Case Number: 3314106/2019
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EMPLOYMENT TRIBUNALS

Claimant **Respondent**

1. Mr Andrew Reed **v** **Thorney Golf Centre Ltd**
2. Mr Roland Reed

Heard by CVP and at Watford **On**: 9 December 2021
10 December 2021 (in chambers)

Before: Employment Judge Manley
Members: Mrs J Hancock
Mr M Bhatti

Appearances

For the Claimant: Mr Tomison, Counsel
For the Respondent: Mr N Morgan, Director (permitted to attend and make representations but no response accepted)

JUDGMENT

1. The date of termination of employment of both claimants was 21 January 2019. The claims presented on 18 April 2019 were therefore brought in time.

2. Mr Andrew Reed was a person with a disability at the relevant time and was discriminated against because of that disability.

3. Mr Roland Reed was not a person with a disability at the relevant time and no award is made for disability discrimination for him.

4. No response having been accepted, it is appropriate to enter judgment as follows:

5. <u>Andrew Reed</u>

Basic award	£ 2,748.90
Notice pay	£ 1,884.96
Holiday pay	£ 1,256.80
Injury to feelings arising for disability discrimination	£10,000.00
TOTAL	**= £15,890.66**

6. Roland Reed

Basic award	£4,636.38
Notice pay	£2,544.60
Holiday pay	£1,696.40
TOTAL	**£ 8,877.38**

7. It is hereby ordered that the respondent pays these sums to the claimants.

REASONS

Introduction and issues

1. These claims have been proceeding for some time with various difficulties along the way as outlined in the judgment of 9 September 2021 and summaries of preliminary hearings on 27 November 2020, 10 March 2021 and 9 September 2021. It is not necessary to repeat these difficulties again in this document unless it explains why the tribunal has come to the decisions that it has.

2. In summary, the claimants under the above case numbers, brought claims for unfair dismissal, discrimination for something arising in consequence of a disability, holiday pay and notice pay. The claims were brought following previous claims under case numbers 3307445/2018 and 3307446/2018 where the claimants brought claims for unlawful deduction of wages because of a failure to pay statutory sick pay. Those claims were discontinued following a preliminary hearing on 30 November 2018, the claimants having been informed that questions about whether SSP has been paid is within the jurisdiction of HMRC rather than the employment tribunal.

3. Shortly after that, the claimant's representatives wrote to the respondent to clarify their employment status. They received an email reply on 21 January 2019 which stated that it was the respondent's position that the claimants had not been their employees since 2 June 2017.

4. These claims were then presented on 18 April 2019. The tribunal judgment of 9 September 2021 sets out what then occurred with respect to a response, which had been presented out of time and rejected. The application for the response to be accepted out of time was refused at the hearing on 9 September 2021.

5. This hearing was therefore listed to conclude the outstanding issues concerning these claims. They were as follows:-

   a) Whether to make a judgment under Rule 21 Employment Tribunal Rules of Procedure 2013, consideration to include the jurisdictional issue of

whether the claims were presented in time (which will depend upon the effective date of termination which is 20 January 2019 on the claimant's case and 2 June 2017 on the respondent's case);

b) If the claims were not presented in time, whether it was not reasonably practicable to present them in time and, for the disability discrimination claims, whether it is just and equitable to extend time;

c) If a Rule 21 judgment is made, what compensation should be awarded, including consideration of mitigation and what is just and equitable.

6. Orders were also made to ensure that this hearing would be effective. Because the claimants have also brought a claim for disability discrimination, it was necessary for the tribunal to determine whether either or both of them did have a disability under the definition in the Equality Act 2010 at the time of the alleged discrimination, which was, in effect, the termination date.

Hearing

7. The hearing was listed to be heard by CVP although Employment Judge Manley and Mrs Hancock were actually at the tribunal hearing centre. Although it was originally thought that Mr Bhatti would not be able to join us, he was then able to join us by the remote hearing link.

8. There were some preliminary matters to deal with. The first was that the claimants' witness statements had been sent to the respondent on 12 November 2021 whereas the order had been to send those statements by 29 October 2021. Employment Judge Manley informed Mr Morgan that as the response had not been accepted, the respondent could only take part in the proceedings to the extent permitted by the Judge. Mr Morgan made it clear that he did not believe a fair trial could proceed because of the late service of the witness statements. He also made reference to some differences between the statements which he had received initially and those which were then before the tribunal. He was also concerned that the ones he had seen were not signed.

9. The claimant's representative offered to send signed statements which were then forwarded to the tribunal and to Mr Morgan. The tribunal discussed matters and determined that the hearing could go ahead. Although it was unfortunate that the witness statements had been sent late and there were some minor alterations for the final versions, it was still the tribunal's view that Mr Morgan had plenty of opportunity to read them and comment on them before we decided the case. Mr Morgan pointed out, on a number of occasions, that we had not accepted the response which was, he said, only about two weeks late (although as the 9 September judgment makes clear, it was 4 weeks late). In any event, it seemed to the tribunal that the delay, whilst not ideal, did not get in the way of the hearing proceeding to deal with the matters to be addressed, particularly in view of the delays which had already occurred.

10. The next preliminary matter was that the claimants sought to rely on some documents which were being presented late and were not included in the bundle. The first group of these were medical records. Some records had been sent with respect to Mr Roland Reed on 8 December and those with respect to Mr Andrew Reed were sent on the morning of the hearing. These were relatively lengthy documents but could be read fairly quickly because we only needed to read those parts which were relevant to any question about whether the claimants had a disability and references to their position at work.

11. The second group of documents was recorded delivery receipts which were relevant as the claimants said that their sick notes had been sent to the respondent by recorded delivery. Mr Tomison, for the claimants, apologised for the delay in these documents being sent through, but pointed out that they were clearly relevant to the issues to be determined. Mr Morgan was permitted to comment and he said did not believe the documents should be admitted. He accepted that they were relevant but that they should have been sent in plenty of time before the hearing. Time was allowed for everyone to look at these documents. The tribunal determined that, as they were relevant documents, they should be considered and if further time was needed to look at any parts of them, we could do allow time. It should be noted that Mr Morgan, when he made his representations later in the day, and the next day, had clearly been able to read the medical records with some care as he asked us to consider sections of them with respect to the question of whether the claimants thought they were still in employment or were going to return to employment.

12. We did have the witness statements and saw signed copies. Although Mr Morgan was concerned that he had seen a different version, it was confirmed to him that the ones the tribunal would take as evidence at this hearing were those which had been signed. Mr Morgan did not accept that the signatures were those of the claimants.

13. Mr Andrew Reed began to give his evidence first and confirmed that the contents of his witness statement was true. It was during questions to him that it emerged that there were some recorded delivery receipts that had been sent that the tribunal had not seen and we therefore took a break to consider those before meeting again after a short lunch break. Having decided to admit those documents, the hearing continued.

14. Mr Morgan needed to be reminded about how we should conduct ourselves in the hearing on a number of occasions but appeared to become frustrated with the process. There being no further questions for Mr Andrew Reed the tribunal then heard from Mr Roland Reed. He also confirmed that he had a copy of his witness statement and he confirmed that the contents of it were true. He was asked if he recalled getting some of the letters in the bundle which we will come to.

15. Mr Morgan wanted to ask questions of the witnesses. This was not allowed because that was not considered to be in the interests of justice. The tribunal accepted that both claimants had mental health issues and Mr

Morgan's behaviour in these proceedings has sometimes been belligerent and offensive. The tribunal was well aware of the disputes on the evidence. Mr Morgan was told that he could make representations at the end of the hearing and address the tribunal on anything which he wishes to take issue with in the statements. The respondent's case and the differing claimants' case is, in any event, clear. Of course, there is a disagreement between them which is to be determined by the tribunal but the tribunal did not feel there were any proper questions which could be asked of these witnesses by Mr Morgan.

16. We then heard oral submissions from the claimants' representative which lasted about 15 minutes. Mr Morgan then made lengthy oral submissions. He took exception to guidance from the judge to move to points which might be more helpful to our decision making and expressed how unhappy he was with decisions made which he expressed on several occasions. He also made several comments about what was recorded in the medical records about the mental health of the two claimants which the employment judge had to warn him to desist from. Mr Morgan addressed the tribunal for about 40 minutes but was then asked to conclude, at which point he said he needed about an hour/an hour and a half longer of what he called evidence.

17. Mr Tomison and Mr Morgan were informed that the tribunal would consider matters on 10 December and that any further submissions or representations which they wished to make should be made in writing before 11am when the tribunal would consider the questions above which included compensation.

18. The next day the tribunal met to make its findings and decide the contents of a reserved judgment. The claimant's representative referred us to the schedules of loss and had nothing else to add. Mr Morgan sent an email for the attention of the non-legal members which they read. He also sent attachments which highlighted things that he wished us to look at in the medical records for both claimants and a copy of the response for the previous statutory sick pay claims. He repeated many of the arguments he had made the day before about the claims being out of time and his general unhappiness with large parts of the tribunal process.

Facts

19. The relevant facts in this case are relatively straightforward. Both claimants were groundsmen at the respondent golf club. Andrew Reed worked there from 1997 carrying out ground keeping tasks and working different days and hours throughout that period. He sustained a shoulder injury at work in 2009 which was still giving him some difficulty by the time with which we are concerned. Roland Reed started working there in 2000. In 2017 the golf club was transferred to the present owners. The claimants' interaction was mostly with the head keeper, Steve Gilford. The claimants complain about Mr Gilford's attitude towards them which, they say, amounted to bullying. On the other hand, Mr Gilford wrote letters and there is documentary evidence that the respondent was unhappy with the claimants' performance, complaining that they were work shy and a number of other matters. It is

not necessary for the tribunal to determine which of these summaries of the claimants' performance or Mr Gilford's behaviour is accurate.

20. Andrew Reed began sick leave on 19 May 2017 because of his shoulder injury and work related stress. On 23 May 2017, the respondent sent a letter to Roland Reed which was a formal written warning relating to a number of performance matters. It was suggested that performance should improve or further disciplinary action will follow (page 71).

21. In response to that letter, Andrew Reed and Roland Reed sent a letter to the respondent on 25 May 2017. They stated that they wanted to "*tell you what has being going on from our perspective"*. They raised a number of matters with respect to the warning given to Roland Reed and then went into details about times that they had worked overtime and some of the difficulties that they alleged they had with Mr Gilford. It also gave some information on the effect this was allegedly having on their mental health. Roland Reed's sick leave commenced around this time.

22. By letter of 30 May 2017, the respondent wrote to Andrew Reed and Roland Reed inviting them to a meeting on 2 June 2017. The claimants say that they did not receive that letter. The tribunal had to consider, on the balance of probabilities, whether they did or did not receive that letter. Mr Morgan points to a part of the previous witness statement where it appears that Andrew Reed is suggesting that they did receive that letter but that they could not attend the meeting. That paragraph reads**:**

> *"26. On 21 January 2019 our solicitor received an email from the golf club which stated that it was their position that we had not been employees of the golf club since 2 June 2017. It was suggested that we had been asked to attend a meeting on that date and because we did not do so it was deemed that we had left their employment. Neither Roland nor I were able to attend the hearing because we were suffering from work related stress at the time. The club would have been aware of this because it had received sick notes from us since May. At no time did we resign our employment or say or do anything that could amount to a resignation. This is evidenced by the fact that we continue to provide sick notes to the club. At no time did anyone inform us that they considered that we had resigned or that we had been dismissed."*

23. Mr Morgan points out that in Andrew Reed's witness statement before the tribunal today, that paragraph, which is now paragraph 27, is worded differently with the middle part reading "*As stated previously we were not aware of any meeting on 2 June 2017*."

24. Roland Reed was also asked at the tribunal whether he had received an invitation to the meeting on 2 June 2017 and he replied that he did not. The tribunal accept that the letter of 30 May 2017 was not received by the claimants. Their evidence has been consistent on this since the commencement of this claim with there being a relatively minor difference in

those witness statement summaries set out above. The claimants continued to send sick notes after this date.

25. The claimants, having not attended the meeting, the respondent wrote the letter of 2 June 2017 which reads as follow:

> "*Further to our letter of 30 May 2017 you were both requested to attend a meeting today 2 June 2017 to address the contents of your letter of 25 May 2017 and your planned return to work.*
>
> *As you have both failed to contact us or attend the meeting we fail to see how we can move forward and assume you no longer wish to address the matter and have left your employment with Thorney Golf Centre. With this in mind we will set your leaving date as 2 June 2017"*

26. It is signed by K Abbott who is a manger for the respondent.

27. The claimants also say that they did not receive this letter. For similar reasons, the tribunal have accepted the claimants' evidence on this. There is no evidence that they did receive those letters and it makes no sense that they would completely ignore them, given they were very concerned about their employment as the medical records show, and they continued to send sick notes in. The tribunal cannot state whether or not the letters were written at the time and there is no evidence of them having been posted as they were not sent recorded delivery. Even if they were posted, the tribunal finds that they were not received by the claimants. The respondent did not send P45s with respect to the alleged end of the claimants' employment.

28. As stated, both claimants continued to see their GPs and both continued to send sick notes by recorded delivery. We have seen a number of receipts for recorded delivery and it is not entirely clear whether the respondent is saying no such sick notes were received. The respondent has not stated clearly that they did not get those sick notes. The judge asked Mr Morgan a direct question during this hearing but he declined to answer. Indeed, their responses in the first SSP claim would suggest that they had seen these sick notes which referred to stress at work (see paragraph 35).

29. On 25 July 2017, the claimants wrote to the respondent seeking to raise a grievance saying that they had been bullied by the head greenkeeper and had been forced to go off sick. There was no response to that letter and the respondent has not told us whether it was received or not.

30. The claimants then wrote another letter on 8 January 2018 to Ms Abbott asking questions about statutory sick pay as none had been received. By this time, it seems that the claimants had got trade union assistance.

31. On 26 January 2018 they wrote another grievance letter to Ms Abbott, it seems with some assistance from the trade union, which refers to the previous grievances of 25 July and the letter of 8 January to which they say there was no reply. This letter raises questions of bullying and not receiving

anything from the respondent by way of sick pay or anything else. None of these letters were responded to and they were sent recorded delivery showing that they had been signed for.

32. In the meantime, the claimant began the previous tribunal cases for unpaid statutory sick pay, claiming up to December 2017, presumably on the basis of that being the period of time over which statutory sick pay should have been paid.

33. There was a preliminary hearing in those previous cases on 30 November 2018 which nobody from the respondent attended. That caused the claimants' solicitor to write an email on 6 December 2018 to seek clarification on their employment position. She writes:

> *"I write following the preliminary hearing which took place on 30 November 2018.*
>
> *It is my position that the employment of my clients is continuing. However at the hearing it was my intention to clarify the employment status of my clients with you but no one from the respondent attended. Please could you confirm that my clients are still employed by you and if you do not consider their employment is ongoing when they were dismissed and what procedure was followed. I look forward to hearing from you."*

34. The claimants had also sent a letter on 31 December 2018 indicating their intention of returning to work in February 2019. There is no direct response to that note but there was a response by the respondent to the claimants' solicitor's email on 21 January 2019. This reads:

> *"It is our position that both of your clients are not employees of Thorney Golf Club Limited and have not been employees since 2nd June 2017.*
>
> *Your clients were requested to attend a meeting on 2nd June 2017 to discuss their sickness and their grievances. Neither of your clients attended their meetings or contacted us to provide a reason for their on attendance. As a result this was deemed that they had left their employment with us."*

35. The tribunal considered that it was worth looking at the response to the previous SSP claims to see whether that sheds light on what the respondent's view might have been of the situation in 2018. The relevant section of the defence to those claims reads as follows:

> *"3. The claimants would not work and did not like work.*
>
> *4. The claimants would not do simple easy and entirely standard greenkeeping work that was asked of them.*
>
> *5. The claimants were workshy and lazy.*

6. *The claimants both left their employment with the respondent simply because they did not want to work.*

7. *The claimants signed on as "sick" unable to work through purported stress both together at virtually one and the same time simply to try and get further free money from the respondent.*

8. *The claimants were not sick and they are not sick they just did not want to work. So they left. They wanted money and saw an opportunity to obtain free money whilst not working and doing nothing."*

36. The tribunal notes that nowhere in that response is there any suggestion of 2 June 2017 being the date at which the claimants' employment allegedly terminated. Given that the respondent appears to have seen the sick notes, it is not very clear why it would form the view that the claimants no longer worked for them.

37. The tribunal find as a fact that the date of termination of employment is when it was unambiguously stated by the respondent that employment had come to an end. That is 21 January 2019.

38. No potentially fair reason or any procedure having been followed, and the claimants indicating they intended to return to work early in the new year, it follows that that must be a dismissal and must also amount to an unfair dismissal.

39. In relation to the issues before the tribunal, those are the relevant findings of fact with respect to when employment terminated. The claim is therefore brought in time.

40. The next factual issues for the tribunal to decide relates to what compensation should be awarded. In this case, the relevant facts relate to the question of whether the claimants were disabled at the material time, this being an issue of jurisdiction for the tribunal. We also must consider the facts in relation to compensation claimed. The schedules of loss make no claims for compensatory awards.

41. As stated above, the tribunal has seen medical records for both claimants and we now summarise parts of them that assisted us with the question of whether they were disabled at the material time.

Andrew Reed

42. For Andrew Reed, the records span a period from 19 May 2017 to 2021. The first entry shows discussion about a hurt shoulder and being "*stressed out*". There was are also reference to the claimant crying and "*breaking down*". There was also a mention about taking an overdose. The medical records give some detail of what the doctor was told about Andrew Reed having suicidal thoughts and he wanted to be signed off work *"long-term*".

On examination, Andrew Reed was tearful with poor eye contact and a diagnosis was a stress related work situation. By June 2017 the diagnosis was said to be "*Mixed anxiety and depressive disorder*" and there was further discussion about suicidal plans. There is repeated mention of work problems. For example, 18 July 2017, "*Pressure from work has caused increased anxiety. Worked at golf club for 20 years and no probs til recent change in head green keeper*. "

43. The diagnosis of mixed anxiety and depressive disorder is repeated on a number of occasions over the next few months with references to suicidal thoughts and other symptoms. There is also reference to "*Hoping to get different job and work with brother."* in November of 2017 and reference to him feeling much better by December 2017. Andrew Reed was prescribed Citalopram for depression and this continued throughout the rest of 2017 and 2018 with sick notes being provided. On 8 May 2018 it was recorded "*Still feels too anxious to work*" and there was reference to union representation.

44. The diagnosis of mixed anxiety and depressive disorder continues throughout 2018 with a referral to the Primary Care Mental Health Service during 2018.

45. There is further reference to "*Suicidal ideation about twice a week*" in August 2018. On 21 August the mental health service recorded "*Andrew reports that last year he had a disagreement at work resulting in now being off sick for nearly 12 months*". And a discussion about suicidal thoughts. There is also some reference to self-harm which was said to be superficial.

46. The patient questionnaire completed in January 2019 showed anxiety, depression and suicidal self-harming and there is further reference to this on 16 January 2019 discussion where Andrew Reed is said to have "*Chronic depression/anxiety*". A further sick note was provided at that point. By 21 May 2019 it was recorded that Andrew Reed had "*Stopped self-harming after having counselling with Prism".* He also told us in his witness statement how this condition affected his normal day to day activities. He said that he found it very hard to sleep, the anxiety stopped him from leaving the house and he did not answer the door. His appetite was affected and he had difficulty getting dressed.

47. By August 2019 there is reference in the medical records to plans for starting a farm and to work with his brother but no other paid work was undertaken. The tribunal is satisfied that Andrew Reed had a mental impairment which had a substantial adverse effect on his normal day to day activities.

48. Andrew Reed also explained how he felt when he heard he was considered not to be employed by the respondent. He was "*sad and relieved*" but also felt "*discarded like a piece of toilet roll, let down, betrayed and feel that I have done something wrong*".

Roland Reed

49. As far as Roland Reed is concerned, we also have seen his medical records. Again, they start in May 2017 mentioning stress at work. The diagnosis is for "*work related stress*" and that continues through 2017. However, this is at a different level than that for Andrew Reed. So, for instance, on 3 July 2017 it is said "*Doesn't feel able to go back yet. Feels a bit low but doesn't think needs to see me ATM . Not talking any overdoses*."

50. There are further discussions with the doctor including one on 22 August 2017 where it is recorded, "*No intention of returning to work at the golf centre*". It is also recorded there that he was "*not depressed and no anxiety outside of work. Willing to work elsewhere*".

51. Further visits to the doctor continued for sick notes and it is clear that stress at work was recorded as a reason for the sick notes but there was also some hypertension. There was no medication given for any mental health issues that the tribunal can see. There was medication for hypertension. The diagnosis is still stress at work.

52. This continues through 2018 with notes such as those in November 2018 which says, *"says he is well and keeping himself busy*". In Rolands Reed's witness statement, he told us of these effects which included struggling to sleep, being worried and upset. He was also diagnosed with type 2 diabetes and high cholesterol and had some other symptoms. However, the tribunal finds that these symptoms in the witness statement do not fully accord with what the medical records indicate.

53. The tribunal understands that both claimants have not worked, at least not formally, since they stopped working for the respondent and are in receipt of some benefits.

Law

54. The question of the date of termination of employment is one of fact. Where it is disputed, the tribunal will look at all relevant evidence. This will include any documentary evidence and witness evidence. Section 111 Employment Rights Act 1996 (ERA) provides that claims arising under that Act should be brought within 3 months (allowing for any extension for ACAS early conciliation) and Section 123 Equality Act 2010 (EQA) also provides for a three month time limit for discrimination claims.

55. Where there is no response to a claim, Rule 21 Employment Tribunal Rules 2013 applies. This reads:-

"(1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply

(2) An employment judge shall decide whether on the available material (which may include further information which the parties are required by a judge to provide), a determination can properly be made of the claim, or part

of it. To the extent that a determination can be made, the judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a judge alone.

(3) The respondent shall be entitled to notice of any hearings and decisions of the tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the judge."

56. The claimants bring claims for unfair dismissal, notice pay and holiday pay and have sent schedules of loss with no compensatory award claimed. The basic award is calculated in accordance with section 119 ERA. The notice pay is calculated in accordance with section 86 ERA and holiday pay for the period they were on sick leave in accordance with section 13 ERA as unlawful deductions of wages.

57. The claimants also bring claims for discrimination because of something arising in consequence of disability under section 15 EQA. In order to bring such a claim, the tribunal needs to decide whether the claimants are disabled within the definition at section 6 EQA and the Guidance on the Definition of Disability 2011.

58. If the tribunal finds there was a disability and discrimination, it may make an award for injury to feelings, guidance on the appropriate level being contained in Vento v West Yorkshire Police [2002] EWCA Civ 1871 and Da'Bell v NSPCC [2009] as well as in the ET Presidential Guidance of March 2021. In summary, the tribunal should consider whether the treatment falls within the lower, middle or upper bands as set out in Vento and updated by the Guidance. The lower band is between £900 to £9100, the middle between £9100 to £27,400 and upper band between £27,400 to £45,600.

Submissions

59. As stated above, the claimants' representative submitted that the tribunal should make the awards as set out in the schedules of loss.

60. Mr Morgan made submissions at the hearing, as set out above, and sent an email for our consideration before we deliberated on 10 December. He drew our attention to excerpts from the medical records, as he did the day before, which, in his submission, showed that they asked to be signed off sick, that they hoped to get a different job and intended to start a business. Mr Morgan submitted the claimants had no intention to "*work or return to work*" and that they "*wanted long term sick note from the very outset*". Mr Morgan alleged that the claimants had started their own business but produced no evidence save for what is recorded in the medical records. He reminded the tribunal about the unsigned and differing witness statements as we discussed the day before. Finally he said that "*the brother openly coached & answered questions on behalf of both other brothers during hearing on 9.12 21".* To deal that last point, the claimants' brother was in attendance for part of the hearing but was asked to leave. The tribunal saw no evidence

whatsoever of him coaching and he did not answer questions which were answered by the claimants.

Conclusions

61. We have to decide whether we can make a judgment under Rule 21, which must include the question of whether the claims were presented in time. As our findings of fact make clear, the claims were presented in time, termination of employment having taken place on 21 January 2019.

62. We therefore move to consider whether to make a Rule 21 judgment and what compensation should be awarded. In light of our findings of fact, there was a dismissal without notice and the claimants were not paid outstanding holiday pay. We also have to determine whether the claimants were disabled.

63. We have decided that Andrew Reed was disabled at the relevant time but that Roland Reed was not. We ask ourselves whether there was a substantial adverse effect on normal day to day activities as a result of an impairment. Clearly, Andrew Reed had an impairment diagnosed as "*mixed anxiety and depressive disorder*". All the evidence contained in medical records and in his witness statement points to a mental impairment which has had a substantial adverse effect on his normal day to day activities.

64. Roland Reed does not meet that test. Although the medical records suggest stress at work, there is no diagnosis of depression and no apparent need for medication. A number of the comments made to the doctor suggest that any effects that there are, are not substantial in nature. Although Roland Reed's witness statement comes closer to providing evidence of the effects on his normal day to day activities, this does not accord with the medical records. Although Roland Reed had some mental health issues, the tribunal does not accept that there is sufficient evidence of it having substantial adverse effects on his normal day to day activities. Roland Reed was not a person with a disability under the definition in EQA at the relevant time. It follows there can have been no discrimination on that ground.

65. That leads us then to the question of what compensation should be awarded. We have schedules of loss at the end of the bundle of documents. Although the parties were given until 11am on the day we were deliberating to make comments, including comments on compensation, none were received on the detail contained in the schedules of loss.

66. Both claimants were unfairly dismissed. We therefore award the basic award for unfair dismissal and the notice pay as claimed. They did not receive any sums for holiday pay whilst on sick leave and those sums are also awarded as claimed.

67. The only other question is with respect to injury to feelings arising from the discrimination for Andrew Reed. The dismissal was because Andrew Reed had been on sick leave and sending in sick notes. That is something arising in consequence of his disability and amounts to unlawful discrimination.

Andrew Reed claims £15,000 in his schedule of loss for injury to feelings for this discrimination, putting it in the middle band of Vento.

68. The tribunal considers that the treatment, which was a dismissal, does place the award in the middle band of Vento. We take into account that Andrew Reed's earnings were low and that some of his injury to feelings were mitigated by the certainty of the end of this employment, where, on any account, he had been very unhappy. Taking everything into account, and including a rough assessment of what interest might have accumulated, the tribunal has decided to award £10,000. There is no claim for interest in the schedule of loss and the tribunal thinks this sum reflects fair compensation for Andrew Reed's injured feelings.

69. In summary, the tribunal makes a Rule 21 judgment because it has jurisdiction and because there was no response in time. The tribunal accepted that Andrew Reed was disabled but did not accept that Roland Reed was. The amounts awarded are as set out in the schedules of loss (apart from the injury to feelings award). These sums are ordered to be paid by the respondent to Andrew Reed and Roland Reed.

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Employment Judge Manley

Date: 31/12/2021

Sent to the parties on: 5/1/2022

N Gotecha
For the Tribunal Office