



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Evans

**Respondent:** Cwmamen Town Council

**Heard at:** Swansea Magistrates Court **On:** 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> May 2024

**Before:** Employment Judge Lloyd-Lawrie, Mrs J Beard and Mr W Horne

## Representation

Claimant: In person

Respondent: Ms Afriyie, Consultant

**JUDGMENT** having been sent to the parties on 29 May 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

## Findings of Fact

1. The Claimant was employed by the Respondent as a Community Makerspace Engagement Technician from 05/07/2022 until his resignation served 26/04/2023, ending his employment on 26/05/2023.
2. The Claimant and his Line Manager were working on the MakerDifference project. This project had been subject to a grant application that the Claimant's Line Manager had written, in conjunction with the Louise Dent.
3. The grant money required certain tasks to be carried out by contractors.
4. The Claimant's Line Manger, Robert Venus, awarded both himself and the Claimant the contracts to specific to supply functions to the Respondent and invoiced for them. The Claimant provided his invoices to Robert Venus who submitted the 2 invoices of the Claimant to the Council's new in role Deputy Clerk and Responsible Financial Officer (RFO), Jayne Grazette, along with an invoice of his company, on 06/02/2023.

5. Ms Grazette queried the invoices and an email chain started which did not include the Claimant. On 14/03/2023 Robert Venus replied to Ms Grazette setting out the system by which he and the Claimant were providing work “in a freelance capacity” and set out the procedures he alleged that had been followed.
6. In a response to Mr Venus email, Mr Aled Nicholas who worked for Carmarthenshire County Council, the grant funder, replied to all (Claimant still not included) and asked for clarity of how the third-party procurement rules were adhered to and set out what those were.
7. On 27/03/2023 Mr Venus “replied to all” and attached conflict of interest forms and providing his explanation as to how he considered the policy had been adhered to.
8. On 29/03/2023 Mr Nicholas confirmed that he did not consider the policy had been followed and that the costs presented by way of the invoices of the Claimant and Mr Venus would not be paid therefore.
9. The Claimant had been suspended, along with his line manager, on full pay on 06/04/2023.
10. A letter confirming this and setting out the reason, that being “to allow an investigation to take place following the allegations of a breach of company and procedures” was prepared and read to the Claimant by Ms Grazette on 06/04/2023. The Claimant was not accompanied at that meeting, nor had he a right to be accompanied.
11. Ms Grazette read the letter to the Claimant as he had disclosed to the Respondent that he had dyslexia. When the Claimant queried with Ms Grazette why he was suspended, she told him it was to do with the MakerDifference project.
12. The Claimant did not receive a copy of his suspension letter the same day as it was sent to his work email which he was locked out after 4 hours.
13. The Claimant contacted Ms Grazette and the Clerk, Louise Dent, the same day to advise that he had not got the letter and asking for documents and clarification on who he could speak to.
14. Ms Grazette responded on 12/04/2023 apologising for the delay, explaining that his email had gone into her junk folder. She attached the suspension letter, the policies requested and the handbook. In addition, she attached the Employee Assistance Programme Leaflet which she stated, “we encourage you to use”.
15. On 12/4/2023 the Claimant received an invite to attend an investigatory meeting chaired by a consultant from the HR company engaged by the Respondent on 13/04/2023.
16. The Claimant did attend the investigation meeting.

17. The Respondent also held an investigation meeting with Robert Venus. Other people interviewed were Jane Grazette, Louise Dent, Mared Pemberton, Head of Funding and Kevin Madge, Councillor.
18. During the Claimant's investigatory meeting, he conceded that he and Robert Venus had backdated the expressions of interest forms but stated that he had been asked to backdate things before, suggesting it was normal practice.
19. The Consultant tasked with the investigation prepared an investigation report on 18/04/2023. This report recommended that a disciplinary hearing was held as there was a case to answer.
20. On 24/04/2023 the Claimant raised a grievance regarding the conduct of his suspension and raised that he was having mental health issues at that time.
21. The Claimant then resigned in a letter dated 26/04/2023, received by email on the 27/04/2023. This gave 4 weeks notice.
22. The Respondent claims to have invited the Claimant to a disciplinary hearing on 27/04/2023, warning him that the allegation may amount to gross misconduct. That letter was not provided to the Tribunal and the Claimant asserted that he had never received it. We find that the letter was not received by the Claimant. In any event, no disciplinary hearing ever took place.
23. The Respondent offered the Claimant the opportunity to rescind his resignation in a letter dated 27/04/2023.
24. The Claimant responded giving a list of conditions he wanted complied with in order to rescind his resignation on 02/05/2023. Ms Grazette sent a holding response, but no substantive response was sent before the Claimant retracted this offer on 17/05/2023.
25. On 05/05/2023 Ms Grazette asked the Claimant for some dates he could make a meeting to discuss his grievance. He replied on 09/05/2023 providing dates he could make and Ms Grazette replied the same date confirming she would get dates organised.
26. On 17/05/2023 a letter was sent to the Claimant confirming that his grievance would be held on 18/05/2023.
27. The Claimant's grievance was not upheld but the outcome was not provided until August 2023.
28. The Claimant undertook the work invoiced as a contractor. He provided his own administration for the tasks and did the work in his own time. He has previously worked on a self-employed basis and was aware of his obligations to manage his own tax and national insurance. The Claimant has sent a letter before action to the Respondent to demand payment of his invoices. The Claimant was not acting as a worker or an employee when he undertook the work for which he invoiced. He therefore cannot bring a claim in the Employment Tribunal for the monies owed. It does not amount to an unlawful deduction from wages.

29. The Claimant was disabled due to depression in the period to be considered. The Respondent had knowledge that the Claimant had had some mental health issues, him having discussed them with his Line Manager. The Claimant is not responsible for ensuring everyone in the organisation knew. He has put the Respondent on notice by telling his Line Manager. We accept that it was known from interview stage by the Respondent's then clerk and Robert Venus that the Claimant was disabled by virtue of depression.

30. Further, we find that the Jayne Grazette was aware of the fact that the Claimant had depression following a staff meeting at an unknown date but prior to the suspension of the Claimant, when he spoke about suffering with depression and anxiety in a meeting where people were sharing their experiences.

31. The Claimant, by his own admission, cannot state that the reason for his suspension, investigation or disciplinary proceedings were due to his having depression. He stated when asked that he could not state either way as he was not the person to suspend.

32. The Claimant has not brought any evidence forward, including his own, that suggests that the decision to suspend, investigate or invite to a disciplinary was due to the Claimant having depression or that his actions in carrying out the contractor work were depression linked and thus the actions were arising from his disability.

33. The Respondent provides support to suspended employees in the form of the Employee Assistance Programme and provides information to employees when they are suspended in the form of the suspension letter. They therefore do not have the claimed provisions, criterion or practices.

34. The issues and legal tests to be applied are as set up by Employment Judge Ryan in his case management order dated 24/112023.

#### Reasons for the decision

35. In making our decision we first reminded ourselves that this was a claim about direct disability discrimination, discrimination arising from disability, failure to make reasonable adjustments and unauthorised deductions from wages only. In regard to the claimed acts, it is therefore not relevant if the Employer did not behave in a legally fair way in regards to their processes, just whether the motivation for the same was discrimination.

36. We have scrutinised the documents provided and listened carefully to the oral evidence when considering employment status. It is conceded that the Claimant was employed by the Respondent for the purposes of the disability discrimination claim. The issue on employee status is in relation to the claimed work as a contractor.

37. Despite the submissions of the Respondent's Representative, which we find are contrary to the position previously advanced, we find that the Claimant was performing work as a self-employed contractor when he undertook the work for which he invoiced. We accept fully his evidence that the matter was

raised with him by Robert Venus, his line manager. However, on his own evidence, he knew that the work could only be carried out by contractors under the grant and that he, when asked to do the same previously by Marissa Sweeney- Aris, had increased the hourly rate to include the additional admin costs and responsibilities that came from being self-employed. We note that the Claimant was paid overtime after being chastised by the new Clerk regarding the submission of an invoice for the project being ran by Marissa Sweeney-Aris. We find that the Claimant was paid overtime on that occasion as his work as a contractor had not been properly sanctioned and otherwise, he would not get paid. Whilst we find that the Respondent has not always taken a diligent approach to proper financial processes, we find that this does not outweigh the evidence of both the Claimant and Mr Venus that the Claimant had properly thought he was providing services on a self-employed basis. The fact that the Claimant agreed to sign a declaration of interest and sent a Letter Before Action to claim his monies owed, we find is evidence that the Claimant knew that he was engaged as a contractor, albeit without due process being followed, by Robert Venus.

38. As we find that the Claimant was a self-employed contractor and not an employee or worker when providing the services for which the invoice was raised, it follows that the Claimant cannot succeed in his unlawful deduction from wages claim. This was a purely commercial agreement and as such is outside the jurisdiction of the Employment Tribunal.

39. We find that the Claimant had been open about his mental health history from the point of his interview onwards. Mr Davies and Mr Venus both remember the Claimant raising mental health issues, albeit in the case of Mr Davies, he remembers anxiety being mentioned specifically, in the interview. Ms Grazette, in answer to a panel member's question, confirmed that in a staff meeting where they had all been sharing experiences the claimant had said that he suffered with depression and anxiety. Whilst she then sought to correct that statement when it was checked, she changed that to that he said he had experience of depression and anxiety. We find that it was more likely than not that Ms Grazette was aware that the Claimant was disabled by way of depression at the relevant time as she certainly knew, on our findings, at the very least before the suspension was instigated.

40. It is admitted that the Respondent suspended the Claimant, investigated the Claimant for breach of the procurement rules, policies and procedures and that the Respondent pursued disciplinary proceedings against the Claimant for breach of procurement rules, policies and procedures.

41. The question we must answer is whether those things amount to less favourable treatment of the Claimant, due to his disability.

42. The Claimant claims that he was treated less favourably than Marissa Sweeney-Aris. As the Respondent has not sought to claim that Ms Sweeney-Aris is disabled, we assume she is not. The Claimant says she did work as a contractor and was not suspended, nor was she suspended when Mr Venus had raised a grievance about her.

43. We have not been provided with evidence, by either party, as to the nature of the grievance of Mr Venus against Ms Sweeney-Aris, save for that it was outstanding at point of Mr Venus's resignation. In any event, it was not

suggested that Ms Sweeney-Aris, in relation to the matters included in the grievance, had potentially committed acts of gross misconduct. In relation to Ms Sweeney-Aris's carrying out work as a contractor, evidence was given by Ms Grazette, that was not challenged, that that work was pre-approved by the funder as it was disclosed as part of the grant.

44. In this case the Claimant and Mr Venus had submitted invoices for work. Ms Grazette who was new in post, starting on 01/02/2023, had noticed what she thought was a breach of financial procedures in that she thought that proper authorisations had not been sought. This ultimately led to the Claimant and Mr Venus being suspended.

45. The Claimant sought to suggest that Mr Venus was a disabled person. Whilst Mr Venus gave evidence that he had previously experienced grief when both his parents died and had been off with work-related stress, there was not evidence provided that Mr Venus suffered with a long-term condition that had a substantial effect on his ability to carry out normal day to day activities. We therefore do not find that Mr Venus was a disabled person at the relevant time.

46. The Claimant in oral evidence, did not dispute that his depression was not the motivator for the Respondent taking the steps they had in terms of suspending, investigating or instigating disciplining processes against him in any event.

47. We find that the Respondent did not engage in less favourable treatment as they would and did treat other non-disabled employees in the same way as the Claimant, Mr Venus being one such example. We also find that they would treat any employee who is alleged to have undertaken or been involved in any form of financial dishonesty in the same manner.

48. As we find that the treatment was not less favourable, we do not have to go on to find whether the treatment was due to disability. However, for completeness, we find it was not to do with disability but was due to Ms Grazette considering financial misconduct had occurred.

49. We next considered discrimination arising from disability. We find that the Claimant was not treated unfavourably by suspension, investigation or disciplinary proceedings being instigated. Suspension is a neutral act and involved both parties that were had submitted invoices. Both were investigated and both were invited to disciplinary proceedings. No sanction was put in place as no disciplinary hearing was actually heard.

50. The Claimant alleges that he needed support when challenged about his invoices and that he needed information about policies and procedures. We find that the Claimant was not first challenged about his invoices directly, but this was done via Robert Venus, Robert Venus somewhat advocating for himself and the Claimant. However, we find that the Claimant was not directly challenged about his invoices until the investigation meeting and by that point, he had been provided with the Employee Assistance Programme information for support.

51. We find that the Claimant needing information about policies and information was not arising in consequence of his disability. He was needing the information because he was being challenged on breaking the policies or being party to the policies being broken. As there was never a disciplinary hearing

held, it is not possible to know what the outcome would have been. In any event, the policies were on the staff intranet when the Claimant was in work, so he had access to them and they were then sent to him 6 days after his suspension, before he was interviewed.

52. We find that there was no unfavourable treatment in this case and that it was not because of those things alleged to have been arising. The Claimant was suspended for alleged financial dishonesty, as was his line manager, Robert Venus.

53. We therefore do not need to do on to consider if the treatment was a proportionate means of achieving a legitimate aim.

54. We lastly consider reasonable adjustments. We carry forward our finding that the Respondent was fixed with knowledge from the date of the Claimant's interview. The Claimant is not responsible for any personnel failings of the Respondent.

55. The Claimant has plead 2 PCPs. A PCP is a provision, criterion or practice. The first is not to provide support to suspended employees. We find that this is not the case. The evidence is that the Respondent has an employee assistance programme and that this information is served on staff when they are suspended. This was given to the Claimant during his suspension, albeit 6 days after he was suspended. We find that this was a reasonable timeframe, in any event, it cannot be said that the Respondent has the first claimed PCP.

56. The second PCP claimed is that they do not provide information to suspended employees. The Respondent engage in a practice of providing a suspension letter which gives an overview of the reason for the investigation and the procedure that will be followed. The Respondent did this with the Claimant. They therefore do not have that PCP.

57. As the PCPs have not been made out, the reasonable adjustments claim fail.

### **Order**

The Claimant's claims for direct disability discrimination fail and are dismissed.

The Claimant's claims for discrimination arising from disability fail and are dismissed.

The Claimant's claim for reasonable adjustments fail and are dismissed.

The Claimant's claim for unauthorised deduction from wages fail and are dismissed.

Employment Judge Lloyd-Lawrie

Date – 19 July 2024

REASONS SENT TO THE PARTIES ON 22 July 2024

FOR THE TRIBUNAL OFFICE Mr N Roche