EMPLOYMENT TRIBUNALS

Claimant: **Christian Mallon**

Respondent: **Electus Recruitment Solutions Limited**

Heard at: **Southampton (by Cloud Video Platform)** **On: 22 and 23 August 2022**

Before: **Employment Judge Halliday**
Ms Goddard
Mr Richardson

Representation
Claimant: in person
Respondent: Mr Mahmood, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that the Claimant's complaint of failure to make reasonable adjustments under section 20 and 21 of the Equality Act 2010 fails and is dismissed.

REASONS

Claims and Issues

1. By a claim form presented on 4 July 2020 the claimant brought a claim for discrimination on grounds of disability. The clamant suffers from dyspraxia and claimed that reasonable adjustments were not made to enable him to apply for a role as Technical Manager via the respondent, an employment agency; specifically, that he was not telephoned by the respondent nor provided with a list of the essential criteria for the role before a call.

2. The respondent defends the claim on the basis that the claimant did not satisfy the essential criteria for the role; that they did send him details of the essential criteria for the role; that it was not a reasonable adjustment to arrange a call with the claimant and that there was no substantial disadvantage to the claimant as he was not in any event qualified for the role. The respondent also alleges that the job application was not made in

good faith by the claimant but is part of a wider campaign to obtain favourable settlements.

3. Case Management Preliminary Hearings in this matter were heard before Employment Judge Raynor on 14 April 2021, before Employment Judge O'Rourke on 5 July 2021, and before Judge Gray on 23 November 2021 and 13 June 2022. There was also a Preliminary hearing before Employment Judge Salter on 3 August 2021 at which the claimant's claim for direct discrimination was struck out.

4. The remaining issues that were to be determined at this hearing (as set out in Employment Judge Gray's Case Management Order made on 23 November 2021) were discussed at the start of the hearing and agreed by the parties as follows:

Time Limits

4.1. It is agreed by the parties that the claim was submitted in time.

Disability

4.2. The respondent concedes that the claimant is a disabled person as defined in section 6 of the Equality Act 2010 by reason of his dyspraxia.

Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

4.3. The respondent concedes that it knew the claimant was a disabled person at all material times (namely from 4 May 2020 when the claimant made the application for the position of Technical Manager with Energy Systems Catapult).

4.4. *A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:*

4.4.1. a policy of asking for written job applications;

The Case Management order of 23 November 2021 records that the respondent agreed that this PCP was applied, but counsel submitted that the concession was not fully recorded and reserved the respondent's position in relation to raising additional arguments on this point.

4.4.2. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the claimant finds it harder to complete a written job application form?

4.4.3. Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

4.4.4. What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests that he should have been given the opportunity to make an oral application for the post.

The claimant does not pursue the argument that he was not provided with a list of the essential criteria for the role.

4.4.5. Was it reasonable for the respondent to have to take those steps and when?

4.4.6. Did the respondent fail to take those steps?

The Proceedings

5. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The tribunal were referred by both parties to documents in an indexed bundle of 181 pages. The bundle included judgements from previous employment tribunal claims bought by the claimant. Additional documents which we understand constituted the bundle from a previous case brought by the claimant, case number: 3202234/2018, Mallon v AECOM, were also made available to the Tribunal, but no additional documents in the bundle were referred to specifically by the parties in their evidence, so this bundle was not reviewed by the tribunal in this hearing.

6. At the start of the hearing, it was noted that by way of reasonable adjustments, the claimant might need regular breaks and that questions needed to be framed in a clear way dealing with one point at a time.

7. We heard evidence from the claimant, and Ms Newport and Ms Musique on behalf of the claimant who had each submitted witness statements (two in the case of Ms Newport) and from Mr Day and Mr Little on behalf of the respondent who had also each submitted a witness statement. The claimant had also prepared an impact statement which was included in the bundle.

8. Ms Newport, Ms Musique, Mr Little and Mr Day each gave clear and consistent answers to the questions put to them in cross-examination. In the case of Mr Day and Mr Little the evidence given was also consistent with the documents in the bundle. The evidence of Ms Newport and Ms Musique primarily related to the claimant's dyspraxia and its impact so there were no relevant documents to consider. We found the evidence of all four of these witnesses to be credible and reliable.

9. The claimant's responses to questions were on a number of occasions inconsistent and evasive. The claimant had asked for questions to be broken down so he could answer them and counsel for the respondent did his utmost to accommodate this request. However, the claimant frequently did not address the question asked, avoided giving "yes or no" answers and instead gave a discursive answer which did not address the question asked.

The tribunal does however note and accept the evidence of Ms Newport that the claimant's memory "is both terrible and excellent depending on the subject matter. He can remember great technical detail about something related to his work projects or one of his hobbies but if I were to ask him something more general like where we went on holiday last year, he would either not know or answer incorrectly". We accept that this explains in part the unevenness of the claimant's recollections and we have taken this into account in reviewing his evidence. We do however conclude that the claimant's evidence is therefore not always reliable.

10. Having heard the evidence and listened to the parties' submissions the tribunal reserved its decision, and this is the reserved judgment with reasons reached following that hearing.

11. Having heard the witnesses give their evidence, we found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

Facts

12. The claimant is 47 years old, has four degrees, a doctorate in chemical engineering which he completed in 2006 and has studied for an MBA. He is motivated to work both on his account and to support his family financially. The claimant was diagnosed with dyspraxia approximately 7/8 years ago.

13. The claimant has had professional support to prepare a comprehensive CV which sets out his key achievements and his main (but not all of his) employment experience. This has evolved over time, and the version relevant to this claim gives details of his disability and the reasonable adjustments requested, namely that:

    "Due to my disability, I request a 'reasonable adjustment' to be made in the application process by completing an 'oral application'. This would be a five-to-ten-minute phone call to talk about my relevant experience. I would welcome the essential criteria so I can prepare in advance."

14. The claimant referred in his evidence to the fact that he has now been out of work for over three years and has applied for around 2,200 jobs. He has referred to previous support provided by the Job Centre to assist him in applying for particular roles, but currently his method of applying for roles is to search for roles in CV Library by using a key word and salary information, then to send his generic CV to the agency or company with a request for an oral application to be facilitated. He further stated that his experience is that he is rarely successful in these applications, so he needs to make a lot of applications in order to obtain enough interviews to have a realistic chance of being offered a role. He makes little or no effort to sift the roles himself to ensure that he meets the minimum requirements, searching only on key words and salary. The claimant confirmed that his work coach had suggested having differentiated CVs for different roles e.g., R & D, or chemical roles but he has elected not to follow this recommendation and made it clear that he is not prepared to change his approach, but rather that he has to "get other people to change their approach to accommodate [him]". His stated understanding of the obligations that arise under the

Equality Act 2010 is that it would be a reasonable adjustment in all cases for the recruitment agency or company to offer him an oral interview to establish if he meets the essential requirement for the role, which he asks are sent to him before that conversation takes place.

15. In the course of these proceedings, the claimant was asked to confirm the total number of employment tribunal claims he has issued; initially by Employment Judge Rayner at the hearing on 14 April 2021 (having confirmed he could think of three current claims) and was ultimately subject to an Unless order to provide details via the AECOM case bundle by Employment Judge Gray on 13 June 2022. The claimant was still giving inconsistent answers to this question in this hearing, stating under cross-examination that "he has issued so many he can't remember", but we accept that he has issued the 39 claims referred to in the bundle as withdrawn claims, including two previous claims against the respondent, and on the balance of probabilities that that he has issued over 100 claims in total. We agree with Employment Judge Gray's comment, "that the mere fact that the claimant, who is disabled, has brought disability discrimination claims in respect of numerous failed job applications is not necessarily evidence that the claimant is vexatious" on this occasion and we note that his claim against AECOM was successful. However, we do conclude that whilst he does wish to work, the claimant has also developed a system of applying for roles by submitting his CV without spending any time assessing whether he meets the requirements of the role, and if he is not immediately sent what he refers to as the "essential requirements" of the role and/or offered what he refers to as an "oral application" he responds with the threat of litigation. He confirmed under cross-examination that he has never paid a deposit order and when faced with one, he does withdraw the claim, or if an Unless Order is made, the claim does not continue by default.

16. Whilst resisting the suggestion that he could tailor his CV to support his application for a specific or particular type of role, the claimant referred in his evidence on a number of occasions to the fact that he had amended his CV following findings in previous tribunal claims in order to highlight his disability and the adjustments required with the express purpose of supporting future tribunal claims for failure to make reasonable adjustments. We also note that the claimant confirmed that his previous work experience included writing technical reports to support claims for tax relief and he stressed the fact that these involved advanced technologies. Whilst we find that the claimant has consistently exaggerated his relevant experience, we therefore conclude that he is capable both of reviewing job adverts to identify those roles for which he may be suitable, and of amending his CV albeit that both these processes may take him longer than if he did not suffer from dyspraxia.

History with the respondent

17. The respondent is small recruitment agency, currently employing 12 staff, which provides recruitment services and places professionals in job roles within the engineering and technical recruitment sector. The role of the respondent as an agency is to find the most skilled and suitable candidates to put forward to the respondent's clients.

18. The claimant has been applying for roles via the respondent since 2008/2009 and has applied for over 100 roles via the respondent since that time. Mr Little and Mr Day are experienced recruitment consultants both having been employed by the respondent since 2009 and the claimant is well known to both of them.

19. In or around September 2018, the claimant made 6 applications for roles via the respondent. As requested by the claimant as a reasonable adjustment, Mr Day called the claimant on 27 September 2018 in order that the claimant could supplement his CV and apply orally for the roles. Mr Little was also in attendance. The telephone conversation was recorded with the consent of the claimant and a transcript of that call was in the bundle.

20. The claimant asked for the roles to be considered in "price" order. It was quickly established that the claimant did not meet the minimum requirements for a role in control systems or a systems integration engineer role. The third role discussed was a mechanical design role. There was some discussion about the type of experience required for the role, with the claimant seeking to persuade Mr Day that his experience in the gas and oil industry constituted relevant mechanical design experience. Mr Day found the claimant to be aggressive in that conversation and agreed to look at the specific job description. There was then some discussion about the difficulties the claimant faced in talking about 5 or 6 different roles and Mr Day agreed to send the claimant the essential requirements for each of these roles before they spoke again.

21. On 4 October 2018, Mr Day wrote to the claimant as agreed setting out the essential criteria for each of these roles. He also suggested holding a general interview, so the respondent understood the claimant's requirements for future roles.

22. A further call was then held on 22 October 2018. The claimant sought to persuade Mr Day that tangentially relevant experience meant he satisfied the requirements for the additional roles, but it was established, after discussion, that the claimant did not meet even the minimum requirements for the remaining roles.

23. Immediately following the oral applications, there was then a further discussion about the type of role that might be suitable for an applicant with the claimant's background, skills and experience. The claimant referred to his broad range of experience but confirmed he had worked in tax, in oil and gas, petro chem and technical and that he was both an engineer and a tax specialist. He confirmed he was prepared to travel and that he was looking for £55k plus within a half hour commute or on a daily rate as a contractor but would work further away if the salary was higher. Security clearance was also discussed.

24. On 15 March 2019, in the context of an earlier Tribunal claim against the respondent, Mr Day wrote to the claimant setting out the essential criteria for a further four roles. Mr Day also pointed out in this letter that "even if a candidate does meet all the essential criteria, should there be many applications for the role and other candidates also fit …… then progress would not be guaranteed. It is also a consideration of how recent the experience is which the candidate possesses as obviously a client would be

more interested in current experience rather than experience several years ago." We find that these comments were both factually accurate and reasonable.

25. We further find that Mr Day and Mr Little have spoken to the claimant on a number of other occasions, including in May 2019 following an application for a defence sector role, and note that the claimant has made two claims against the respondent previously. We accept Mr Little's evidence that he understands the claimant's background, skills, qualifications, and experience. The respondent indicated in both 2018 and 2019 that they would contact the claimant if a suitable role arose within tax or process engineering in oil and gas as this was where the claimant's background, skills and experience lay, however we accept Mr Little's evidence that these are not sectors which the respondent specialises in and that they have not therefore pro-actively contacted the claimant in relation to a suitable role, although the claimant continues to apply for other roles via the respondent.

Application for position with Energy Systems Catapult

26. On 4 May 2020 the claimant applied for the role of Technical Manager at Energy Systems Catapult. The job description sets out (in summary, with relevant extracts set out in full):

    26.1. Information about the client

    26.2. the purpose of the role: "to take the lead in designing and structuring membership meetings to support an effective dialogue between members and in following up outputs and ensuring key points are communicated clearly and disseminated to a wide audience"

    26.3. what experience the candidate should have:

        *26.3.1. "*experience in the UK energy sector and ideally a good understanding of UK energy policy and energy policy innovation including how the energy sector interacts and interfaces with other sectors/aspects of the built environment, including transport, water, cities and digital.

        *26.3.2. "*experience of working with senior-level key funders and stakeholders of energy research, development demonstration and deployment (RDD&D) across government, such as BEIS and the EIB industry and academia, plus other interested bodies.

    26.4. Responsibilities

    26.5. Key Skills: Project management, Marketing and Sales, and Report Writing.

27. A more detailed job description included in the bundle sets out the criteria in significantly more detail and indicates that: 40% of the role is project management; 25% member and speaking support; 25% dissemination; and 10% management. The longer job description also sets out a long list of credentials which the candidate would ideally have, covering, knowledge, experience and skills.

28. The Covid-19 pandemic had affected the respondent's business significantly and on 4 May 2020 two thirds of the respondent's workforce had been furloughed, leaving only the two directors and three other employees working in the respondent's business. The respondent received 133 applications for the Technical Manager role. The majority of the candidates were unsuitable for the role which Mr Little identified as having "niche" requirements.

29. Mr Little reviewed the claimant's application for the role taking into account his CV (which was generic) and the background information known to Mr Little from his previous significant dealings with the claimant. Mr Little concluded that the claimant did not meet the minimum requirements for the role. Mr Little specifically considered that the claimant had worked in tax roles between 2014 and 2019 and had had no involvement in UK energy policy and energy policy innovation, or experience of people management or recent working relationships with the cross-Government energy bodies.

30. Mr Little therefore wrote to the claimant on 4 May 2020 at 4:46 pm to confirm that his application would not be progressed.

31. The claimant responded 6 minutes later at 4:52 pm by email: "can I ask why you did not follow my reasonable adjustment listed on my cv? do you have a problem with disabled people working? as I cannot help my medical condition and find a doc attached why my request is a reasonable one to ask". The tribunal note that this is in line with his response to a refusal to progress his application in other tribunal claims to which they have been referred.

32. On 6 May 2020 Mr Little responded by stating the respondent's commitment to equal opportunities and setting out the respondent's process for dealing with applications, which as confirmed by Mr Day in his witness statement is:

    32.1. to undertake an initial review of a candidate's application and their skills and experience to assess if they are relevant to the job role;

    32.2. candidates demonstrating relevant skills and experience will then be shortlisted;

    32.3. having passed the initial sift, the candidate is contacted and asked if they require any reasonable adjustments for an initial phone interview.

33. Mr Little also referred to previous discussions with the claimant and repeated his assurance that the respondent understood the claimant's skills and experience and set out for the avoidance of doubt that the claimant on this occasion did not have:

33.1. "Recent experience in the UK energy sector and ideally a good understanding of UK energy policy and energy technology innovation including how the energy sector interacts and interfaces with other sectors/aspects of the built environment, including transport, water, cities, and digital.

33.2. Experience working with senior level key funders and stakeholders of energy research, development. demonstration, and deployment (RDD&D) across government, such as BEIS and the EIB industry and academia plus other interested bodies."

34. The claimant wrote to Mr Little 10 minutes later at 12:22 pm on 6 May 2020 asking him to set out the essential criteria that Mr Little believed the claimant did not have and again at 14:44 pm the same day raising a formal complaint of discrimination. The claimant emailed again on 14 May 2020 at 7.17 am chasing for a response and indicating that if one was not received, he would get ACAS involved.

35. Mr Little responded on 14 May 2020 at 10.00 am to say that as a director of the company, he did not have a line manager, that the respondent understood the claimant's skill set and setting out again the required skills and experience for this specific role. Mr Little re-iterated that the respondent would be in touch should a relevant role in tax, or process engineering roles within oil and gas become available and that otherwise it considered the matter closed.

36. The claimant responded at 10:26 am that he would keep this in writing and referred to a "court"; referred to his CV setting out great detail about his disability; and then set out areas of experience which he considered to be relevant to the role including:

36.1. working in transport and selling liquid technology;

36.2. six years' experience in energy technology innovation and published papers;

36.3. research and development for 5 years in tax;

36.4. ten years in industries, oil and gas, plastic, paint injection systems and nanotechnology;

36.5. work in academia for over three years at two universities in energy innovation.

37. During the hearing, the claimant was cross-examined on these assertions at some length by counsel for the respondent, and we conclude that the claimant has very limited work experience and apart from report writing, does not satisfy the criteria at the level required for this role. We accept that he has held 25 roles and that these are varied, but other than a substantial period of time working in tax including submitting tax claims relating to innovation and research and development, his roles have in the main been short-term and the claimant exaggerates the experience he obtained during these roles. For example: he currently sells car treatment sachets and scratch cloths primarily via e-bay as confirmed by Ms Newport but sought to

categorise this as experience in nano-technology and link this to the wider sectors where this technology may be of use; under cross-examination he continued to maintain that his work submitting tax returns demonstrates engagement with the sectors his clients worked in; and that attending networking events, demonstrated engagement with key government stakeholders. He also relies on his experience in the oil and gas sector prior to 2013 and his academic work when undertaking his PhD which he concluded in 2006. Mr Day stated in his evidence that the claimant was unrealistic in applying for roles for which he had no relevant experience and that it was evident that the claimant could not have the required experience for the wide range of roles he has applied for summarising the claimant's approach as "because I have worked as an engineer, I can do any engineering role" and we accept that this is the case.

38. In relation to the Energy Systems Catapult role, we are therefore satisfied that even if he had been given a verbal interview immediately, he would not and could not have evidenced that he met the requirements of the role.

39. The claimant sent a further email on 24 May 2020 referring to the involvement of ACAS and setting out the basis on which he believed he could bring a legal claim.

40. Mr Little sent an email in response on 27 May 2020 explaining that the grievance procedure did not apply as the claimant was not an employee, re-iterating the respondent's belief that there had been no material change in the claimant's skills and experience, setting out in more detail the requirements of the role, and confirming that the claimant was always free to supplement his applications verbally if he had additional information to disclose. Mr Little referred to his conversation with ACAS and confirmed that he was only able to put forward the most suitable and qualified candidates and asked the claimant to call him if he felt he had recent demonstrable experience in relation to the matters set out in his email and provided contact details. The claimant did not call Mr Little but replied on 4 July 2020 with details of his tribunal claim.

41. The claimant applied for the role direct with Energy Systems Catapult but was unsuccessful.

42. Having established the above facts, we now apply the law.

The Law

43. This is a claim alleging discrimination because of the claimant's disability under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges failure by the respondent to comply with its duty to make adjustments to him as an applicant for a role.

44. The provisions relating to the duty to make reasonable adjustments are to be found in sections 20 and 21 of the EqA. The duty comprises of three requirements, of which the first is relevant in this case, namely that where a provision criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, there is a requirement to take such steps as it is

reasonable to have to take to avoid that disadvantage. A failure to comply with this requirement is a failure to comply with a duty to make reasonable adjustments. A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

45. Section 212(1) EqA states that 'substantial' means 'more than minor or trivial'

46. Paragraph 20 of Schedule 8 to the Equality Act 2010 sets out that this duty is not engaged if the employer does not know and could not reasonably be expected to know […] that the employee firstly has a disability and secondly is likely to be placed at a disadvantage.

47. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides in section 136(2) that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However, by virtue of section 136(3) this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.

48. In relation to reasonable adjustment claims, the burden of proof is on the Claimant to establish the existence of the provision, criterion or practice and to show that it placed them at a substantial disadvantage (*Project Management Institute v Latif [2007] IRLR 579*). Thereafter the onus remains on the Claimant to identify the potential reasonable adjustments with a sufficient degree of specificity to enable the Respondent to address them evidentially and the Tribunal to consider the reasonableness of providing them. At the point where the duty to make reasonable adjustments has been engaged, and the Claimant has identified one or more potential reasonable adjustments, the burden of proof is reversed. The Respondent must then show, on the balance of probabilities, that the adjustment could not reasonably have been achieved.

49. Guidance on the approach to be taken in reasonable adjustment claims was given by the EAT in *Environment Agency v Rowan 2008 ICR 218, EAT* in which His Honour Judge Serota QC stated that a tribunal must consider:

- the PCP applied by or on behalf of the employer,
- the identity of non-disabled comparators (where appropriate), and
- the nature and extent of the substantial disadvantage suffered by the claimant.

50. Guidance as to the considerations that are relevant in assessing reasonableness is also provided in paragraph 6.28 of the Equality and Human Rights Commission's statutory Code of Practice on Employment. The Tribunal is required to have regard to this Code when considering disability discrimination claims.

51. Counsel for the respondent has referred the tribunal to the case of *Smith v Churchills Stairlifts plc (2006) ICR 524, CA* in which the Court of Appeal confirmed that the test of reasonableness was an objective one and to the case of *RBS v Ashton (2011) ICR 632 EAT* in support of the contention that

in addressing the reasonableness of any proposed adjustment, the focus has to be on the practical result of the measures and not on the thought processes of the [sic] employer.

52. We also note the principles set out in *Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA* and the finding that unless the disadvantage is properly identified, it is not possible to determine what steps the employer might reasonably be expected to take to eliminate it.

53. We were also referred by the respondent to the case of *Tarbuck v Sainsbury's Supermarkets Ltd 2006 IRLR 664*, EAT in support of the contention that it is no part of the duty to make reasonable adjustments for the employer actively to consult the employee about what adjustments should or could be made and referred to the judgment of Mr Justice Elias (then President of the EAT) which states that while it will always be good practice for the employer to consult, and it will potentially jeopardise the employer's legal position if it does not do so, there is no separate and distinct duty on an employer to consult with a disabled worker. The only question is, objectively, whether the employer has complied with its obligation to make reasonable adjustments. This decision has been followed in Spence v Intype Libra Ltd EAT 0617/06 and Salford NHS PCT v Smith EAT 0507/10.

54. Th claimant has referred us to the case of *Mallon v AECOM case no: 3202234/2018* and the judgment of Employment Judge Gardiner dated 5 March 2022 in which he succeeded in his claim for failure to make reasonable adjustments under section 20 and 21 of the Equality Act 2010 and to two cases where a job applicant also succeeded in their claims, the Court of Appeal decision in the Northern Irish case of British Telecommunications Plc v Meier GIR11016 dated 29/07/2019 and the Employment Tribunal decision given by Employment Judge Snelson on 28 June 2017 in the case of Mr O'Sulllivan v London Borough of Islington Case no 2207632/2016.

55. In closing submissions, counsel also referred the tribunal to conclusions drawn by other first instance tribunals in the cases of: *Mallon v Dept of Agriculture (2017)*, *Mallon v MBA Notts Ltd (2019), Mallon v Ginger Recruitment (2019*) and *Mallon v Ela8 Ltd (201)9* in support of the respondent's contentions that firstly, the claimant is not a credible or reliable witness and secondly that his claim is misconceived and has been issued not because the claimant has a genuine belief that he has been discriminated against but cynically as part of a wider campaign of similar complaints issued by the claimant against numerous organisations, which we note.

56. We take these cases as guidance, and not in substitution for the provisions of the relevant statutes and in relation to fist instance decisions without considering ourselves bound by the conclusions reached.

Decision

57. It is agreed that the claimant suffered from a disability, dyspraxia, which was known to the respondent on 4 May 2020 when the claimant made the application for the position of Technical Manager with Energy Systems Catapult.

58. The dispute between the parties is essentially this: the claimant says that as his CV shows that he has dyspraxia and, given that he requested an oral application for this role, the failure to offer him an oral interview immediately is a failure to make a reasonable adjustment. He further claims that if he applies for any role on the basis of his standard CV, the respondent, as a recruitment agency, should as matter of course, (in all cases, and whether or not he has any relevant experience or any realistic prospect of being short-listed for the role) give him the opportunity to make an oral application and not to do so is a failure to make reasonable adjustments. The respondents say that to offer an oral application when it is apparent from the claimant's CV and the knowledge they have of the claimant's work history, that he has no prospect of being short-listed is not a reasonable adjustment as the claimant suffers no disadvantage and they are entitled to shortlist without automatically offering an oral application on every occasion.

59. We first consider if a relevant PCP was applied to the claimant, namely, as identified in the agreed list of issues, if there was a policy of asking for written job applications. The respondent submits that although it did on this occasion and indeed still does require applicants to submit written applications (and to that extent the respondent accepts that a PCP existed in this case) the claimant was subsequently invited to contact the respondent with a view to discussing his application and further in any event the claimant had previously submitted oral applications following a written application and was therefore aware that he could make an oral application if he wished to do so, so the PCP was not applied to the claimant in this case. The claimant says that the requirement to submit a written application is the PCP relied on.

60. We conclude that the offer of an oral application is in effect a variation to the usual process adopted by the respondent which as stated by Mr Day is to require applications to be made in writing and to shortlist on the basis of the written application. We are therefore satisfied that the PCP relied on by the claimant that there is policy (or practice) of asking for written applications exists.

61. We next consider whether the PCP put the claimant at a substantial disadvantage compared to someone without the Claimant's disability, including whether substantial disadvantage arises because the claimant finds it harder to complete a written job application form than someone without the same disability.

62. We have accepted the claimant's evidence that he has made approximately 2,200 job applications in the last few years which he does by submitting a CV. We accept that it would be harder for the claimant to submit individual bespoke applications than for an applicant without the same disability, but we do not accept that the claimant finds it any harder to submit his CV than

any other applicant who elected to submit his CV. We have further found that the claimant is capable of making changes to his CV as evidenced by the fact that he has done so in order to highlight his disability. He is a highly educated individual, with a PhD who on his own evidence can produce technical reports. He has previously obtained support from both professional CV writers in preparing a generic but very full CV and from the Job Centre in relation to applications for specific roles. We therefore do not find that the policy of requiring a written application places him at a substantial disadvantage for the following reasons.

62.1. Firstly, the claimant was able to and in fact did, apply for this role by providing a comprehensive CV setting out his work history, experience and achievements in order for the short-listing decision to be made. The finding of the tribunal is that there was no additional relevant experience that could have been given by him in an oral application that would have affected the respondent's decision not to shortlist him for initial consideration for the role on this occasion. We unreservedly accept the evidence of Mr Day that in his professional judgment the claimant is unrealistic in applying for roles for which he has no relevant experience and that this was the case in relation to the role of Technical Manager at Energy Systems Catapult. This was corroborated by the claimant under cross-examination when he was seeking to persuade the tribunal that he could meet the minimum requirements of the role but demonstrated an unrealistic assessment of his relevant experience and his own abilities. We accept that far from being a strong candidate whom the respondent could recommend for this role, the claimant failed to meet the majority of the minimum requirements for the role. We therefore conclude that the claimant was not placed at a substantial disadvantage as he had in fact provided all the information the respondent required to assess his suitability to shortlist him by submitting his CV.

62.2. Secondly, we have also found that Mr Day and Mr Little had already taken the time to discuss the claimant's CV with him, both generally in the recorded call of 22 October 2018 and subsequently on a number of occasions including in May 2019. Given the claimant has given evidence that he has not been employed for three years, we further conclude that even if we are incorrect on the first ground, the respondent had sufficient additional information to reach the conclusion that the claimant was not a suitable candidate to shortlist as there was no additional evidence he could have provided by way of a further oral application in addition to the information he had previously provided orally to the respondent and there was therefore no substantial disadvantage.

62.3. Thirdly, we further find that the claimant is capable of amending his CV, as he has already done in order to increase the focus on his reasonable adjustment requirements. We note that his evidence is that he has been recommended to produce bespoke CVs targeted at specific roles/sectors by a work coach but that he has elected not to follow this advice, although we conclude that he would be able to do so in the same way as he has been able to produce a full and

professional CV setting out his substantive experience. We therefore further find that he has not been placed at a substantial disadvantage on the basis that he could, if he chose to do so, produce a small number of targeted CVs which would provide all relevant information for those roles where his application would be strong enough to merit a shortlisting interview rather than persist with applying for numerous roles based on his system of using keywords and salary which results in many applications for roles where he has no reasonable prospect of being shortlisted. This conclusion would apply to any future applications he makes. Whether or not he now chooses to remove relevant information from his CV (as he has suggested he will); there can be no substantial disadvantage on future occasions if he is able to provide the necessary information by way of a full CV as he has on this occasion or by way of a few targeted CVs as he has been recommended to do.

62.4. Fourthly, we accept that on 27 May 2020 the respondent offered the claimant the opportunity to make an oral application to discuss any recent demonstrable experience relevant to the role. The claimant chose not to do make an oral application. Adjustments were therefore made to the PCP on this occasion, although in light of our conclusions above, there was no obligation on the respondent to make such adjustments.

63. Further, having reached these conclusions we are therefore satisfied that the respondent was correct in concluding that the claimant was not likely to be placed at a substantial disadvantage by the PCP of short-listing on the basis of a written application and we therefore do not need to consider what steps (the 'adjustments') could have been taken to avoid the disadvantage, as there was none.

64. We further accept that the claimant's claim is misconceived as counsel for the respondent submits. We have found that the claimant has developed a system of applying for roles by submitting his CV without spending any time assessing whether he meets the requirements of the role, with the expressed requirement that on every occasion, no matter how weak his application for a role taken at its highest could be, the employer or agency should offer him the opportunity to make an oral application after sending him what he terms to be the "essential requirements" of the role. If this is not done, he responds with the threat of litigation and issues a claim unless settlement is reached via ACAS. This is the process the claimant has adopted in this case. The claimant has confirmed under cross-examination that he has never paid a deposit order and when faced with one, he does withdraw the claim, or if an Unless Order is made, the claim does not continue by default. We have been referred to previous judgments in which the claimant's claim has been struck out in circumstances where he has adopted a similar practice of applying for a role where he has no relevant experience and note in particular the judgment of Employment Judge R Clark in the case of *Mallon v MBA Notts Ltd* and the detailed discussion of the claimant's lack of experience in the manufacture of pre-cast concrete which led to the decision that the claim had no reasonable prospect of success and the claim being struck out. In this case the claimant's claim for failure to make reasonable adjustments was not struck out at a preliminary

hearing (although the claim for direct discrimination was), a deposit order has not been made and the claim has proceeded to final hearing, but we conclude that the claimant as an experienced litigant must have known that this claim had no reasonable prospect of success and we conclude that it was not made in good faith but as part of a wider campaign as the respondent alleges.

65. The claimant's claim therefore fails and is dismissed.

66. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 4; the findings of fact made in relation to those issues are at paragraphs 12 to 41; a concise identification of the relevant law is at paragraphs 43 to 53; and how that law has been applied to those findings in order to decide the issues is at paragraphs 57 to 65.

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Employment Judge Halliday
Date:19 September 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
29 September 2022 By Mr J McCormick

FOR EMPLOYMENT TRIBUNALS