



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mr T. Anderson

Morrison Data Services Ltd

Held at: Exeter

On: 4-6 December 2023

**Before: Employment Judge Smail
Mr K J Sleeth
Ms E Smillie**

Appearances

Claimant: In Person

Respondent: Mr S. Davis, Inhouse Counsel

JUDGMENT having been sent to the parties on 3 January 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By a claim form presented on 9 November 2022, the Claimant claims unfair dismissal and disability discrimination. The Claimant was employed by the Respondent as a meter reader. His continuity stretches back to 4 April 2006 meaning he had 16 complete years at the date of dismissal.
2. The Respondent provides support services to the energy providers, which includes the reading of meters.
3. The Claimant was dismissed for ill health capability at a meeting held on 28th and 29th June 2022. 12 weeks notice was given and within the notice period an appeal was held on 24 August 2022. The decision to dismiss was confirmed.

4. The issues in the case were identified at a case management hearing with Employment Judge Gray on 29th June 2023. These are reproduced in the Appendix at the back of the Judgment.
5. In essence the Respondent says it had waited long enough as the Claimant had failed to return to work on two planned dates and so they were entitled to dismiss in the absence of a firm proposed return to work date. The Claimant says first of all he had a disability and needed to be treated as a disabled person and secondly, the Respondent dismissed prematurely without obtaining an up-to-date occupational health report and without considering reasonable adjustments relating in particular to sedentary duties which he says he could have performed whilst awaiting a full recovery. He says he was able to perform sedentary work as from July 2022.

THE LAW

6. We set out here the essential statutory provisions. The issues are framed upon those statutory provisions.

Unfair Dismissal

7. The Tribunal has had regard to section 98 of the Employment Rights Act 1996. By section 98(1) it is for the employer to show the reason, or if more than one, the principal reason for the dismissal. A reason relating to the capability of an employee is a potentially fair reason. By section 98(4) where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case.
8. In Iceland Frozen Foods v Jones [1982] IRLR 439 (EAT) guidance was given on the meaning of s. 98(4). The starting point should always be the words of s. 98(4) themselves; that in applying this section an Employment Tribunal must consider the reasonableness of the employer's conduct, not simply whether they, the employment Tribunal, consider the dismissal to be fair. In judging the reasonableness of the employer's conduct an employment Tribunal must not substitute its decision as to what was the right course for that of the employer. In many, though not all, cases there is a band of reasonable responses to the employee's [position] within which one employer might reasonably take one view, whilst another quite reasonably take another. The function of the employment Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair: if the dismissal is outside the band, it is unfair.
9. It is usual in cases of ill health capability concerning absence for an employer to make reasonable enquires of a medically qualified person/people, such as

an occupational health professional, so as to arrive at an informed assessment of the likelihood of a return to work in the foreseeable future.

Disability Discrimination

10. Discrimination arising from disability is provided for under Section 15 of the Equality Act 2010. That provides at subsection (1) -

A person A discriminates against a disabled person B if

(a) A treats B unfavourably because of something arising in consequence of B's disability and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

11. The duty to make reasonable adjustments is set out in sections 20 – 21 of the Equality Act 2010, and in Schedule 8. Section 21 establishes that a failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments. Section 20 sets out the requirements. Under s20 (3), the first requirement is a requirement, 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, to take such steps as it is reasonable to have to take to avoid the disadvantage.
12. Burden of proof under the Equality Act 2010 is covered by section 136. In effect, once the Claimant establishes a prima facie case of discrimination, the burden transfers to the employer to show that discrimination has played no role in its decision-making whatsoever. If the employer does not discharge that burden, the Tribunal must find discrimination.

FINDINGS OF FACT

13. On 23rd October 2021, the Claimant suffered a serious motorbike accident. He broke his left leg in multiple positions, his ribs and scapula. His absence from work began on 25 October 2021 and indeed he never returned to work. The leg injury took the longest time to heal.
14. By email dated 15 March 2023, the Respondent conceded disability in respect of the impact on normal day-to-day activities of the injuries caused by the road traffic accident. The Respondent has today floated the issue of knowledge. We find that the Respondent knew the symptoms surrounding the leg injury were likely to last 12 months and so amount to a disability at latest upon receipt of the first occupational health report which was sent on 2nd January 2022.
15. The first Occupational Health Report was by Brian White an Occupational Physiotherapist. We will quote extensively from this and the second occupational health report.

As you will be aware Tim was involved in a motorbike accident on 25th October 2021 in which he sustained a number of injuries. These include fractured left scapula, injuries to ribs and a fractured knee-cap and fractured tibia and fibula which has been plated and screwed. Currently Tim reports that his mobility is limited and he is still non weight bearing and he is mobile over short distances with the help of a Zimmer frame. Tim reports that his symptoms are slowly improving and his shoulder and rib injuries are not now causing any significant difficulties, however, he is still unable to weight bear on his affected limb for a further few weeks. After he has been told he can start weight bearing on his affected leg, he will need a further period of sickness absence for his continued rehabilitation to improve the movement and strength in his knee. I therefore have given 28th March 2022 as a possible date for his return to work. However, this date is subject to change depending on the speed of his continued recovery.

Specific questions: seated duties including driving.

Tim is currently unfit for work and a more reliable opinion on this particular activity will be possible nearer his estimated date of return towards the end of March 2022.

Duties requiring periods of standing or walking.

Tim is currently non weight bearing; hopefully he will be able to start improving his mobility in the next few weeks. He will need an extensive rehabilitation period after this due to the nature of his role at work.

Activities, roles requiring squatting and/or kneeling.

Tim is currently unfit for work and a more reliable opinion on this particular activity would be possible nearer to his estimated date of return towards the end of March 2022.

Lifting and carrying pushing and pulling.

Tim is currently unfit for work; again March 2022 to review the matter,

Working zones: i.e. above shoulder height or floor level.

Tim is currently unfit for work and is currently only mobile of the help of a Zimmer frame. More reliable opinion later.

Further comments

Tim reports that his symptoms are currently improving. However, he is currently non weight bearing. In my experience he will need a further period of sickness absence to continue the rehabilitation programme. It is possible that long periods of walking may aggravate his symptoms for a number of months. However, this tends to improve with time. A more reliable opinion on this can be obtained nearer to the date of his possible return to work. It is likely that a further assessment for Tim will be beneficial to all parties nearer to this date.

16. A phased return to work was predicted when the Claimant was otherwise fit to return. In respect of the question whether the Claimant was a disabled person within the meaning of the Equality Act 2010 Mr White wrote:

Case Number: 1403533/2022

In my opinion it is likely that Tim would qualify under the conditions of the above Act. My reasoning for this is that his symptoms are likely to last for a year and are currently having a significant effect on his everyday life. However, I understand that this is the decision for a court of law.

Following the appointment on 19th January 2022, the treatment plan will become clearer as it is possible that he will be able to start to weight bear on his affected leg. In my experience he will require further period for rehabilitation to help improve the movement in strength in his knee which will likely be 6 – 8 weeks. It is likely that Tim will be given some additional exercises to start to improve his mobility in normal circumstances depending on what is available in his locality. He may also be advised to attend a rehabilitation class at the physiotherapy department. However, due to the current covid 19 pandemic this type of class may not be currently available.

17. The next report was obtained at around the period that Mr White thought there was a possible return to work. So there is a second report on 29 March 2022 written by Fiona Arrol an Occupational Physiotherapist. She wrote:

Mr Anderson reports to be currently walking with two crutches but is unable to fully weight bear on his left foot without support. He reports to be walking indoors mostly and rarely goes outside unless he is getting into the car. Mr Anderson is unable to drive at this time and relies on his wife to take him to appointments. He is attending weekly hydrotherapy sessions and is due to start a lower limb rehabilitation class with the NHS. Mr Anderson also sees a physiotherapist at least once a month and has regular home exercises to do each day in order to continue improving the flexibility, strength and function of his left knee and ankle. It is my opinion that Mr Anderson is currently not fit to perform his full normal job role but I am confident that with further intensive rehabilitation, he will improve the strength and function of his left leg in order to commence a phased return to his normal duties in another 6 – 12 weeks.

Seated duties. Mr Anderson is currently unable to drive as his domestic vehicle has a manual gearbox. Mr Anderson reports his work vehicle is also manual, therefore he would be unable to drive that too.

Standing or walking. Mr Anderson reports to be able to walk approximately 200 yards before requiring to stop and sit down. He reports to be able to stand with support from two crutches for approximately 5 – 10 minutes before requiring to sit down and rest.

Squatting and kneeling. Mr Anderson reports to be unable to squat or kneel due to restrictions in his left knee and ankle flexibility. Lifting and carrying, pushing and pulling Mr Anderson requires support of two crutches at this time. Therefore, he would be unable to safely lift, carry or push and pull items working zones. Mr Anderson is currently unfit to work safely within any working zone for prolonged periods.

I am confident with further intensive rehabilitation, he will improve the strength function of his left leg in order to commence a phased return to normal duties in another 6 – 12 weeks. If at 12 weeks Mr Anderson remains unfit for work, I will recommend another occupational health assessment take place to update on progress. A phased return to work plan is described if he does return to work. As Mr Anderson's injury was caused by a traumatic accident it is unlikely to recur. However, it is possible that Mr Anderson reports intermittent symptoms to his left leg in the future. I am confident that if Mr Anderson continues regular strengthening and flexibility exercises for

his leg beyond his discharge from physiotherapy he should be able to significantly limit the impact these potential symptoms have on his overall function.

18. She was uncertain whether he would count as a disabled person under the Act because she thought a full recovery within 12 months was likely. Again, she reiterates intensive rehabilitation would be required.
19. From that position there was an expectation that there would be a full recovery. There was a welfare meeting on 21 April 2022 between the Claimant and his line manager, Adam Morgan. Mr Morgan was looking for indications of a return-to-work date. There had been a meeting with his consultant on 13 April 2022. The Claimant said he had been discharged from his consultant but he had an appointment with his surgeon on 1 June 2022. The Claimant said the consultant did not commit to a date of recovery. Hydrotherapy had been helpful. Physiotherapy was continuing daily at home and the physiotherapist was seen monthly. No one had given him a recovery time. As to mobility he walks around the block morning and evening which is about a quarter of a mile. The Claimant said he wanted to get back to work. He was still walking with crutches; being given a stick was the next step. Mr Morgan said “there seems to be progress every time which is really good. We also look at your capability. I just want an overview of how you are with driving.” The Claimant said he had not driven yet, he had been only just been able to weight bear. Mr Morgan floated the question about whether an automatic car would assist. The Claimant replied he had not been told this. He believed it was too premature to try and drive at this time but hopefully he would be able to drive soon. He supposed he could try and see how he got on with pressing the clutch. As to kneeling, bending and squatting: the Claimant said these were not good at the moment, but hoped to improve daily. In respect of crutches the Claimant said once he did not have to use crutches, he did not see any issues at all. Mr Morgan asked was there anything the Claimant had concerns about regarding return to work. The Claimant said he was hoping to make a full recovery. Mr Morgan advised the Claimant to look at vacancies within the company on the Group website for alternative duties. The Claimant’s position throughout this matter is that there were no relevant sedentary duties advertised on the website. This company has its head office in Newcastle and any such sedentary or back office jobs are held there and not in Devon.
20. The physiotherapist had recommended a 6 weeks phased return, when ready. Mr Morgan suggested 27 June 2022 would be a potential return to work date, consistently with the hope of the last occupational health report.
21. A welfare meeting was envisaged for 16 June 2022. We find, on the balance of probability, that there was a brief discussion held then and Mr Morgan informed the Claimant that they needed to move from informal to formal. The Claimant was invited to a long-term sickness review meeting on 28 June 2022. The letter of invitation dated 17 June 2022 did not describe it as a final capability review meeting, as the subsequent minutes did, but it did warn that dismissal was an option.

The meeting of 28 June 2022

22. Mr Morgan the line manager conducted the meeting on 28 June 2022. The Claimant’s participation was by telephone. The Claimant had participated in

all of these meetings by telephone. It seems possible that this was a Teams meeting. Mr Wareham the trade union representative appeared on screen with Mr Morgan but importantly the Claimant was on the telephone as we find was to be predicted. As far as he was concerned, this meeting was a telephone one. We have the minutes of that hearing and we see that at the outset Mr Wareham, the union representative asked for a further occupational health referral and Mr Morgan's position was depending on the answers, that might be an option. All the Claimant's other injuries other than the leg had healed. The Claimant informed he was still going to physio once a week, the leg was getting stronger by the week. The physio was face to face in the gym. He was walking better than he had. He was doing the same sort of distance daily, 16 steps around the house. He was walking up the stairs with crutches better, normal walk rather than hobble, cautious not to do too much, walking with crutches outside twice daily around his local estate quarter of a mile (half a mile a day). He said he used to enjoy walking over the moors. He hoped to get back to that soon and he was walking around the house and up the stairs was more normal. He was asked about driving, he said he could not drive yet he did not have a car only the works vehicle. Had he had any advice from a doctor about returning to driving? No. As to bending, he could pick things off the floor, which was an improvement, he could see progress by the week. Kneeling he had not tried kneeling yet and was not sure if this was possible. Walking up and down stairs: cautious but doing it better with crutches. Crouching: could do that slightly but would not be able to get under stairs and in cupboards to read meters. He thought he could hit performance targets once he recovered.

23. Mr Morgan then asked him whether he believed he would be able to resume full duties of the role within the next 3 weeks, 3 months or 6 – 12 months. Not 3 weeks, he said. He was looking at September as a possibility for a phased return. Another 3 months. He was asked whether he believed he would ever be able to resume the full duties of his role. He said yes, he was a positive person, progress was getting better week by week. He could see improvement and he was looking forward to getting back to work. He was still having weekly physio, daily exercises, strength being built up.
24. There was an update on the meeting with the surgeon on 1st June. The Claimant reported that he had been discharged by the surgeon which was progress. The advice had been just to keep up with exercises. There had been visits to the GP on 10, 17 and 24 June. There had been infection in the leg and antibiotics had been given. He was still taking pain killers up to 4 times a day, presently twice a day, and sometimes did not need them at all. He was asked about whether he would make a full recovery. The doctors had said that he should make a full recovery no one had said that he would not; no one had said when he would be able to return to work, as they did not want to commit at present to a return-to-work date. The Claimant was hoping to return by the end of September.
25. Mr Morgan then rehearsed the history of occupational health. The Claimant was asked whether he could return to work at the end of the expiry of the current sick note on 8th July, the Claimant said he would not be able to return on 8th July and said no later than September which was more of a realistic target. If he was fit before then he would return. He knew his own body; he said September was proposed.

26. The Claimant asked whether there were any contact centre jobs that he could do from home using his phone. If there were, he could start that tomorrow. He said it was a case of when, not if he would be fit to return. None of the medical people has said that he would not make a full recovery. Mr Wareham said that from the very start the Claimant has suffered some horrendous injuries. He had lots of hospital meetings. Occupational health reports and meetings put him under a lot of stress and anxiety and all he wanted to do was to get back to work. It was a matter of when, not if. The occupational health dates had not been realistic owing to the injuries. There had been problems with NHS not fulfilling all the treatments.
27. Mr Morgan said the meeting was then adjourned to the following day. Mr Morgan gave his outcome stating that he had taken into consideration the information provided by the Claimant at yesterday's meeting. He had considered the suggestion about temporary alternative duties by somehow providing back office support via your company phone from home. However, no such operational needs existed within the business. It was not considered that the Claimant would have the skill set to complete the back office role, even if one was available, without substantial training. He had also looked at the possibility of redeployment via vacancies within the wider business but the Claimant had made it clear that none would be suitable.
28. Mr Morgan then expressed his conclusion that based on the lack of overall improvement in the Claimant's health when considering the ability to fulfil the fundamental responsibilities of his role as a meter reader, he had made the decision to contractually dismiss on the grounds of ill health capability with effect from 29th June 2022. The Claimant was entitled to twelve weeks pay, that would be paid in his final salary in July 2022.
29. Mr Wareham of the Union said at the end of the meeting that the Claimant should not have been dismissed without a face-to-face meeting, without a member of HR present as this has always been company policy as far as he was aware. He should have had another occupational health meeting as the last one was over two months ago. Mr Wareham stated he was dissatisfied with the outcome and left the meeting.

Procedural Deficiencies

30. It seems to us that there are procedural significant problems with this meeting. The handbook that applied to this period of employment envisaged that decisions to dismiss in respect of capability would not be taken by the line manager. There is a passage in the handbook which suggests that a line manager can give warnings but a more senior manager has to make the decision to dismiss. Mr Bailey of HR on behalf of the Respondent said on a proper construction of that part of the handbook, the procedure related to multiple short-term sickness absences not long-term. Even if that is right, the section which purports to cover long-term ill-health absence says that the decision to dismiss must be taken or should be taken by a senior member of the HR department. In either case it is envisaged that that it is not the line manager who makes the decision. The significance of that is not a formalistic one, it is rather more that a fresh set of eyes looks at the matter, a fresh set

of eyes would be likely, in our judgment, to ask for an updated occupational health report.

31. It is wholly unsatisfactory also that this meeting was conducted by the Respondent on the telephone without even being able to see the Claimant and the extent of his apparent mobility, his improvement or otherwise. Up to the time of the appeal no-one, not even occupational health, had actually seen the Claimant in person.
32. Most fundamentally, Mr Morgan was purporting to come to his own medical view as to the likelihood of recovery in the near future rather than taking an up-to-date opinion from occupational health. He was not qualified to take a medical view when there was not an up-to-date report from occupational health and we find that the decision to make his own decision without an occupational health report testing the Claimant's position that he would be able to return to work in 3 months was a decision which is outside the reasonable range of responses, that is to say a decision which no reasonable employer could make. All the more so because earlier occupational health reports envisaged a return to work in the foreseeable future.

The Appeal

33. There was then an appeal on multiple grounds. Let us address the central one, which is the failure to obtain an up-to-date medical report. Mr Webb did see the Claimant in person, he did ask for some up-to-date information from the Claimant. He was told before his decision that the Claimant was now driving and had managed to walk into the room without the assistance of a stick or crutches. It was a central ground of appeal that there needed to be an up-to-date medical report. Mr Webb stated that it was clear to him that Adam Morgan had carefully examined whether there was a requirement for a further occupational health assessment in advance of making any final decision when assessing capability to perform the role as a metering representative. Having reviewed the information the Claimant provided at the capability hearing attended on 28 June 2022, he agreed with Mr Morgan's position that an occupational health report would not have added any further information or value.
34. We find that this was not a view that was reasonably open to Mr Webb. The last occupational health report was dated in March 2022, some five months prior to this appeal. The Claimant's contention that he would be fit to return within another 3 months was one that required serious consideration by occupational health and moreover an occupational health that actually saw the Claimant in person and subjected him to a physical examination. All of this information up to now had been information on the telephone with no examination by a doctor. Information had been forthcoming that the Claimant had been discharged by his own surgeon. The March occupational health report had said there would be a recovery such that he would return to work. In our assessment it was a decision outside the range of reasonable responses for Mr Webb to say that an occupational health report would not have added any further information or value.

CONCLUSIONS

35. We agree with the Respondent's position that it was not reasonable for them to provide the Claimant with a sedentary role. There was no sedentary role he could viably do from home; those roles were done out of Newcastle. The Respondents say they would have made the adjustments of a phased return to work, and we accept that. There was no failure to make reasonable adjustments here. There were none that it was reasonable to make.
36. We do say that the failure to attain an up-to-date medical report rendered this dismissal unfair as did the fact that the decision was not taken by someone authorised to take it and that it was a decision taken at the first instance over the telephone without actually seeing the Claimant. Those are all matters outside the band of reasonable responses.
37. The consequence of this, further, is that the Respondent cannot justify its decision as a proportionate means of achieving a legitimate aim, and therefore the decision to dismiss was also in breach of section 15 of the Equality Act 2010. It was something arising from the disability that the Claimant was absent. Therefore, the Respondent has to justify the dismissal as a proportionate means of achieving a legitimate aim. The legitimate aim of having a workforce working is readily identifiable. The difficulty here is proportionate means. That there remained a possibility at the time of the decision to dismiss that the Claimant might be fit to return to work in the foreseeable future; and that a medical assessment needed to be taken into account with the assistance of an up-to-date occupational health report bearing in mind the positivity of previous occupational health reports; meant that the Respondent could not justify the dismissal without making the medical enquiry.
38. That is the decision on liability; it is essentially a procedural position. What we need to do as best we can following disclosure of medical records (and it is most unfortunate that we do not have the GP records and any letters from the consultant as to the state of play with the leg) is to assess the percentage likelihood of what the occupational health report would have said at around August 2022 as to the prospects of a return to work in the near future.
39. If there was not a return to work likely in the near-future, then loss of future earnings or loss of future sick pay will be limited as will the injury to feelings. If however, it is clear that after a short period of time the Claimant would have returned fully to engage with his duty, then losses will be open ended. We will have to see what jobs he applied for. We will have to see what the medical evidence says. There should be an email trail of jobs applied for. If there is not, that would be surprising. For example, why could he not work on the tills, on the checkout in a supermarket. We will have to see what jobs he applied for, what jobs he might have done. We bear in mind that whilst this is an important job, it is a relatively low paid job, which means that the range of jobs available that should be looked at by way of mitigation is quite a wide one. We also do not forget the Respondent's point - and indeed the Claimant's position - that he thought he was entitled to 6 months full pay and 6 months half pay as a matter of contractual right - and that this may have informed his position. In other words, he thought he could take a whole year out before the need to look for alternative employment. Whether that was a

significant feature in his position - we think it is possible that it influenced his attitude – we will see that from the medical disclosure and from what evidence there is of efforts he made to find alternative work.

40. Unless it is possible now for the parties to come to some resolution in terms of compensation, we will have to come back another day following a comprehensive exercise of disclosure to see what the position is. If the disclosure suggests that the Claimant could not return to work, say, either at the end of September or a few months thereafter, and that he made no applications for alternative employment, then the compensation will be modest.

Employment Judge Smail
Date: 26 February 2024

Reasons sent to the Parties: 27 February 2024

FOR THE TRIBUNAL OFFICE

Public access to employment Tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Appendix: The Issues

1. Unfair dismissal

1.1 Was the Claimant dismissed? Yes, this is not in dispute.

1.2 What was the reason for dismissal? The Respondent asserts that it was a reason related to capability, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

1.3 Did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

1.3.1 The Respondent genuinely believed the Claimant was no longer capable of performing their duties;

1.3.2 The Respondent adequately consulted the Claimant;

1.3.3 The Respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;

1.3.4 Whether the Respondent could reasonably be expected to wait longer before dismissing the Claimant;

1.3.5 Dismissal was within the range of reasonable responses.

1.4 Did the Respondent adopt a fair procedure?

1.5 If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

1.6 The Claimant challenges the fairness of the dismissal in the following respects ... “The Respondent’s decision to dismiss me from my employment was taken without an up-to-date medical report; and with no proper consideration of the fact that within my T&Cs of employment I had an entitlement to 12 months sick pay – of which I had taken only 8 months at the point of my dismissal. At the point of my appeal, I was able to draw the Respondent’s attention to yet further progress regarding my mobility, including the fact that I was able to drive again.”.

1.7 The Claimant confirmed at this hearing that he also asserts that during the dismissal and appeal process the Respondent fabricated or reworded his answers to questions in a negative way. By way of example, he was asked if he could kneel to access an understairs cupboard, and he replied that even when fit and healthy it can be a struggle in some cases. However, his recorded answer was he couldn’t access an understairs cupboard. The Claimant is to confirm the other specific examples connected to this allegation as set out in the case management orders above.

1.8 Further, he asserts his dismissal was unfair because the Respondent did not investigate or allow for alternative work.

1.9 The Respondent denies all these allegations.

2. Disability

2.1 The Respondent concedes disability in respect of the impact on normal day to day activities of the injury's caused by the RTA (on the 24 October 2021) in which the Claimant was involved.

3. Direct disability discrimination (Equality Act 2010 section 13)

3.1 The Claimant describes himself as a disabled person.

3.2 Did the Respondent do the following things:

3.2.1 Dismiss the Claimant (this is not in dispute).

3.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they treated worse than someone else would have been treated. The Claimant has not named anyone in particular who they say was treated better than they were and therefore will confirm his position on this complaint as set out in the case management orders above.

3.4 If so, was it because of disability?

3.5 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to disability?

4. Discrimination arising from disability (Equality Act 2010 section 15)

4.1 Did the Respondent treat the Claimant unfavourably by:

4.1.1 Dismissing the Claimant.

4.2 Did the following things arise in consequence of the Claimant's disability? The Claimant's case is that in consequence of his disability arose sickness absence and an inability to perform his work contract.

4.3 Was the unfavourable treatment because of any of those things? (Did the Respondent dismiss the Claimant because of that sickness absence)?

4.4 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent will set out details of this in the amended response if it does rely upon this defence.

4.5 The Tribunal will decide in particular:

4.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;

4.5.2 Could something less discriminatory have been done instead;

4.5.3 How should the needs of the Claimant and the Respondent be balanced?

4.6 Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability? From what date?

5. Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

5.1 Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability? From what date?

5.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCP:

5.2.1 Require employees such as the Claimant to perform their contracted work role.

5.3 Did the PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that he could not do so?

5.4 Did the lack of an auxiliary aid, namely an automatic vehicle put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that he could not drive a non-automatic at that time?

5.5 Did the Respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

5.6 What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests:

5.6.1 alternative work, such as telephone work from home (as meter reader support), by being given requested monthly jobs with a focus on driving rather than walking, or half hourly jobs.

5.6.2 Allowing a further period for recovery.

5.6.3 Providing an automatic vehicle, which the Claimant says he could use despite his RTA injury limiting the use of his left leg.

5.7 Was it reasonable for the Respondent to have to take those steps and when?

5.8 Did the Respondent fail to take those steps?

6. Remedy

Unfair dismissal

- 6.1 The Claimant does not wish to be reinstated and/or re-engaged.
- 6.2 What basic award is payable to the Claimant, if any?
- 6.3 If there is a compensatory award, how much should it be? The Tribunal will decide:
- 6.3.1 What financial losses has the dismissal caused the Claimant?
- 6.3.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 6.3.3 If not, for what period of loss should the Claimant be compensated?
- 6.3.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 6.3.5 If so, should the Claimant's compensation be reduced? By how much?

Discrimination

- 6.4 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?
- 6.5 What financial losses has the discrimination caused the Claimant?
- 6.6 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 6.7 If not, for what period of loss should the Claimant be compensated for?
- 6.8 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- 6.9 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 6.10 Should interest be awarded? How much?