



EMPLOYMENT TRIBUNALS

Claimant: Mr Richard Miles Hamilton

Respondents: Eden Horticulture Ltd

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Birmingham (CVP) **On:** 01 June 2023

Before: Employment Judge Hena

Appearances

For the claimant: In Person

For the respondent: Ms Del Priore, (Counsel)

JUDGMENT

The Tribunal makes the following decision in relation to the preliminary issues heard at the Public Preliminary Hearing:

1. The claimant suffered a mental impairment which meets the definition of a disability as defined in Section 6 of the Equality Act 2010 at the time of the events the claim was about. I find the evidence distinguishes the claimant's circumstances from those in the cases of *J v DLA Piper UK LLP* [2010] ICR 1052 and *Mr Igweike v TSB Bank* [2019]. The Tribunal decided:
 - A) The claimant suffered a mental impairment of anxiety at the time of the claimed discrimination took place.
 - B) That this anxiety had a substantial adverse effect on his ability to carry out his day-to-day activities and when he returned to the work place

he needed significant help from his then partner to present himself at work but this impacted his home life.

- C) The effects of the anxiety were likely to last at least 12 months from when he first informed the respondent of his condition in September 2021.

PRELIMINARY FINDING

The Tribunal made a preliminary finding on the claimant's two strike out applications against the respondent's response for late filing. It was accepted that the respondent had good reason, namely the liquidation of their instructed firm, in December 2022 to file papers late and it does not meet the high threshold to warrant strike out. With regards to the second strike out application it is found the respondent served the skeleton argument within 7 days of today's hearing.

REASONS

1. The issues in this matter are as follows:
 - 1.1. Whether there is merit in the Claimants Strike Out application against the Respondent for failure to comply with the Tribunal directions and serving bundles late.
 - 1.2. If the Tribunal accepts to determine the Strike Out application whether the respondent failed to comply with Tribunal directions and their response should be struck out?
 - 1.3. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - 1.3.1 Did he have a physical or mental impairment: anxiety and depression?
 - 1.3.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?
 - 1.3.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

- 1.3.4 Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?
 - 1.3.5 What the effects of the impairment long term? The Tribunal will decide:
 - (a) Did they last at least 12 months, or were they likely to last at least 12 months?
 - (b) If not, were they likely to reoccur?
- 1.4. The consideration of Case Management Orders, and the listing of the Final Hearing if relevant.

Background

2. The claimant was employed by the respondent, Eden Horticulture Limited, as an Accounts and Sales Manager, from April 2017 until February 2022. Early conciliation started on the 31 March 2022 and ended on the 10 May 2022. The claim form was presented on the 23 May 2022.
3. The claim is about unfair dismissal, direct disability discrimination, failure to make reasonable adjustments and potentially a breach of contract claim.
4. The matter came before Employment Judge Beck on the 7 December 2022, where the claimant informed the tribunal that he had made a strike out application in respect of respondents late filing of the bundle and case management agenda. The respondent in response explained that the delay was because he had moved firms of solicitors one week ago as his previous firm had gone into liquidation, he had had difficulty retrieving his file from his previous firm. Due to this he was forced to make up a bundle himself for the hearing. The tribunal and the respondent had not received notification of the claimant's application for strike out.
5. The Tribunal was also missing a 6–7-page document the claimant has submitted which set out all the incidents of disability discrimination in this matter. In respect of the potential breach of contract claim, the claimant indicated at the hearing that he believed this was payable during his employment before dismissal. The respondent confirmed that they understood the position to be that the claimant was saying if he had not been unfairly dismissed, he would have received his bonus/car/watch. Whilst the claim form did not explicitly refer to breach of contract claim there were references to a breach of contract and Employment Judge Beck directed the claimant to clarify this aspect of his claim.
6. The matter has been listed for a preliminary hearing to determine whether a) the claimant's application for strike out should be considered and b) whether the claimant has a disability as per section 6 of the Equality Act 2010.

The Hearing

- 7. The tribunal heard evidence from the claimant, Mr Bough for the respondent, and Ms Harris for the respondent, unfortunately matters were delayed due to a connection issue and it was agreed by both parties that the claimant could attend the hearing via telephone.

- 8. Given the delays the tribunal was unable to timetable the matter for final hearing, the matter is to be listed for a CMPH on 19 July 2023 for 3 hours, it will establish:
 - a) The alleged acts the respondent committed of direct disability discrimination.
 - b) What PCP (provision criterion or practice) the respondent had regarding reasonable adjustments.
 - c) What steps the respondent could have taken to avoid disadvantaging the claimant regarding reasonable adjustments.
 - d) Whether the claimant made a claim for Breach of Contract in his ET1 as per Employment Judge Beck's order of 7 December 2022 page 7 paragraph 4.

Employment Judge A. Hena

01 June 2023

Sent to the parties on:
08th June 2023

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For the Tribunal Office:
Gulfaraz Amjad

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