



EMPLOYMENT TRIBUNALS

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (by CVP) **On:** 1 February 2022

Before: Employment Judge Daniels (sitting alone)

Claimant: Mr C Manley

Respondent: Peterborough Ltd t/a Aragon Direct Services

Appearances:

Claimant: In person, assisted by Mr R Doncaster and Ms Giuseppina Dilia D'Agostino

Respondent: Ms Golaspink (Solicitor)

JUDGMENT

1 The tribunal has jurisdiction to hear the claims for unfair dismissal and breach of contract. It was not reasonably practicable for the claimant to file such claims in time and the claims were presented within a reasonable period thereafter. Reasons for this decision were provided orally at the hearing.

2 The tribunal has jurisdiction to hear the claim for disability discrimination with regard to dismissal. It was just and equitable to extend the period for the claimant to file his claim in all the circumstances. Reasons for this decision were provided orally at the hearing.

CASE MANAGEMENT SUMMARY

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Final hearing

1. All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting with Members at the Employment Tribunals, **Cambridge**, (in person) on **3 to 5 October 2022**, starting at 10 am or as soon as possible afterwards. The time estimate for the hearing is **3 days**.
2. The claimant(s) and the respondent(s) **must** inform the Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing.

3. Deposit orders

The tribunal made deposit orders in relation to each claim brought by the claimant with full details in a separate deposit order of today's date.

The issues

4. The issues between the parties which potentially fall to be determined will depend on whether or not the claimant pays the deposit orders granted in this case. At present these issues are as follows:

Unfair dismissal

- 4.1 What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The respondent asserts that it was a reason relating to the claimant's conduct.
- 4.2 If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the so-called 'band of reasonable responses'?

Remedy for unfair dismissal

- 4.3 If the claimant was unfairly dismissed and the remedy is compensation:
 - a. if the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would [still have been dismissed had a fair and reasonable procedure been followed / have been dismissed in time anyway]? See: Polkey v AE Dayton Services Ltd [1987] UKHL 8; paragraph 54 of Software 2000 Ltd v Andrews [2007] ICR 825; W Devis & Sons Ltd v Atkins [1977] 3 All ER 40;

Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604];

- b. would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?
- c. did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

Disability

- 4.4 Was the claimant a disabled person in accordance with the Equality Act 2010 ("EQA") at all relevant times?

EQA, section 13: direct discrimination because of disability

- 4.5 Has the respondent subjected the claimant to the following treatment:
 - a. Dismissing him. (The claimant confirmed at the hearing that this is his only alleged unlawful act of discrimination relied upon).
- 4.6 Was that treatment "*less favourable treatment*", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?
- 4.7 If so, was this because of the claimant's disability and/or because of the protected characteristic of disability more generally?

Breach of contract

- 4.8 To how much notice was the claimant entitled?
- 4.9 Did the claimant fundamentally breach the contract of employment by an act of gross misconduct? N.B. This requires the respondent to prove, on the balance of probabilities, that the claimant actually committed the gross misconduct?
- 4.10 *Remedy*

If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded. Specific remedy issues that may arise and that have not already been mentioned include:

- a. *if it is possible that the claimant would still have been dismissed at some relevant stage even if there had been no discrimination, what reduction, if any, should be made to any award as a result?*

- b. *did the respondent unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to increase any award, and if so, by what percentage, up to a maximum of 25%, pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 (“section 207A”)?*
- c. *did the claimant unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to decrease any award and if so, by what percentage (again up to a maximum of 25%), pursuant to section 207A?*

Other matters

- 5 The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’, which can be found at:
www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/
- 6 The parties are reminded of rule 92: “Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise)...”. **If, when writing to the tribunal, the parties don’t comply with this rule, the tribunal may decide not to consider what they have written.**
- 7 The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- 8 The following case management orders were made reasons, to the extent not set out below, were given at the time and written reasons will not be provided unless they are asked for by a written request presented by any party within 14 days of the sending of this written record of the decision.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Further information

If the disability claim is pursued and the relevant deposit is paid, the claimant is to provide further and full particulars of his claim for disability discrimination by 15 April 2022, setting out (a) when the respondent allegedly discriminated against him; (b)

how it did so (and confirming the claim is of s13 direct discrimination), who did so and on what basis it is alleged that this was because of his disability?

2. Judicial mediation

- 2.1 The parties are referred to the “*Judicial Mediation*” section of the Presidential Guidance on ‘General Case Management’, which can be found at: www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/.
- 2.2 The respondent is not interested in judicial mediation.
- 2.3 If they change their minds, they must inform each other/the other party and the tribunal of this as soon as possible.

3. Complaints and issues

- 3.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

4. Amended Response

The respondent shall have until **29 April 2022** to file an **Amended Response** if it so wishes.

5. Statement of remedy / schedule of loss

- 5.1 The claimant must provide to the respondent by **21 April 2022** an updated document – a “Schedule of Loss” – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant’s complaints and how the amount(s) have been calculated.
- 5.2 If any part of the claimant’s claim relates to dismissal and includes a claim for earnings lost because of dismissal, the Schedule of Loss must include the following information: whether the claimant has obtained alternative employment and if so when and what; how much money the claimant has earned since dismissal and how it was earned; full details of social security benefits received as a result of dismissal.

6. Disability issue

- 6.1 The parties must by **27 May 2022** serve on each other copies of any medical notes, reports, occupational health assessments and other evidence in their possession and/or control relevant to the issue of whether the claimant was at all relevant times a disabled person under the EQA (“disability issue”). For the purposes of this paragraph: documentation already in existence that can be obtained by the claimant by requesting it from their GP or other treating healthcare provider or that is in the possession or control of the respondent’s

occupational health provider is deemed to be within, respectively, the claimant's and the respondent's possession and/or control.

- 6.2 The claimant must by **27 May 2022** provide the respondent with a detailed witness statement (or statements): identifying what "*physical or mental impairment*"(s), in accordance with EQA section 6, is relied on in relation to the disability issue; stating, in relation to each impairment relied on, between which dates it is alleged the claimant was a disabled person because of that impairment; dealing, by specific reference to schedule 1 to the EQA and any relevant provision of any statutory guidance or Code of Practice, with the effect of the alleged disability (or disabilities) on the ability of the claimant to carry out normal day to day activities. The claimant is referred to the part of the Presidential Guidance issued on General Case Management, referred to above, that relates to disability.
- 6.3 The respondent must by **8 July 2022** inform the Tribunal and the claimant of the extent to which the disability issue is conceded, and if it isn't conceded in full, the reasons why.

7. Documents

- 7.1 On or before **24 June 2022** the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so.

8. Final hearing bundle

- 8.1 By **22 July 2022**, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files ("bundle"), and provide the claimant with a 'hard' and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issue in the case that won't be in the remedy bundle referred to below and should only include the following documents:
- the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
 - documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle

- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

9. Remedy bundle

- 9.1 The claimant must prepare a paginated file of documents (“remedy bundle”) relevant to the issue of remedy and in particular how much in compensation and/or damages they should be awarded if they win their claim and provide the respondent with a ‘hard’ and electronic copy of it by **22 July 2022**.
- 9.2 The documents must be arranged in chronological or other logical order and the remedy bundle must have an up to date schedule of loss at the front of it.

10. Witness statements

- 10.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before **5 August 2022**.
- 10.2 No additional witness evidence will be allowed at the final hearing without the Tribunal’s permission.
- 10.3 The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant’s witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

11. Final hearing preparation

- 11.1 On the working day immediately before the first day of the final hearing (but not before that day, the following parties must lodge the following with the Tribunal:
 - 11.1.1 7 copies of the bundle(s), by the respondent;
 - 11.1.2 7 hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;
 - 11.1.3 7 hard copies of any written opening submissions / skeleton argument, by whichever party is relying on them / it;
 - 11.1.4 7 hard copies of the following, agreed if possible, by the respondent, a neutral chronology, a ‘cast list’ and a key reading list.

12. Other matters

- 12.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.

- 12.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 12.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.
- 12.4 **Public access to employment tribunal decisions**
- All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.
- 12.5 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
- 12.6 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

Employment Judge Daniels

3 March 2022

Sent to the parties on:

21 April 2022

For the Tribunal: