted in relation to the question of time bar that he hadn't expected to raise a Tribunal claim and acknowledged that he had initially raised the claim against the incorrect respondent.

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20. In relation to the issue of his disability status, he acknowledged that he had not been formally diagnosed as suffering from depression and anxiety. He sought to focus on the entries in his medical records where a record was made of him suffering the symptoms which were associated with depression and anxiety. He indicated that he had been in a very bad place mentally for around

9 months and that while he was now in a much better place, it had taken him around 9 months to recover.

21. The respondent provided written submissions. Reference was made to Herry v Dudley Metropolitan Borough Council UKEAT/100/16/LA. The respondent's position was that the claimant had failed to establish that he was a disabled person during the relevant period for the purposes of section 6 EqA and that he was not suffering from a medical condition during that period but a reaction to his perception of how he was being treated in the workplace.

22. The respondent also submitted that the claim was time barred on two grounds – it was presented outwith the statutory time limit, taking into account ACAS early conciliation by reference to the date of termination of the claimant's employment, but also that any alleged act of discrimination had taken place on or before 25 June when the claimant was accepted for voluntary severance.

23. The respondent went on to argue that if the Tribunal concluded that it did have jurisdiction to consider the claimant's claims, then his claims had no reasonable prospects of success and should be struck out. In the alternative, the claimant should be required to lodge a deposit with the Tribunal in order to continue to pursue his claims.

Relevant law

Disability status

24. Section 6 EqA states that for the purposes of the Act, a person 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.

Time bar

25. Section 123 EqA provides that a claim must be brought within three months of the act complained of, or where the claim relates to a series of acts, at the end of the period of such acts, or such other period as the employment tribunal
5 thinks just and equitable.

Discussion and decision**Disability status**

10 26. The Tribunal considered first the issue of the claimant's disability status. The Tribunal accepted that the claimant's mental health had been adversely affected by his diagnosis of Bell's Palsy and his perception of how he was treated by the respondent in his efforts to return to work. It was clear from the
15 claimant's evidence that for a period he was very unwell and considered self-harm. However, such a period of illness is not sufficient to demonstrate that a person is disabled for the purposes of the EqA.

20 27. While the Tribunal accepted that the fact that the claimant had not been formally diagnosed as suffering from depression and anxiety was not determinative of the matter, as he clearly suffered from symptoms commonly associated with such conditions, there was no evidence that the claimant's normal day to day activities were adversely affected for a significant period of time by any condition. The claimant gave evidence that he did not go out his
25 house for a period. However, it was also recorded that he travelled to Spain to see his partner and new child. There was little other evidence to demonstrate that the claimant's normal day to day activities were adversely impacted by his mental health.

30 28. While it is accepted that the claimant was unwell, this is not sufficient to amount to an impairment, for the purposes of the EqA. Further even if the claimant was suffering from depression and anxiety during the relevant period (and the Tribunal did not have sufficient evidence to decide that the claimant did suffer from these conditions) the Tribunal did not hear evidence to demonstrate that

any condition from which he was suffering had a substantial and long term adverse effect on the claimant's normal day to day activities.

5 29. In addition, while the claimant was undoubtedly unwell for a period, this period did not and was not likely to last for more than a year.

10 30. In these circumstances, the Tribunal concluded that the claimant was not a disabled person for the purposes of section 6 EqA during the relevant period and therefore his claim fails on this basis.

15 31. Having determined that the claimant was not disabled during the relevant period, it was not necessary to consider the other preliminary matters raised by the respondent. The claimant's claim is therefore dismissed.

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Employment Judge: Amanda Jones
Date of Judgment: 20 October 2020
Entered in register: 21 October 2020
20 and copied to parties