



# EMPLOYMENT TRIBUNALS

**Claimant:** Adam Watson

**Respondent:** National Tube Straightening Services Limited

**Heard at:** Bristol Employment Tribunal via CVP **On:** Friday, 10 May 2024

**Before:** Employment Judge Mr. M. Salter

**Representation:**  
Claimant: In person  
Respondent: Mr. MacPhail, counsel

## JUDGMENT

The Claimant **was not**, at the relevant time, disabled within the meaning of s6 of the Equality Act 2010 by reason of Chronic Fatigue Syndrome/Myalgic Encephalomyelitis.

## REASONS

*References in square brackets below are unless the context suggests otherwise to the page of the bundle. Those followed by a with a § refer to a paragraph on that page and references that follow a case reference, or a witness' initials, refer to the paragraph number of that authority or witness statement.*

*References in round brackets are to the paragraph of these reasons or to provide definitions.*

### INTRODUCTION

1. These are my reasons given orally at the final hearing on Friday, 10 May 2024. In accordance with Rule 62(3) of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (“the 2013 Regulations”) written reasons will not be provided unless they are asked for by any party at the hearing or by a written request presented within 14 days of the sending of the written record of the decision. If no such request is made,

then the tribunal will only provide written reasons if requested to do so by the Employment Appeal Tribunal or a court.

2. The Employment Tribunal is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>. The Employment Tribunal has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the Employment Tribunal for an order to that effect under Rule 50 of the Tribunal's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness.
3. These written reasons are prepared at the request of the Claimant

#### **BACKGROUND**

##### The Claimant's case as formulated in his ET1

4. The Claimant's complaint, as formulated in his Form ET1, presented to the tribunal on 4<sup>th</sup> July 2023, is in short, he was unfairly dismissed and that dismissal was an act of disability discrimination.

##### The Respondent's Response

5. In its Form ET3, the Respondent accepted the Claimant was an employee and that he was dismissed, but denied the Claimant had the necessary two-years' service to present a claim of unfair dismissal and denied that the Claimant's dismissal was an act of direct discrimination

##### Strike Out

6. The Claimant's claim of unfair dismissal was struck out by Employment Judge Livesey by way of letter dated 14<sup>th</sup> August 2023 on grounds of the claimant's lack of continuity of employment.

##### Relevant Procedural History

7. The matter came before E.J Bax on 11 January 2024 for a Preliminary Hearing during which the claim was identified as one of discrimination arising

from disability, a three-day Final Hearing was set down and today's Preliminary Hearing was listed to determine whether the claimant was at the relevant time disabled within the meaning of the Equality Act 2010. The Respondent was given permission to amend their defence to address the newly identified head of claim.

## TODAY'S HEARING

### General

8. The Claimant represented himself, The Respondents were represented by Mr. MacPhail of counsel.
9. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no significant difficulties.
10. The participants were told that it was an offence to record the proceedings.

## DOCUMENTS AND EVIDENCE

### Witness Evidence

11. I heard evidence from the Claimant. Who gave evidence by way of written disability impact statements that were read by the me in advance of them giving oral evidence.
12. Evidence was heard from the Claimant via video link. I was satisfied that he was not being coached or assisted by any unseen third party while giving his evidence.

### Bundle

13. To assist me in determining the matter I have before me today an agreed bundle consisting of some 111 pages prepared by the Respondent. My attention was taken to a number of these documents as part of me hearing submissions and as discussed with the parties at the outset of the hearing, before commencing their submissions, I have not considered any document or part of a document to which my attention was not drawn. I refer to this bundle by reference to the relevant page number.

## SUBMISSIONS

### Respondent

14. The Respondent made its submissions first:

- (a) Mr. MacPhail highlighted the Claimant's evidence that he was not relying on the diagnosis of generalized anxiety disorder back in 2015
- (b) Regarding chronic fatigue syndrome there is no clear diagnosis, at best there is in 2018 at a GP saying it's possibility. there's been no medical view whatsoever given on the diagnosis of CFS or any link between that any such diagnosis and any alleged substantial adverse effects suffered by the claims;
- (c) The burden of proof is on the Claimant;
- (d) Mr. MacPhail then turned to the issue of the question of substantial adverse effect what we have in some evidence on that is the claimant gives an account of how he says he was affected in 2023 that's in his second statement he is very limited evidence on the matter but it's apparent that applies to He can go to work carry out his full roll 40 hours a week and put engage with weekend reenactments and he's not going to the GP at all during that.
- (e) there is very weak evidence of any substantial adverse effect even in 2023 if there is any such effect to study for short periods namely 2023 not a year and as I said it could of course be caused by something entirely different from CFS
- (f) there's no clear link back to any previous substantial adverse effect indeed there's very weak evidence about any substantial adverse effect in the past in
- (g) suggest is not proven that the alleged impairment of CFS exists in his case or that he suffered art substantial adverse effect as is necessary section 6 all that one caused the other judging let's I can assist any further those

Claimant

15. The Claimant made oral submissions which I have considered with care but do not rehearse here in full. In essence, in the course of the hearing, it was submitted that:

- (a) I would like to begin by refuting this idea that's my fatigue is related to my anxiety disorder
- (b) if you go back to the 2015 records as early as page 77 is clear that some degree of difficulty if not outright disability has begun in 2015 the fact is that if my condition was not serious
- (c) I posit that my GP simply would not enter extreme information into my medical record its presence there demonstrates its relevance to my case it is listed that I am unwell it is listed that my memory is very poor
- (d) the entry of the word tiredness in my records all the way from 2015 onwards specifically the record 23rd January 2018 on page 78 this is before busy lifestyle I wasn't re-enacting in 2018 I was conducting relatively difficult employment but nothing that is unusual for a otherwise fit young man the level of fatigue I was experiencing as is supported in my disability impact statement page 75 is by all measures abnormal for someone who is not otherwise suffering from a degree of disability
- (e) furthermore in the in Page 79 in my records from 2018 emphasis is placed on physical fatigue which is again not something and this is public knowledge that is associated with an anxiety disorder sleep being unrewarding is explicitly a symptom of chronic fatigue
- (f) Page 79 this is the second time that my GP has reference is condition in my record and is therefore ordering further tests pursuant to this possibility I would submit that this is no longer simply an idle impression and is now something

that in the eyes of my GP requires investment of time and tests tests which were conducted its and found to be inconclusive

- (g) I would suggest that the reason these tests are inconclusive is because chronic fatigue syndrome by its very nature is not something that is caused by a single malfunction or a simple black of anyone given you know bodily function but rather is a chronic and generally encompassing condition
- (h) I would also suppose based on the idea that I was suffering from affect whether that be a chronic fatigue syndrome or any degree of disability or simply a non-disability related difficulty in my life long term impairment all the way back as far as 2015 continued in 20/17/2018 then is listed in my supporting evidence in 2023 that to propose that my difficulties simply cease during the intermediate.

## MATERIAL FACTS

### General Points

16. From the evidence and submissions, I made the following finding of fact. I make my findings after considering all of the evidence before me, taking into account relevant documents where they exist, the accounts given by the Claimant in evidence, both in his statements and in oral testimony. Where it has been necessary to resolve disputes about what happened I have done so on the balance of probabilities taking into account my assessment of the credibility of the witnesses and the consistency of their accounts with the rest of the evidence including the documentary evidence. In this decision I do not address every episode covered by that evidence, or set out all of the evidence, even where it is disputed.
17. Matters on which I make no finding, or do not make a finding to the same level of detail as the evidence presented to me, in accordance with the overriding objective reflect the extent to which I consider that the particular matter assisted me in determining the identified issues. Rather, I have set out my principle findings of fact on the evidence before me that I consider to be necessary in order to fairly determine the claims and the issues to which the parties have asked me to decide.
18. Th Claimant worked for the Respondent as a workshop operative from 5<sup>th</sup> December 2022 until 3 May 2023 when his employment was terminated. There were no issues with the Claimant work or performance during this time.
19. On 3<sup>rd</sup> May 2023, the Claimant did not attend work on time on that day. The Respondent contends this was gross misconduct entitling it to dismiss him, the Claimant says he slept through various alarms as a result of his CFS.

20. I make no findings on the above matters, the issue for me is whether the claimant is disabled by reason of CFS [See the order of RJ Bax]
21. In 2018, the Claimant's GP had noted that the Claimant potentially may have CFS, but there was no other reference in the papers I saw of the claimant receiving any assistance advice or treatment for this. And tests he undertook were inconclusive.
22. During his time with the Respondent, the Claimant conducted an active life, both working and in his private life, engaging in and organising a re-enactment society, and before he was employed with the Respondent the Claimant was able to undertake active physical work, seemingly without any difficulties.

## **THE LAW**

### The Equality Act 2010 ("the 2010 Act")

23. The burden is on the Claimant to prove he satisfies the definition of disability under s.6 of the 2010 Act. This section states:

- (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".*

### The Case Law

24. The definition has four constituent elements which the tribunal will be required to consider, although they should not be treated as rigid consecutive stages (Goodwin v Patent Office [1999] ICR 302 at 308A-C; Elliott v Dorset County Council (2021) UKEAT/0197/20/LA(V) at [17]-[18]) These are the:

- (a) *impairment element*. Does the Claimant have an impairment which is either mental or physical?
- (b) *adverse effect element*: Does the impairment affect Claimant's ability to carry out normal day-to-day activities and does it have an adverse effect?
- (c) *substantial element*: Is the adverse effect (upon the Claimant's ability) substantial?
- (d) *long-term element*: Is the adverse effect (upon the Claimant's ability) long-term?

### Guidance

25. When determining the issue of disability, the Tribunal must take into account the Guidance on Matters to be Taken into Account in Determining Questions

Relating to the Definition of Disability 2011 ('2011 Guidance') (s.6(5) 2010 Act; Goodwin at 307F-H).

The Equality Act 2010: Constituent Elements

*The Impairment Element*

26. In there is no statutory definition of either a 'physical impairment' or a 'mental impairment', and nor is there any definition in the government guidance.
27. in McNicol v Balfour Beatty Rail Maintenance Ltd [2002] ICR 1498, CA the Court of Appeal held that

*'impairment' in this context bears 'its ordinary and natural meaning... . . . It is left to the good sense of the tribunal to make a decision in each case on whether the evidence available establishes that the applicant has a physical or mental impairment with the stated effects.'*

**CONCLUSIONS ON THE ISSUES**

*Issue 1: Impairment Element*

28. I have considered the evidence and am of the conclusion that, at the relevant time, the claimant has not satisfied me he met the statutory threshold for disability. I consider that the evidence I have been shown does not meet the threshold in relation to the question of whether the Claimant did in fact suffer from an impairment:
- (a) at no point is the condition is not formally diagnosed (I accept this is not a determinative factor);
  - (b) with no diagnosis of CFS, the highpoint of this matter appears to be the reference in 2018 to "? Cfs" by the claimants GP on an entry into his medical notes;
  - (c) Irrespective of the lack of any formal diagnosis, or cause, I have looked at the resultant symptoms and effects claimed by the claimant in his impact statement and evidence and I note
    - (i) there are no visits to his GP on this matter for a number of years;
    - (ii) there appears to be no impact on his attendance at work for the Respondents for the period of his employment with them;
    - (iii) there appears to be no negative performance of his work;
    - (iv) during this time he has an apparently physical working life style in the years leading up to his employment with the Respondent
    - (v) The increase in his non-work activities with his enactment society
29. I conclude that, having looked at the medical evidence and material I have had placed before me, the Claimant has not satisfied me, on the balance of probabilities, that he has an underlying impairment, whether CFS or otherwise and I cannot deduce an impairment from such material

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Employment Judge Salter

Monday, 10 June 2024

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ORIGINAL JUDGMENT & REASONS SENT TO THE PARTIES ON  
02 July 2024

**AMENDED** JUDGMENT & REASONS SENT TO THE PARTIES ON  
05 July 2024 By Mr J McCormick

For the Tribunal Office

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.