



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr Justin Griffiths

AND

Respondent

Dimensions Training Solutions Limited
(In Voluntary Creditors Liquidation)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY BY VHS

ON

12 December 2022

EMPLOYMENT JUDGE N J Roper

MEMBERS Mrs L B Simmonds
Dr J Miller

Representation:

For the Claimant: In person

For the Respondent: Did Not Attend

JUDGMENT

The unanimous judgment of the tribunal is that the claimant succeeds in his claims of disability discrimination and the respondent is ordered to pay the claimant compensation in the sum of £26,062.50 together with interest in the sum of £3,558.29 (being total compensation including interest of £29,620.79).

RESERVED REASONS

1. In this case the claimant Mr Justin Griffiths claims that he has been discriminated against because of a protected characteristic, namely disability. The claim is for discrimination arising from disability, and because of the respondent's failure to make reasonable adjustments. The respondent has conceded that the claimant was disabled at the relevant times, but otherwise has denied the claims.
2. The respondent entered Voluntary Creditors Liquidation on 26 July 2022 and after that date has taken no steps to continue to defend this claim, it and did not attend this hearing today.

3. This has been a remote hearing by video, and the form of remote hearing was by Video Hearing Service. An in-person hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.
4. We have heard from the claimant. The respondent did not attend today and did not take part in this hearing.
5. We have heard the claimant give his 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 any factual and legal submissions made by and on behalf of the respective parties.
6. The Facts
7. The respondent is a limited company which specialised in the delivery of training, and it had a contract with DWP to provide training. The claimant Mr Justin Griffiths was born in 1975 and he was employed by the respondent as an Employability Adviser within the DWP contract. His duties included advising others on workplace adjustments for disability. He commenced employment on 10 February 2020 and was dismissed summarily on 15 October 2020.
8. The claimant has a number of illnesses and impairments. The respondent has already conceded that two of these are disabilities for the purposes of the relevant legislation. The first is osteoarthritis of the knee and knee and leg pains, giving rise to restricted leg mobility. The second is asthma. In each case the claimant has suffered from the relevant impairment for more than 12 months, and each impairment has had a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities. This includes mobility and concentration.
9. In March 2020 the Government imposed its national lockdown as a result of the Covid-19 pandemic. The respondent directed all of its staff including the claimant to work from home with effect from 23 March 2020. The claimant completed a "working from home risk assessment" at the request of the respondent, and he confirmed that he would need reasonable adjustments because he was unable to work comfortably at his dining room table on a dining room chair. The respondent's reaction was to require the claimant to attend at its Gloucester centre in order to collect his chair from his office workplace, but the claimant was unable to do this because he was shielding. The respondent failed to act further upon the claimant's request for his chair, and during August and September 2020 the claimant raised a grievance. On 14 October 2020 the claimant sought advice from ACAS and then made an official written request to the respondent's Group HR Manager for reasonable adjustments. On the following morning (15 October 2020) the respondent's Operations Director telephoned the claimant and dismissed him summarily. The respondent paid the claimant one month's pay in lieu of notice, and his accrued holiday entitlement. The respondent failed to answer the claimant's request for written reasons for his dismissal, and it failed to process his appeal against dismissal.
10. The claimant was hurt and humiliated by his dismissal, which occurred in the run-up to a family Christmas, and appeared to be simply because the claimant had requested adjustments to address his disabilities, in circumstances where the claimant's role with the respondent was to advise people on exactly those issues. He sought medical advice, and was prescribed antidepressants, and also required some counselling.
11. Having established the above facts, we now apply the law.
12. The Law
13. 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 discrimination arising from a disability, and failure by the respondent to comply with its duty to make adjustments.
14. The protected characteristic relied upon is disability, as set out in section 6 and schedule 1 of the EqA. A person P has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities. A substantial adverse effect is one that is more than

- minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months, or is likely to last the rest of the life of the person.
15. As for the claim for discrimination arising from disability, under section 15 (1) of the EqA a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
 16. 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 and third are relevant in this case, namely that (s20(3)) 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, and (s20(5)) where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid. A failure to comply with either 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.
 17. The remedies available to the tribunal are to be found in section 124 of the EqA. The tribunal may make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; may order the respondent to pay compensation to the complainant (on a tortious measure, including injury to feelings); and make an appropriate recommendation. In addition, the tribunal may also award interest on any award pursuant to section 139 of the EqA.
 18. The interest payable on discrimination awards is to be calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 ("the Interest Regulations"). Under regulation 2 the tribunal shall consider whether to award interest, and if it chooses to do so then under regulation 3 the interest is to be calculated as simple interest accruing from day to day. Under regulation 6 the interest on an award for injury to feelings is to be from the period beginning on the date of the act of discrimination complained of and ending on the day of calculation. All other sums are to be calculated for a period beginning with a mid-point date between the act of discrimination and ending on the day of calculation
 19. We have considered the cases of Pnaiser v NHS England [2016] IRLR 170 EAT; Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14; Environment Agency v Rowan [2008] IRLR 20 EAT; Ishola v Transport for London [2020] ICR 1024 CA; Nottinghamshire City Transport Ltd v Harvey [2013] EqLR 4 EAT Newham Sixth Form College v Sanders EWCA Civ 7 May 2014; Archibald v Fife Council [2004] IRLR 651 HL; General Dynamics Information Technology Ltd v Carranza [2015] ICR 169 EAT; Leeds Teaching Hospital NHS Trust v Foster [2011] EqLR 1075 EAT; Project Management Institute v Latif [2007] IRLR 579 EAT; Vento v West Yorkshire Police [2003] IRLR 102 CA; Da'Bell v NSPCC [2010] IRLR 19 EAT; Simmons v Castle [2012] EWCA Civ 1039; De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879; and the Fifth Addendum dated 28 March 2022 to the Presidential Guidance on awards for injury to feelings and psychiatric injury dated 5 September 2017.
 20. Decision
 21. The claimant's claims to be determined by this Tribunal were agreed at a case management preliminary hearing and set out in the Case Management Order of Employment Judge Salter dated 29 November 2021 ("the Order"). The claimant's claims are for disability discrimination, (being discrimination arising from disability, and an alleged failure to make adjustments). We deal with each of these claims in turn
 22. The Claimant's Disability:
 23. The disabilities relied upon by the claimant are osteoarthritis of the knee, and asthma. For the reasons explained in our findings of fact above, for each of these two

- impairments we find that at all material times the claimant suffered from a physical impairment which had a substantial and long-term adverse effect on the claimant's ability to carry out normal day to day activities, in particular mobility and concentration. There was a substantial adverse effect because it was more than minor or trivial, and there was a long-term effect because it lasted for at least 12 months.
24. The respondent has already conceded that the claimant was a disabled person by reason of each of these two impairments relied upon at all material times. We agree with that concession, and we so find.
 25. Discrimination Arising from Disability s15 EqA:
 26. This claim is set out in paragraph 39 of the Order. For the reasons explained in our findings of fact we find that the three elements of unfavourable treatment relied upon did all take place. The respondent required the claimant to attend the Gloucester centre to collect his office chair when he was shielding and unable to do so. The respondent then dismissed the claimant immediately after his formal request for reasonable adjustments. The respondent also ignored the claimant's request for written reasons for his dismissal and ignored his request to pursue an appeal against the termination of his employment.
 27. The proper approach to section 15 claims was considered by Simler P in the case of Pnaiser v NHS England at paragraph 31: (a) Having identified the unfavourable treatment by A, the ET must determine what caused it, i.e. what the "something" was. The focus is on the reason in the mind of A; it involves an examination of the conscious or unconscious thought processes of A. It does not have to be the sole or main cause of the unfavourable treatment but it must have a significant influence on it. (b) The ET must then consider whether it was something "arising in consequence of B's disability". The question is one of objective fact to be robustly assessed by the ET in each case. Furthermore: (c) It does not matter in precisely what order the two questions are addressed but, it is clear, each of the two questions must be addressed, (d) the expression "arising in consequence of" could describe a range of causal links ... the causal link between the something that causes unfavourable treatment and the disability may include more than one link, and (e) the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.
 28. In Basildon & Thurrock NHS Foundation Trust v Weerasinghe the EAT held that the fact that unfavourable treatment might be loosely related to a person's disability, or the context in which the disability was manifested, is not the same as showing that the treatment was the result of something arising out of the person's disability.
 29. We find that the claimant's requirement to shield during the Covid pandemic, and his requirement for reasonable adjustments to work at home, all arose in direct consequence of his disability. We also find that the less favourable treatment complained of and suffered by the claimant were because of these matters had arisen in direct consequence of his disability.
 30. The respondent was not present at this hearing and has not pursued any defence of justification, and the claimant therefore succeeds in these claims.
 31. Reasonable Adjustments
 32. The claimant's claim for reasonable adjustments is set out in paragraph 40 of the Order. The first PCP relied upon is a requirement for him to work from home without the provision of a suitable workspace. The second PCP relied upon is a requirement for the claimant to attend the Gloucester centre to collect his chair.
 33. The constituent elements of claims in respect of an alleged failure to make reasonable adjustments are set out in Environment Agency v Rowan. Before considering whether any proposed adjustment is reasonable, the Tribunal must identify: (i) the provision, criterion or practice applied by or on behalf of the employer; (ii) the identity of the non-disabled comparators (where appropriate); and (iii) the nature and extent of the substantial disadvantage suffered by the claimant.
 34. Environment Agency v Rowan has been specifically approved by the Court of Appeal in Newham Sixth Form College v Sanders - the authorities make it clear that to find a

breach of the duty to make reasonable adjustments, an employment tribunal had first to be satisfied that there was a PCP which placed the disabled person at a substantial disadvantage in comparison with persons who were not disabled. The tribunal had then to consider the nature and extent of the disadvantage which the PCP created by comparison with those who were not disabled, the employer's knowledge of the disadvantage, and the reasonableness of proposed adjustments.

35. As per HHJ Richardson at para 37 of General Dynamics Information Technology Ltd v Carranza UKEAT/0107/14 KN: "The general approach to the duty to make adjustments under section 20(3) is now very well-known. The Employment Tribunal should identify (1) the employer's PCP at issue; (2) the identity of the persons who are not disabled with whom comparison is made; and (3) the nature and extent of the substantial disadvantage suffered by the employee. Without these findings the Employment Tribunal is in no position to find what, if any, step it is reasonable for the employer to have to take to avoid the disadvantage. It is then important to identify the "step". Without identifying the step it is impossible to assess whether it is one which it is reasonable for the employer to have to take".
36. In addition, it is clear from Ishola v Transport for London, that although a PCP will not be narrowly construed, nonetheless the concept does not apply to every act of unfair treatment of a particular employee. It must be capable of being applied to others, and it suggests a state of affairs which indicates how similar cases are generally treated or how a similar case will be treated if it occurred again. This is consistent with Nottinghamshire City Transport Ltd v Harvey which states "practice connotes something which occurs more than on a one-off occasion and which has an element of repetition about it".
37. In the first place we do not agree that the second PCP relied upon, namely requirement for the claimant to attend the Gloucester office to collect his chair, was a PCP. We think this was a one-off requirement without any element of repetition and applying Nottinghamshire City Transport Ltd v Harvey we do not agree that this was a PCP.
38. However, the claimant has succeeded in establishing that the first PCP was in place, namely that the claimant was required to work from home without the provision of a suitable workstation. This caused the claimant a substantial disadvantage when compared with non-disabled persons because he was unable to work at his dining room table with the dining room chair. That disadvantage could have been ameliorated by the supply of the claimant's suitable chair from the Gloucester office, which was an auxiliary aid.
39. We therefore find that the statutory duty to provide an auxiliary aid under section 20(5) EqA was engaged, and the respondent failed in its duty to provide the auxiliary aid in question. The claimant therefore succeeds in this claim.
40. Compensation:
41. The claimant seeks compensation for his monetary loss arising from his dismissal, and for injury to feelings caused by the discrimination. We deal with each of these in turn.
42. The claimant received net weekly basic pay of £351.57 whilst working for the respondent. He was paid one month's pay in lieu of notice to 15 November 2020. He was able to secure alternative employment within two weeks of that date, but he lost two weeks' pay (£703.14) until this period. After he commenced new employment on 30 November 2020 the claimant received net weekly basic pay of £273.09. This was £78.48 per week less than his previous net weekly take home pay with the respondent. The claimant claims, and we award, this pay differential for the period from 30 November 2020 until the date of this hearing on 15 December 2022. That is a period of 106 weeks at £78.48, which is a sub-total of £8,318.88. In addition, the claimant claims future loss of 26 weeks only, after which time he suspects that he may have been in a position to fully mitigate this ongoing loss. We consider that to be reasonable and we award a further 26 weeks' pay at £78.48 being £2,040.48. We therefore award a total for loss of earnings in the sum of £11,062.50.
43. Interest is payable upon this award from the midpoint between the date of dismissal and the date of this hearing some 791 days later. That is interest for 395 days. We

- apply the judicial interest rate of 8%, and interest at this rate on £11,062.50 is £885.00 per annum, or £2.42 per day. Interest payable at this rate for 395 days is £955.90, and we therefore award interest on the loss of earnings in the sum of £955.90.
44. We next make an award for injury to feelings in respect of the other discrimination claims. We have heard from the claimant that he was hurt and humiliated by his dismissal, which occurred in the run-up to a family Christmas, and appeared to be simply because the claimant had requested adjustments to address his disabilities, in circumstances where the claimant's role with the respondent was to advise people on exactly those issues. He sought medical advice, and was prescribed antidepressants, and also required some counselling.
 45. Bearing in mind the appropriate guidance we consider that we should make an award in the middle band of Vento, and we consider an appropriate award to be £15,000.00. Interest on injury to feelings is payable from the act of discrimination which is 791 days from 15 October 2020 to 15 December 2022. Interest on £15,000 at the rate of 8% is £1,200.00 per annum, or £3.29 per day, which for 791 days is £2,602.39.
 46. We therefore order the respondent to pay compensation to the claimant for discrimination in the sum of £26,062.50 together with interest in the sum of £3,558.29 (being total compensation including interest of £29,620.79). We consider that this award is just and equitable in all the circumstances of this case.
 47. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 6 to 10; a concise identification of the relevant law is at paragraphs 12 to 19; how that law has been applied to those findings in order to decide the issues is at paragraphs 20 to 39; and how the amount of the financial award has been calculated is at paragraphs 40 to 46.

Employment Judge N J Roper
Dated 12 December 2022

Judgment sent to Parties on
21 December 2022 By MR J McCormick

For the Tribunal Office