



EMPLOYMENT TRIBUNALS

Claimant

Mr F Germizaj

v

Respondent

Morgan Sindall Property Services
Limited

Heard at: Bury St Edmunds (by CVP)

On: 17 February 2022

Before: Employment Judge Laidler

Appearances:

For the Claimant: In person

For the Respondent: Miss L Kaye, Counsel

JUDGMENT having been sent to the parties on 25 February 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. This Preliminary Hearing was listed at an earlier Preliminary Hearing which took place on 30 September 2021 when the Claimant was represented by Counsel. Detailed directions were given regarding the production of an Impact Statement by the Claimant setting out the nature of his alleged disability and how it affected him. There were also detailed directions made with regard to the provision of medical records and further medical information that the Claimant sought to rely upon.
2. This Tribunal, however, only had very limited medical information in the form of fit notes and some of the medical information provided was after the material time.
3. Counsel for the Claimant, on the last occasion, filed after that hearing amended Particulars of Claim which are very specific as to the acts relied upon. These were seen at page 99 of the Hearing Bundle; paragraph 5a – 5d. The same acts are relied upon in relation to each head of claim under the Equality Act 2010 and the relevant period that this Tribunal must consider is between 24 February 2020 and 2 June 2020, the beginning and end date of the acts which are alleged to amount to discriminatory conduct by the Respondent.

4. The Claimant attended Imperial College Healthcare NHS Trust on 26 May 2019 as an emergency. In the Bundle was seen a letter from the hospital dated that day describing him attending with back pain trauma. It stated,

“Sudden onset of lower back pain while loading work tools into a van. Pain radiating down the left leg. Not weight bearing due to pain.”
5. In a section headed ‘Action for GP’ it was stated,

“Given pain relief and advised him to take Ibuprofen over the counter. Advised him to rest for one week.”
6. The diagnosis was given as sciatica and the outcome as, *“Treatment complete”* with no follow up referral. An Outpatient prescription was given for Co-dydramol: two tablets – four times a day for seven days and Diazepam: 2mg tables – three times a day for three days.
7. The Tribunal then saw various fit notes with the first being for 28 May 2019, describing lower back pain and the Claimant not fit for work until 11 June 2019. Then on 7 June 2019, a fit note running until 21 June 2019 stated the Claimant could restart work on 10 June 2019, on amended duties. The first two weeks were to be less heavy manual duty work.
8. There are then no fit notes until the Claimant went off sick again on 7 March 2020. From the time he returned to work, certainly from the end of June 2019 until 7 March 2020, the Claimant was doing a range of duties that would have included bending, lifting and undertaking plumbing work. He was also driving between jobs. These are also normal day to day activities which the Claimant was able to perform.
9. The Claimant states he has had physiotherapy since December 2019 until prevented from attending in person due to the Covid pandemic. The only evidence provided of this is a letter dated 12 March 2020 that states from the Physiotherapist that the Claimant is,

“Currently attending physiotherapy. The left side leg and arm neuropathic pain and low back pain. He is struggling to continue with work duties at present due to the repetitive bending and prolonged driving.”
10. Shortly after, the Claimant was signed off sick:-
 - The first sick note dated 11 – 13 March 2020 described the Claimant as *“off with back issues”*;
 - 7 – 21 April 2020 described the Claimant as *“unfit due to sciatica”*;
 - 20 April 2020 – 4 May 2020, that the Claimant was *“off with back pain”*; and
 - 20 April 2020 – 2 June 2020, stated the Claimant would be fit to return on light duties from 4 May 2020.
11. It is known that the Claimant returned to work on 5 May 2020. He was furloughed on 11 May 2020.

12. On 15 May 2020, there is a GP letter seen in the Bundle confirming that the Claimant had been in touch, but this was in relation to stress related symptoms, mood disturbance and anxiety; not about his back. The GP stated that a dose of anti-depressants had been increased.
13. Whilst on furlough there is another sick note stating that the Claimant may be fit for work on light duties and that is for the period 15 June 2020 to 17 July 2020.
14. There is then an Occupational Health report in the Bundle dated 3 September 2020. However, that is not relevant to this Tribunal's consideration, as written after the material time.

Conclusions

15. There is no dispute that the Claimant has back pain. The issue is whether it has had a substantial and long-term adverse effect on the Claimant's ability to carry out normal day to day activities, within s.6 Equality Act 2010. Schedule 1 to the Act describes long term as,
 - (1) The effect of an impairment is long term if-
 - (a) it has lasted for at least 12 months;
 - (b) it is likely to last for at least 12 months; or
 - (c) it is likely to last for the rest of the life of the person affected.
16. In looking at what is 'likely', the Tribunal should consider whether it "could well happen". The Tribunal has also taken into account the Guidance on Disability.
17. By the date of the last act complained of, namely 2 June 2020, it was over one year from the Claimant's injury sustained on 26 May 2019. However, this Tribunal does not have evidence that throughout the entire 12 months the back pain had a substantial and adverse effect as required by the definition. The Claimant had a prescription initially for only a seven day and three day period. He was off until 10 June 2019 when he could resume on light duties and thereafter performed his full role, until going off sick again on 7 March 2020. He was able to return to work on 5 May 2020 on light duties until being furloughed on 11 May 2020.
18. During that furlough period there was a fit note of 15 June 2020 to 17 July 2020, again stating the Claimant could work on light duties.
19. Whilst as stated in the Claimant's Impact Statement, he might have had some limitations in his walking and playing with his children, he has not established an adverse effect lasting 12 months, or that at the material time it was more likely to last for 12 months. There is no evidence of that, or any diagnosis going forward.
20. The Tribunal has therefore come to the conclusion that the Claimant has not established that he met the statutory definition of disabled at the material time.

21. It follows therefore, that as all his claims are claims of disability discrimination, these cannot continue and are dismissed.

Employment Judge Laidler

Date: 7 April 2022

Judgment sent to the parties on

17/4/2022

N Gotecha

For the Tribunal office