



# EMPLOYMENT TRIBUNALS

## Claimant

Mr James Hindry

v

## Respondent

Hunt Sheds Limited

**Heard at:** Norwich

**On:** 6 February 2023

**Before:** Employment Judge Postle

## Appearances

**For the Claimants:** In person

**For the Respondent:** Did not attend and was not represented

## JUDGMENT

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**Remedy Hearing following a Default Judgment on 13 August 2022**

1. The Claimant has a disability of bowel cancer within the meaning of s.6 of the Equality Act 2010.
2. The Claimant was unfairly dismissed and suffered discrimination arising from disability under s.15 of the Equality Act 2010.
3. The Respondents are Ordered to pay a basic award in the sum of £1,470.00.
4. The Claimant is entitled to future loss of 26 weeks from 15 March 2022, following being fit to return to work, the Respondents are Ordered to pay £3,640.00.
5. The Claimant is entitled to an award for injury to feelings of £5,000.00 and the Respondents are Ordered to pay that sum.
6. The Claimant is also entitled to an award for loss of statutory rights of £500.00.
7. The total award payable by the Respondents to the Claimant is:  
**£10,610.00**
8. Recoupment does not apply to this award.

## REASONS

1. By a claim form filed on 19 October 2021, following Early Conciliation with ACAS commencing on 14 September 2021 and concluding on 4 October 2021, the Claimant made a claim for: ordinary unfair dismissal and a claim under the Equality Act 2010 for disability discrimination.
2. The Claimant was employed part time as a Shed Builder. The claim was filed on 11 April 2022. A Notice of Claim was sent to the Respondents at their address, their Response was clearly received. The Notice of Claim advised the Respondents that a Response was required by 3 February 2022. For reasons best known to the Respondent, they filed their Response, it being date stamped at the Watford Employment Tribunal (the Administration Centre) on 11 April 2022.
3. The Respondents were informed by letter of 6 July 2022, that their Response had been rejected under Rule 18 as it had been received more than 28 days after the claim had been sent to the Respondent and no extension of time had been applied for. The Respondents were advised that a Judgment would now be issued and that the Respondents would only be entitled to participate in the Hearing to the extent permitted by the Employment Judge.
4. That letter (Rejection of Response) was accompanied by a document headed, 'Your Questions Answered' and explained what a Respondent could do in the above circumstances.
5. Notice of the Remedy Hearing was then sent to the parties on 7 July 2022. The original date was postponed as was a subsequent date due to Covid, the Hearing taking place today.
6. In the meantime, on 12 July 2022, the Respondents simply submitted the letter to the Tribunal saying,

*"Please urgently review the Tribunal file in this case. We have received a Tribunal Notice stating the Respondents failed to present a valid Response on time and a Judgment has been issued against the Respondent under Rule 21. When I telephoned the Tribunal yesterday I was informed by a member of staff that the ET3 Response had been received but it was 28 days too late."*

7. The Respondents acknowledged that the Notice of Claim was dated 6 January 2022 and confirmed that any Response had to be in by 3 February. The letter from the Respondents went on to say that the ET3 Response was sent to the Tribunal by Royal Mail Special Delivery and that the Respondents were assured that the Post Office had delivered it within the time limits prescribed.

8. However, Employment Judge Postle makes the point that the Respondent is under a duty to ensure an ET3 Response is submitted within the due time and the Respondent has produced no evidence from the Royal Mail that the ET3 was delivered within the time limits.
9. A direction was sent on 1 August 2022 to the Respondents from Employment Judge Poste, which confirmed,

*“The ET3 (Response Form) is shown as date stamped received by the Employment Tribunal on 11 April 2022 and is therefore received outside the time limits.”*
10. Following that, nothing further was heard from the Respondents and no Application was made for a reconsideration.
11. At this morning’s Hearing the Claimant gave evidence on Oath. He confirmed that the dates of his employment were 1 June 2014 until he was dismissed when he attended the Respondent’s premises on 13 August 2021.
12. The Claimant has been candid this morning in admitting that because of his cancer, he was unable to work effectively until his stoma was removed. This is due to be removed on 15 March 2023.
13. In the intervening period the Claimant has been in receipt of statutory sick pay and following the exhaustion of statutory sick pay, on 12 November 2020 the Claimant then received Employer Support Assistance.
14. The Claimant has also not been signed off fit to return to work until his stoma is removed and in any event, during the intervening period he was considered a vulnerable person and was shielding.
15. The diagnosis for bowel cancer having been made on 13 April 2020, which clearly is a recognised disability under the Equality Act 2010.
16. The Claimant tells me that he kept in touch with the Respondent providing fit notes on a regular basis. He saw Mr Hunt in early January 2021 to talk about a return to work and the suggestion was to wait until the Claimant’s stoma was removed.
17. The Claimant attended the Respondent’s premises around 13 August 2021 (it could have been the 11<sup>th</sup>) the Claimant denies that he was in any way aggressive. He wanted to talk about returning to work, albeit not on his former hours which were in any event part time. His statement says that Mr Hunt looked at the Claimant and said,

*“You haven’t got a fucking days’ work in you”*

And it would appear Mr Hunt had employed other staff in place of the Claimant.

18. The Claimant denies resigning and requesting his P45. Subsequently the Claimant was dismissed. The Claimant is adamant he wanted to return to work for his own wellbeing.
19. Since being dismissed, the Claimant has been diagnosed with anxiety and depression and is on medication, although he is reluctant to take it.
20. The Claimant clearly was unfairly dismissed. There clearly was no warning of the Claimant's dismissal and no discussion about the Claimant's return to work and the fact that the Respondent's Mr Hunt believed the Claimant simply was not fit to return. The Claimant was dismissed without waiting or seeking any medical advice.
21. The Claimant, in those circumstances, clearly had been unfairly dismissed under the Employment Rights Act 1996.
22. The Claimant has also been discriminated against, arising from his disability, in that because of the Claimant's disability the Respondents believed he was not fit to work and simply dismissed the Claimant because of his current disability.
23. Looking at the Claimant's payslips, his part time work brought in £7,280 net per year. Given the hours worked it appeared that was below the tax threshold. Therefore his pay per week was £140.
24. The Claimant is entitled to the following damages:
  - 24.1 Basic Award, age 52 at date of dismissal with 7 years complete service, entitled to 10.5 weeks pay at £140 = £1,470;
  - 24.2 Given the Claimant has been unable to work until the stoma is removed and has been in receipt of benefits, there is no immediate loss;
  - 24.3 The future loss I have assessed at 26 weeks from 15 March 2022, again at £140 per week = £3,640;
  - 24.4 Injury to feelings, the Claimant tells me that since his dismissal he believes that part of the reason for his depression and stress is the way he was treated, accepting that some of it may be down to the fact that he was diagnosed with cancer. The dismissal was a one off event, therefore I have assessed the injury to feelings at £5,000;
  - 24.5 Given the Claimant's length of service, I have also assessed his statutory rights at £500;

24.6 This makes a total of **£10,610** which is not subject to recoupment given the fact I have made no award for immediate loss.

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Employment Judge Postle

Date: 23/2/2023

Sent to the parties on: 2/3/2023

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For the Tribunal Office.