



# EMPLOYMENT TRIBUNALS

## Claimant

Mr S C Winwright

## Respondents

v TSYS Managed Services EMEA Ltd

**Heard at:** Watford (CVP)

**On:** 16 August 2023

**Before:** Employment Judge S Moore

## Appearances

**For the Claimant:** In person

**For the Respondent:** Ms D Fawzi-Perrin, counsel

## JUDGMENT ON PRELIMINARY ISSUES

- (1) The Claimant was not a disabled person within the meaning of section 6 of the Equality Act 2010 at the material time and the claim of disability discrimination is struck out.
- (2) The complaint of unfair dismissal is struck out because the Claimant did not have two years' service and so the Tribunal does not have jurisdiction to hear it.
- (3) The claim is dismissed in its entirety.

## REASONS

### Introduction

1. The following issues were listed for determination at a Preliminary Hearing:

- i) Whether the complaint of unlawful disability discrimination should be dismissed if the Claimant is not entitled to bring it if he does not have a disability within the meaning of s. 6 of the Equality Act 2010 and;
  - ii) Whether any of the claims should be struck out as having no reasonable prospect of success.
2. For the purpose of determining disability, I heard evidence from the Claimant. However, it was agreed at the outset that it would not be appropriate to hear evidence on the issue of whether the claim of disability discrimination should be struck out even if the Claimant were found to be a disabled person within the meaning of the Equality Act 2010 on the grounds the claim nevertheless has no reasonable prospect of success.

### **Background**

3. It is common ground the Claimant was employed by the Respondent as a Fraud Analyst between 16 September 2022 and 1 December 2022 when he was summarily dismissed. Following a period of Early Conciliation between 13 December 2022 and 12 January 2023 he brought a claim for unfair dismissal on 14 January 2023.
4. Although he did not tick a box in section 8.1 of the form alleging discrimination, he ticked the box stating he was making another type of claim, namely 'Neglect of duty of care, which resulted in myself developing anxiety over the role". The complaint was that although, according to the Claimant, he had told the Respondent at interview that his last bus back home left at 7.30pm he was regularly required to work shifts that lasted until 8.00pm. The Claimant stated that "I expressed I couldn't work these til 8pm shifts as my last public transport is 7.30 after which I expressed multiple times, it gave me anxiety to the point I couldn't even answer the phone after I received an email saying I was awol (I wasn't awol I let management aware that I couldn't work until 8pm and will have to adjust shifts or can only work the ones that don't last til 8pm) as it includes either a £35 taxi home or a two hour long commute...I'm dyslexic and was advised I could get a shuttle bus from work to Milton Keynes, then a bus to Luton, then a bus to Dunstable then walk 30 mins home after work... Just because I was on probation shouldn't mean I have less rights to reasonable adjustments especially when I voiced it, showed that it was making me ill also to no avail. This has affected my health from months of trying to adjust and the lack of sleep due to the commute that was extended due to works neglect of care in rectifying the issue but instead fired me."
5. Notwithstanding the fact that the Claimant did not expressly allege disability discrimination in his Claim Form, his claim was understood by both the Respondent and the Tribunal as including a complaint that he is a disabled person within the meaning of the Equality Act 2010 and that the Respondent failed in its duty to make reasonable adjustments under

sections 20 and 21 of that act. Specifically, that the Respondent applied a “provision, criterion or practice” (PCP) of requiring the Claimant to work shifts that lasted until 8.00pm and that this put him at a substantial disadvantage in a relation to a relevant matter compared with persons who are not disabled.

6. In this respect, the Claimant subsequently stated that the disability he relies upon is Dyslexia.
7. As regards the complaint of disability discrimination, the Respondent contends the complaint should be struck out because:
  - (i) The Claimant has not shown he is a disabled person by reason of Dyslexia because he has not shown that condition has a substantial adverse effect on his ability to carry out day to day activities.
  - (ii) In any event, the PCP relied on by the Claimant (having to work until 8pm) did not put persons with Dyslexia at a substantial advantage compared to persons who do not have Dyslexia.
  - (iii) In any event, the Respondent did not know and could not reasonably have been expected to know the PCP was likely to put the Claimant at a substantial disadvantage.

### **Evidence**

8. Claimant’s date of birth is 7 March 1992.
9. The bundle contains a Psychological Assessment Report dated 12 May 2016 which was produced when the Claimant was in his second year of a degree in Media Production. The report states “He has always been aware that he may well have some form of learning difficulties and recent feedback suggested that he may well have Dyslexia and this assessment was thus felt necessary.”
10. The summary of that report provides:

“The assessment noted some excellent cognitive reasoning competences with regard to verbal comprehension. There was however a contrasting lower score with working memory and processing speeds, which is indicative of a Specific Learning Difficulty. The impact of this difficulty was clearly seen in poor reading accuracy, slow reading speed, slow writing and inadequate spelling.

Sean therefore presents with some impairment in:

- Word reading accuracy
- Writing fluency
- Poor clarity or organization of written expression
- Poor speed and expression with writing.

Based on the asymmetrical pattern of scores, and his reading and comprehension difficulties, a Specific Learning Difficulty (Learning Disorder DSM 5) is seen as an appropriate diagnosis. This is a specific reading and spelling disorder or “Dyslexia”. In addition, it appeared that there is a high probability that he may have features of Developmental Coordination Disorder.”

11. The Claimant had not provided an Impact Statement (or any witness statement). However, he stated in evidence that his Dyslexia caused him to have difficulty with, and stress and anxiety about, complicated journeys, navigation of some buildings and journeys abroad.
12. Nevertheless, it was clear from his evidence that the Claimant regularly uses and had used public transport for reasonably local journeys, including to travel to university and to attend several previous jobs. Further that he had no difficulty travelling to the Respondent’s place to work by public transport (and foot) in the morning or travelling from work to home in the evening when his shift finished by 6.30pm. Moreover, while the Claimant’s journey home at 8pm was more complicated, involving two buses and a train, it is clear from emails he sent to the Respondent at the time - complaining about the length of the journey by public transport and the cost of getting a taxi as an alternative - that he had worked out the relevant timetables and what the journey required. He did not say he could not manage the journey because of his Dyslexia but instead pointed out the inconvenience of the journey.
13. In this respect, in an email of 21 November 2022 the Claimant states, “I expressed in my interview call that I can work anytime as long as there’s a bus back to Dunstable (until I drive) which was accepted, the last bus leaves at 7.30 from Water Eaton.” Further, in an email of 1 December 2022 (written after his dismissal) he states “I completely understand the outcome of today, but what surprised me is the opinion I could indeed leave at 8pm get a shuttle bus to MK... then the train to Leighton Buzzard, then the last bus of 9.30pm to arrive in Dunstable for 10pm and home for 10.20pm...with this shift and an 8am the next day? I would have to and have got up at 5.30am to get ready and the 6.30am bus to work for 8am...”
14. In addition, in his application form for the post with the Respondent the Claimant ticked “no” to the question ‘Do you consider yourself disabled?’ and in response to the question “Do you have a health problem or disability which you feel is relevant to this job application or any support you may require if successful in the role? If yes, please describe below”, the Claimant answered simply “N/A (dyslexia – spellings)”. In addition, at the end of the form, where there was a box with an opportunity to provide any other information thought relevant to the application, the Claimant wrote “N/A – interested in a career change to office based (hoping for a hybrid position to grow with).”

15. Finally, it is also notable that the “Disabled Students’ Allowances Needs Assessment Report” produced in response to the Psychological Assessment Report stated in respect of “Travel/Access to H.E. Environment “Sean has **no mobility issues** and has no difficulties navigating around the campus” (bold typeface in the report).

## Conclusions

### *Disability*

16. Section 6 of the Equality Act (“EqA”) says that:
  - (1) A person (P) has a disability if-
    - (a) P has a physical or mental impairment, and
    - (b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.”
17. As to section 6(1)(a) the Claimant relies on the mental impairment of dyslexia.
18. Section 6(1)(b) EqA provides that a mental or physical impairment amounts to a disability if it has both a substantial and a long-term adverse effect on a person’s ability to carry out normal day-to-day activities.
19. The Respondent accepts that the Claimant’s impairment of dyslexia is, and was during his employment, long-term, but does not accept it has (or had) a substantial adverse effect on his ability to carry out normal day-to-day activities.
20. As to the meaning of substantial, section 212(1) EqA and paragraph B1 of the Guidance on matters to be taken into account in determining questions relating to the definition of disability 2011 (“the Guidance”) state that a substantial effect reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people and that a substantial effect is one that is more than a minor or trivial effect.
21. In respect of Dyslexia, it is difficult to state at what point the condition, which is shared by many people, crosses the line to be classed as a disability.’ Simply because a claimant suffers from Dyslexia does not mean that he or she is automatically to be regarded as being disabled. All depends on whether the impairment is substantial and has a long-term adverse effect on the individual’s ability to carry out normal day-to-day activities.
22. In this case I am not satisfied that Claimant has established that his Dyslexia has a substantial effect on his ability to carry out normal day-day activities.

23. Due to the nature of the claim brought, the focus of the enquiry was on the Claimant's ability to travel. I would accept that if the Claimant was unable to travel by public transport or was only able to do with difficulty or when accompanied, this would amount to a substantial adverse effect on his ability to carry out normal day to day activities. However, this is plainly not the case since the evidence shows the Claimant has frequently and regularly travelled by public transport.
24. Furthermore, on the basis of the evidence set out at paragraphs 11-15 above, I am not satisfied the Claimant has established that he is unable to manage – or able to manage only with difficulty – journeys involving more than one element of public transport or more complicated navigation and/or that Dyslexia has a substantial adverse effect on his ability to carry out normal day to day activities for this reason.
25. It follows that I am not satisfied the Claimant is disabled person within the meaning of the Equality Act 2010 and the claim for disability discrimination must be struck out.

*Unfair Dismissal*

26. As regards the complaint of unfair dismissal, the complaint must be struck out because the Claimant does not have the requisite two years' service.

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Employment Judge S Moore

Date: 16 August 2023.....

Sent to the parties on: 20/9/2023

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For the Tribunal Office