



**EMPLOYMENT TRIBUNALS**  
**(England and Wales)**  
**Midlands West Region**

Claimant: Mr P Jones assisted by Mrs M Jones (his mother)  
Respondent: Lickhill Manor Ltd t/a Lincomb Lock Caravan Park

Heard by CVP on 29<sup>th</sup> to 31<sup>st</sup> August 2023  
Before: Employment Judge Mr J S Burns  
Members Mr S Woodall and Mr D Faulconbridge

Representation

Claimant: in person (assisted by his mother Mrs B Jones)  
Respondent: Mr J Davies (Counsel)

JUDGMENT

The claims are dismissed.

REASONS

1. This was a claim for disability discrimination (under sections 13, 15 and 20 of the Equality Act 2010) arising from the Claimant's dismissal on 14/10/20.
2. The Respondent conceded that (i) the Claimant was disabled by reason of anxiety and depression at the material time and (ii) the Respondent had constructive knowledge of that disability from 9/8/2020.
3. The issues were as set out in a simplified list compiled by Mr Davies shortly before the trial.
4. We heard evidence from the Claimant and then from the Respondent's witnesses Mr L Chadwick (manager) and from Mr T Arthurs (the Claimant's erstwhile Line Manager) and we read a signed statement from Mr R Cole, (a third-party ground-works contractor), and we were referred to a bundle of documents of 234 pages and to a Respondent's skeleton argument.
5. Although Mr Cole did not appear to be cross-examined, the gist of his statement (namely that while staying away on sick-leave from the Respondent's work, over a period of several months leading up to the Claimant's dismissal by the Respondent, the Claimant had been engaged in his own fledgling business venture) was largely accepted by the Claimant himself.

Findings of fact

6. The Claimant was employed as a seasonal groundsman from 19 August 2019 until 14 October 2020 by the Respondent at Lincomb Lock Caravan Park on the outskirts of Stourport-on-Severn.
7. The Claimant's contract was (almost) a zero-hours contract as it provided that he would be paid

by the hour and that the hours could be varied at the Respondent's discretion from between 1 and 40 hours per week. In practice, before the matters complained of in this case, the Claimant was usually employed 40 hours a week.

8. He was obliged by his contract to cover all periods of continuous sickness absence with "*evidence of a medical certificate notified weekly*".
9. Two live-in managers (Mr and Mrs Arthurs) were employed on the caravan site from 1/10/2019. From February 2020 onwards Mr and Mrs Dark were employed on site as live-in wardens. This was a change from how the Respondent had arranged matters before and as Mr Dark and Mr Arthurs were both able to do some grounds-maintenance work, this reduced the need for the Respondent to employ full time groundsmen in addition. At that point the Respondent also employed two groundsmen on site namely Wayne Farley and the Claimant.
10. Wayne left in June 2020 and from 6 July 2020 the Claimant started absenting himself from work and calling in sick. In order to meet the shortfall in employees to cover the groundwork, of which there was much in the peak Summer months, the Respondent employed two temporary agency workers from August 2020 onwards.
11. Mr R Cole (whose statement we read) was also employed on site during the Summer months of 2020, where he worked alongside the Claimant (until the latter stayed away from work) building a gabion wall.
12. During April 2020 the Claimant asked to work three rather than five days a week. This was refused because the Respondent at that stage required his services full-time. The Claimant's request was made because he wished to spend more time on a private business that he and a friend were trying to establish as partners in a nearby industrial unit equipped with tools to the value of about £5000.
13. The Claimant's private partnership business consisted in breaking up cars and selling car parts on Ebay.
14. In addition, the Claimant had his own separate business of selling key rings and similar cheap articles on Ebay (in such numbers that he would sometimes have to pack and post as many as sixty separate items per day).
15. From 6/7/2020 and again on 13/7/2020 the Claimant started staying away from work and calling in to the Respondent to say he was sick. He made no reference to mental health at that stage but said he was "*feeling unwell*" and later in the month referred to getting his blood tested. He told the Respondent that he had obtained a doctor's note, but no such note covering this period was ever provided.
16. The Claimant worked again for the Respondent briefly at the end of July and early August 2020 but then he began a period of continuous absence from early August which absence lasted until his dismissal.
17. The period from 6 August to 20 September 2020 were covered by GP sick notes which stated that the Claimant was "*not fit to work*" because of "*low mood*". No further sick notes were provided after 20 September and at the end of September the Claimant claimed he had to stay away from work further because of a sore throat and a cold.

18. Throughout his sickness absence he was paid SSP by the Respondent.
19. The Claimant agreed in evidence that during this time (ie in July 2020 and subsequently) while claiming to be too sick to work, he was engaged in his aforesaid private business (although he preferred to call it “a hobby”) breaking cars and selling parts, and also selling keyrings and other small items on Ebay.
20. His bank statement from 2/8/2020 to 18/9/2020 shows regular receipts for various usually modest sums exceeding £1000 in total value from Paypal and Ebay.
21. As confirmed by Mr Cole, the Claimant’s involvement and activity in his separate business venture (during the time that he was signed off as sick) came to the attention of other staff members within the Respondent at the time.
22. On 7 September 2020, the Claimant emailed Mr Chadwick as follows: *“Hi Lawrence, sorry I’ve not been in contact last week I thought my note ran out today And not last Monday, I have had spoken to the doctor today and he has given me a few more weeks, I get my note tomorrow so I will forward it over. He has recommended I try and come back to work after that but He said he thinks I should try a few days a week until I feel better. Is that something I could do or do I need to come back full time?”*
23. No medical evidence was ever supplied from the Claimant’s GP directly to confirm that this recommendation had been made, or to explain why.
24. In oral evidence the Claimant confirmed that when procuring his sick notes from the GP he had not told the GP that he (the Claimant) was engaged at the time in his separate car parts business in an industrial unit.
25. On 16 September 2020, Mr Chadwick responded to the request (for part-time hours) as follows; *“With regards to returning to work, our preference would be that you return to fulltime hours, bearing in mind the amount of work we currently have on the park”.*
26. In oral evidence Mr Arthurs stated that the reason for this refusal was that if the request was acceded to it would have required the Respondent to dismiss one full-time Agency worker. We do not find that reason easy to understand firstly because it does not appear in any witness statement from the Respondent but also because it is likely that the agency worker’s hours could have been reduced to accommodate the Claimant’s part-time hours.
27. On 22 September 2020, Mr Chadwick emailed the Claimant asking him why he had not returned to work on 20 September 2020
28. On 23 September 2020, the Claimant emailed Mr Chadwick again saying he was not ready to return.
29. On 29 September 2020, the Claimant emailed Mr Chadwick to state he was hoping to be back at work on Monday 5 October 2020. He said he had cold which was preventing him from returning.

30. The Claimant told Mr Cole around this time that the unit he was using to set up his new business had been broken into and their goods and work tools had been stolen.
31. On 4 October 2020, Mr Chadwick responded to ensure the Claimant was fully recovered before he returned.
32. On 8 October 2020, Mr Chadwick chased up the Claimant for a return date
33. The Claimant responded the same day saying he was not fully fit.
34. On 12 October 2020, the Respondent decided to let the two agency staff workers go.
35. On 12 October 2020, Mr Chadwick emailed to say the Claimant could return on 14 October 2020
36. On 13 October 2020, the Claimant emailed Mr Chadwick to ask if he could return and Mr Chadwick responded he could as long the Claimant was fit and well. The Respondent was expecting the Claimant to return on 14 October 2020.
37. However, the Claimant failed to turn up that day.
38. On 14 October 2020, Mr Chadwick emailed the Claimant terminating his employment and giving as the reason the reduction of workload due to COVID restrictions.
39. We were told by both the Respondent's live witnesses that the dismissal decision was made by the Respondent's Managing Director Mr Dennis Lloyd-Jones, who however did not provide any evidence for the Tribunal.
40. On 4 November 2020, the Park was closed due to COVID restrictions and was due to reopen on 3 December 2020.
41. On 31 December 2020, the Park was again closed due to COVID restrictions and eventually re-opened on 12 April 2021.
42. In June 2021 Mr and Mrs Dark left the site and new wardens were taken on.
43. In the summer months of 2021 Ralph (a groundsman from another site) was seconded for a period to the Lincomb Lock Caravan Park.
44. The Coronavirus Job Retention Scheme (which we refer to hereafter as "furlough") applied from 1 March 2020 and ended on 30 September 2021. The scheme provided grants to employers so they could retain and continue to pay staff during coronavirus related lockdowns, by furloughing employees at up to 80% of their wages.
45. There is no evidence before us that the Claimant ever asked the Respondent to be put on furlough. We accept the Respondent's evidence that it did not put any of its employees on furlough at any time.

#### The Law

Direct Discrimination

46. Section 13 Equality Act 2010 provides that a person discriminates against another if because of a protected characteristic, he treats another less favourably than he treats or would treat others.

Disability Related Discrimination

47. Section 15 of the Act provides that a person discriminates against a disabled person 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.
48. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

Failure to make Reasonable Adjustments

49. Sections 20 read with 21 provide that a person discriminates against a disabled person if he fails to comply with a duty to make reasonable adjustments.
50. Section 20(1)(3) provides that where a provision criterion or practice (PCP) of As puts the disabled person concerned at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, it is the duty of A to take such steps as it is reasonable to have to take to avoid the disadvantage.

Onus of proof

51. Section 136 provides that if there are facts from which a court could decide, in the absence of any other explanation that a person has contravened a provision under the EA, the court must hold that the contravention occurred, unless the person shows that he did not contravene the provision.

Conclusions

Direct discrimination

52. The Claimant claims that he was dismissed on 14/10/2020 because he was disabled by reason of depression and anxiety.
53. We note that we have not heard any evidence from the person whom the Respondent's live witnesses said was the person who made the decision to dismiss (namely the MD Mr Lloyd-Jones). We have also not been given a reason for his not being called. Mr Davies properly reminded us that we could draw an adverse inference from this unsatisfactory situation.
54. However we do not find that the Claimant has established a prima-facie case in this regard.
55. If he was to be dismissed simply because of his disability, then it would have been expected that he would have been dismissed when or shortly after the Respondent became aware of his disability which it did on 9/8/2020. Instead after that the Respondent adopted a tolerant and accommodating approach to the Claimant's extended subsequent absence until some two months later by which time (i) the main abundant ground-work arising in the Summer months had been done (ii) the Respondent was able to deal with the remaining ground work on site

through the services of Mr Dark assisting Mr Arthurs and (iii) it had come to the Respondent's attention that the Claimant was and had been for several months working on his private business while at the same time claiming that he was too sick to work and claiming full-time SSP from the Respondent. We find that it was these three factors which caused the dismissal and not the Claimant's disability.

56. The Claimant claims that he was not put on furlough because of his disability.
57. There is no evidence before us that the Claimant wanted or asked to be put on furlough and the evidence before us shows that the Respondent wanted its employees either to work for full pay if they were able to do so, or if not able to do so by reason of sickness, to take sick leave and receive sick pay. Using the furlough scheme to pay an employee in lieu of sick pay would not be a proper use of the scheme in any event. Not putting the Claimant on furlough was not unfavourable treatment. In any event there is no causal link between the Claimant's disability and the fact that he was not put on furlough.

Disability Related Discrimination

58. The Respondent admits it had the claimed PCP of requiring regular attendance at work by its employees in accordance with their contractual obligations. The Respondent contends that this PCP was also a legitimate aim for the purposes of Section 15(2) of the Equality Act 2010.
59. The Claimant claims that his sickness absence between 9 August 2020 and 14 October 2020 arose in consequence of his disability and that he was dismissed because of this absence.
60. There is no dispute that the Claimant does suffer from low moods and that he had obtained GP sick notes covering the period 6/8/2020 to 20/9/2020.
61. We are not satisfied on a balance of probabilities that his absence during this period from his work with the Respondent arose from his disability. The Claimant was not disabled from work by his low mood. He was absent because he wished to be able to devote time to his private business, and did so. The GP sick notes (which in any event do not cover the absence from 20/9/20 onwards - during which period the Claimant started referring to other non-disability related complaints such as cold and sore throat) were issued by the GP in ignorance of the fact that the Claimant was in fact working on his private businesses throughout.
62. The Claimant stated in evidence that he was involved in working at the industrial unit only once or twice a month. We do not have any clear evidence about this but do not accept the Claimant's account as reliable. The Claimant acted in a covert manner in this regard during the period July to October 2020, not telling either his GP or his employer about it. When he was openly asking for time off for his car parts business in April 2020 he asked for two days off a week and not two days per month. His bank statements show mainly modest but regular receipts from Ebay and Paypal throughout the relevant time.
63. If we are wrong about this and should have found that the absence arose from the disability then in any event we do not find that the Claimant was dismissed because of his absence. We find that he was dismissed because (i) the main abundant ground work arising in the Summer months had been done (ii) the Respondent was able to deal with the remaining ground work on site through the services of Mr Dark assisting Mr Arthurs and (iii) it had come to the Respondent's attention that the Claimant was and had been for several months working on his

private business while at the same time claiming that he was too sick to work and claiming full-time SSP from the Respondent.

64. The Claimant claims that he was not put on furlough because of his sickness absence. There is no connection between the two and the Claimant did not make any comprehensible argument that there had been.

Failure to make Reasonable Adjustments

65. The Respondent admits it had the claimed PCP of requiring regular attendance at work by its employees in accordance with their contractual obligations. The Respondent also concedes that usually this would place a disabled claimant at a substantial disadvantage compared to someone without anxiety and depression, by rendering him liable for dismissal.
66. However, we find on the facts of this case that the PCP did not place the Claimant at a substantial disadvantage in relation to his disability in comparison with a person who was not disabled. His failure to provide regular attendance was not genuinely disability-related. The absences, even on the Claimant's case, were not all because of his disability, as significant periods of absence were explained by him by reference to complaints such as high blood pressure and sore throat.
67. More fundamentally, but for his engagement in his private business he would not have been absent from work as he was. He was able to work. In effect the Claimant made a choice between either returning to work full-time or using the cover of GP notes and other references to different kinds of ill-health as a means of obtaining the time he wanted to build up his own business. This situation only came to an end in late September/early October when the industrial unit was broken into and his tools were stolen.
68. A non-disabled employee in the same situation as the Claimant - that is wishing for time away the Respondent's work place in order to work on a private business - would have been placed at the same disadvantage by the PCP as was the Claimant.
69. The Claimant claims that it would have been a reasonable adjustment for his disability to place him on furlough. Our main findings about the reasons for his absence fly in the face of this claim. In any event using the furlough scheme to pay an employee in lieu of sick pay would not be a proper use of the scheme and could not be regarded as an adjustment which it would be reasonable for an employer to make.
70. The Claimant claims that allowing him to return to work on reduced hours would have been a reasonable adjustment for his disability. There is no direct medical evidence to support this. Furthermore, even if the doctor had recommended it, we would not accept that as a reliable indication that the Claimant was not fit to work full time, because the Claimant had not been frank with the doctor.
71. On a balance of probabilities, we find that the Claimant's interest in part-time working in September 2020 was the same as it had been in April 2020, namely that it would allow him a transitional phase in moving from employment to self-employment. He realised that working part-time for the Respondent would have given him a part-time wage while he built up his self-employed business. We are not satisfied that part-time work was required by him as an adjustment for any disadvantage caused to him as a disabled person, - on the contrary he wanted it as an adjustment to accommodate his involvement in a fledgling car-parts business.

72. Hence the claims are dismissed.

Mr J S Burns  
Employment Judge  
31/8/2023

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