



EMPLOYMENT TRIBUNALS

Claimant

Mr Robert Magnus

v

Respondent

Car World (Cambs) Limited

Heard at:

Cambridge

On: 20 and 21 March 2024

Before:

Employment Judge M Ord

Members:

Ms W Smith and Mr C Grant

Appearances:

For the Claimant: Mr S Patel, Counsel

For the Respondent: Mr D Flood, Counsel

JUDGMENT having been sent to the parties on 16 April 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This was a Final Hearing to consider the Claimant's complaint of disability discrimination. Disability and knowledge at the relevant time were accepted by the Respondent.
2. The Claimant was employed from 18 March 2019 until 24 November 2020 by the Respondent. His role was to inspect and to assess vehicles on arriving at the Respondent's premises following purchase online at auction, or otherwise. This is described as a very important role within the Respondent's business and it was accepted at all times that the Claimant was very good at it.
3. Prior to joining the Respondent in March 2019, the Claimant had been out of work for a period of eight months and was waiting for an operation on his back. The Respondent was aware of this and took the Claimant on, notwithstanding the impending operation. During 2020 and 2021, the Claimant had a significant amount of absence as detailed in Mr Fazal's statement, including from 27 January to 6 April 2020 due to the operation on the Claimant's back.
4. Later in 2020 the Claimant suffered pain and was passing blood in his

urine. Tests disclosed Stage 2 Bladder Cancer. The Claimant was given a Fit Note for six weeks commencing 24 November 2020 as he was to undergo Chemotherapy. That Fit Note was sent by the Claimant to the Respondent on 24 November 2020 and on that same day Mr Fazal rang the Claimant and asked him to attend what he described to us today as a welfare meeting.

5. There had been no previous welfare meetings held with the Claimant, despite his previous absences and despite the nature of his lengthy absence earlier that year.
6. The events at the meeting on 24 November 2020 and the reason for it are in dispute. The Claimant says he attended the Meeting notwithstanding the fact that he was under a Fit Note saying he was unfit for work and that such a meeting could have been held remotely. He was told by Mr Fazal that he had had 191 days absence which was too much and that he was letting the Claimant go. The Claimant asked that this should be put in writing, that he should receive a P45 and that Mr Fazal had told him that he wished to tell the Claimant this face to face.
7. According to the Respondent, Mr Fazal had asked the Claimant how he was, at which point the Claimant asked to be placed on Furlough for financial reasons. According to Mr Fazal when the Claimant was told this was not possible the Claimant left the meeting.
8. In the Respondent's Grounds of Resistance it is said that the Claimant then "walked out of the meeting and out of the premises". There was no comment on the Claimant's demeanour.
9. According to Mr Fazal's Statement, the Claimant did not take well to the rejection of Furlough and walked out of the premises. According to his evidence today, the Claimant was shouting in the office and "got loud" and was angry. Unanimously, the Members of the Tribunal find that this was Mr Fazal seeking to gild the lily and that that behaviour was not the case on the day.
10. On the balance of the evidence we have heard, we prefer the Claimant's version of the events of this Meeting and therefore find that the Claimant was dismissed by Mr Fazal in the face of his submitting a Fit Note and that he was about to start a period of Chemotherapy following a diagnosis of Cancer, having previously had periods of absence from work.
11. We reach this decision based on what we see as a degree of evolution in Mr. Fazal's evidence. He paints a picture of anger and shouting based on a rejection of furlough which had not been previously suggested. The claimant's evidence was, by contrast, consistent.
12. Accordingly on that day the claimant was dismissed by the Respondent.
13. Mr Fazal accepted that he knew at the time of the Meeting that the Claimant was both diagnosed with Cancer and about to commence Chemotherapy.
14. The Respondent has accepted that a finding of dismissal would be a

finding of unfavourable treatment under s.15 of the Equality Act 2010.

- 15. Throughout the period since his dismissal the Claimant has been out of work. He was offered work without seeking it on four occasions between April 2021 and October 2022. All of which he rejected due, he says, to his mental health. There was no evidence connecting any mental health issues to his dismissal adduced before us. All four offers were made direct to the Claimant, he was not seeking work and the Claimant has adduced no evidence to suggest that he has at any time since his dismissal, sought work.
- 16. Accordingly the claimant has been, on his evidence, unfit for work since the time of his dismissal. He has been in receipt of benefits equal to those he would have received had he not been dismissed and remained unfit for work.
- 17. In those circumstances we are satisfied that the Claimant has not established that he has any financial loss. The benefits he has received since November 2020 are the same as he would have received without the dismissal as he has been unable to work since dismissal and he has adduced no attempts to find work since the termination of employment with the Respondent.
- 18. The parties have agreed that an Award for Injury to Feelings should be in the sum of £15,000 and we accept that as an agreed sum for which the Claimant has Judgment by consent. The Claimant is entitled to interest at 8% per annum from the date of the act of discrimination to date, which amounts to £3,989.00.
- 19. The total Award to the Claimant is: **£18,989.00**

18 June 2024

Employment Judge M Ord

Judgment sent to the parties on
2 July 2024

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For the Tribunal office

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Case No:- 3302493/2021.

the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>