



EMPLOYMENT TRIBUNALS

Claimant: Mr J McNulty

Respondent: Hyde Housing Association Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Southampton

On: 3 September 2024

Before: Employment Judge Dawson

Appearances

For the claimant: Representing himself

For the respondent: Mr Ismail, counsel

JUDGMENT

1. The claimant was disabled by reason dyslexia while he worked for the respondent.

2. Further directions are given in the separate document “Case Management Orders”

REASONS

1. This document is formatted to assist the claimant.
2. This is the decision on whether or not the claimant was disabled because of dyslexia when he worked for the respondent.
3. The issue comes to be determined today by a slightly unusual route. The case had been listed for a final hearing starting today, during which the question of the claimant’s disability would be decided. However the claimant has failed to comply with most of the tribunal’s directions and has not given disclosure or exchanged witness statements.
4. He says that is because he is overwhelmed, in part because of his dyslexia, and he was without the assistance of his partner for a time.
5. In those circumstances the respondent applied to convert the first day of the final hearing into a preliminary hearing to determine whether the claimant was disabled. Last week I converted the hearing into a preliminary hearing and, today, the claimant has confirmed his agreement to the question of his disability status being determined.

6. Although there had been discussion in the past about obtaining a jointly instructed expert report, the respondent does not seek to pursue such a report and I do not consider it is necessary. In those circumstances, this hearing has been used to determine the question of disability.
7. The respondent has compiled a helpful bundle of documents running to 100 pages and counsel for the respondent has put together a helpful opening note setting out the background to matters and also the law on disability.
8. The claimant had, some time ago, prepared a disability impact statement which appears at page 54 of the bundle. He told me at the outset of this hearing that he would not be able to read the statement now, although he believes it would have been true at the time it was made. The claimant says the statement was written by his partner on his behalf. After the claimant had taken the affirmation, I read the statement to him and he said that it was true and I also read out the two documents referred to in that statement.
9. The issues in the case, including as to disability, were agreed at a Case Management hearing on 29 November 2023, following which a case management order was sent to the parties on 10 December 2023.

The Law

10. Disability is defined in section 6 of the Equality Act 2010. A person has a disability if they have a physical or mental impairment and that impairment has a substantial

and long term adverse effect on their ability to carry out day-to-day activities.

11. “Substantial” means more than minor or trivial (section 212 (1) Equality Act 2010)
12. In *Aderemi v London and South Eastern Railway* [2013] ICR 591, Langstaff P stated

“It is clear first from the definition in section 6(1)(b) of the Equality Act 2010, that what a Tribunal has to consider is an adverse effect, and that it is an adverse effect not upon his carrying out normal day-to-day activities but upon his ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a Claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a Tribunal has then to assess whether that is or is not substantial. Here, however, it has to bear in mind the definition of substantial which is contained in section 212(1) of the Act. It means more than minor or trivial. In other words, the Act itself does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial but provides for a bifurcation: unless a matter can be classified as within the heading “trivial” or “insubstantial”, it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other’.

(paragraph 14)

13. The approach in determining whether a person has a disability is:

- consider whether the person has a physical or mental impairment;
- consider whether the impairment affects the person's ability to carry out normal day-to-day activities;
- The effect on such activities must be 'substantial';
- The effects must be 'long term'.

Goodwin v The Patent Office [1999] ICR 302

The Evidence

14. The claimant's disability impact statement states that whilst he was completing his apprenticeship at the Steve Willis Training Centre, his difficulties with reading writing and spelling were picked up and he was given special equipment.

15. The claimant told the tribunal today that he was given extra time at college. He described how his dyslexia was picked up, referring to the fact that it was noticed that he could answer short but difficult questions easily but could not answer long easy questions.

16. The claimant says that he has never been able to read long emails or writing, after the second word everything muddles into one. He struggles to understand short statements. He cannot spell very well. He struggles with “interpreting” what things sound like in his head onto paper. He is always consumed with embarrassment because he believes he will look stupid. He has to repeat sentences a lot due to not understanding and start from the beginning.
17. The claimant describes having to work harder mentally to do simple things which makes him more tired and he can get information overload. He describes feeling awkward and uncomfortable in meetings and social interactions and worries that he will look silly if he is asked to read something. He talks about avoiding many social situations because of his dyslexia which affects his friendships and professional relationships.
18. The claimant told me that he often did not fill in his PDA when he arrived on site because he was greeting the customer, being told about the job and then would forget. That is an example of his information overload and the way it affects his short term memory.
19. He has attached to his disability impact statement an email dated 3 February 2022 from Sean Smith to Mark Beves. There are, apparently, some words missing from the email. The respondent has told me today that it has searched for a full copy of that email but been unable to find it.
20. In the email Mr Smith writes about the claimant:

“his work as usual is of high quality but again Joe had forgotten to log on site with his PDA... I sat down and talked him for a while whilst deleting old jobs of his phone. I think Joe has some form of dyslexia as he takes a long time to read information and he said the words jumble up when he reads (he therefore does not read long emails as he can't get through them or understand them properly”.

Ms Smith says he thinks that goes a long way to explain why he is very poor with admin. He goes on to say “I have not noticed before but when Joe is working he doesn't deviate from the...” That part of email is then missing.

Mr Smith says, in the context of using the PDA and a lone working device “He asked me if there was any way he could get some help with the processes that the company have...”

21. On 7 February 2022 a personal improvement plan was completed in which the respondent stated “Joe is dyslexic which hampers following written information/instructions.”
22. On 14 April 2023 a disciplinary hearing took place about the claimant's failure to input correct data into his PDA and his use of his van for personal reasons.
23. Steve Davies, Planned Contract Manager, wrote in the outcome letter... “I have taken into consideration the impact of your dyslexia, so no formal sanction will be issued, however I will be recommending to a line manager that a personal improvement plan be put into place.” This judgment is not the place for me to give an

opinion on whether it would have been more helpful if reasonable adjustments had been put into place.

24. The respondent relies upon a number of documents in order to assert that the claimant does not have a mental impairment and, if he has an impairment, it does not have a substantial adverse effect on his day-to-day two activities.
25. The respondent refers to the fact that the claimant did not say that he was disabled when he filled out his diversity and inclusion monitoring form. The claimant points out that he was 17 at the time and says that he felt that he might not go well for him if he got the job and then announced that he was dyslexic.
26. The respondent also refers to an occupational health report from Medigold Health which does not refer to the claimant being dyslexic and says that shows that the claimant is not dyslexic.
27. That report was carried out at a time when the claimant had gone off work with stress and depression. He felt that he was being bullied. The referral which was sent by the respondent to the occupational health company is not in the papers before me and I do not know if any request was made in relation to the claimant's dyslexia.
28. The report also refers to an appointment between the claimant and his GP but the claimant has disclosed no medical evidence from his GP to say that he was dyslexic.
29. The respondent also refers to emails within the bundle from the claimant which are relatively detailed (page 89

is an example) and points out that the claimant was asking for complicated documents such as his contract of employment.

30. The claimant's answer to that is that his partner wrote those emails and when emails such as those were written his manager would joke that he knew the claimant had not written them.

31. The claimant says that if any comparison was made between those emails and the emails he sent on a day-to-day basis, it would be obvious that he had not written the longer emails.

32. There are no day-to-day emails in the bundle for me to compare. I make no criticism of the claimant in that respect since he appears to have had little input in preparing the bundle.

33. The respondent points out that there are no documents from the time that the claimant was in college showing that he was dyslexic.

Analysis & Conclusions

34. This case is not straightforward because there is no medical evidence of the claimant's dyslexia and no documentary evidence, such as the adjustments which were made while he was at college.

35. Whilst that makes my task more difficult I do not consider it be particularly surprising. Which documents people consider are important to keep when they leave college at the age of 17 varies considerably depending

upon factors such as their maturity at that time and what help they have from others, such as their parents. If a person does not anticipate that some years later they may need to prove that they are dyslexic then they may not consider those documents worth keeping. There is no evidence that, in this case, the claimant was even given any such documents by his college.

36. It seemed to me, and I find, that the claimant is a stoical individual. He does not like to complain about his dyslexia- in fact he told me that he never raised it with the respondent, it was always the respondent raising it with him and suggesting to him that he was dyslexic. I conclude that he does not raise his dyslexia because he is embarrassed, as his statement suggests. That is unfortunate, there is nothing for him to be embarrassed about. Dyslexia affects a lot of people and is no reflection of intelligence or ability. Indeed, it is clear from the email from Sean Smith that his work was of high quality.
37. I do not consider it particularly surprising that there is no medical evidence dealing with the claimant's dyslexia, the claimant was not seeking assistance for it, he was simply getting on with his work without referring to it.
38. It is, perhaps, a little bit more surprisingly the dyslexia was not picked up by the occupational health report, but I accept what the claimant tells me which is that he was talking to them about his stress and depression not primarily about his dyslexia.
39. I am particularly persuaded by the fact that while the claimant was working for the respondent, it clearly saw sufficient problems with the claimant's ability to read that

it was making the assumption (that is the word used in closing by Mr Ismail) that the claimant was dyslexic.

40. On three separate occasions the claimant was regarded as being dyslexic by the respondent. It seems to me that is powerful contemporaneous evidence in support of the claimant is saying to me.
41. The claimant's evidence about the way in which his dyslexia was discovered at college and the adjustments which were given to him was given spontaneously at this hearing and did not appear to me to be fabricated. Indeed, despite powerful cross-examination by Mr Ismail, the claimant was not shown to be misleading me.
42. I accept the claimant's evidence that he is not able to read long emails or writing. I accept that after the second word everything "muddles into one".
43. I accept that the claimant tries to avoid meetings and social interactions where he may have to read things out and accept that it is likely that he suffers from information overload. That is consistent with somebody who has dyslexia.
44. I have no reason to doubt that the claimant's girlfriend would assist him in writing to the respondent when matters between the respondent and the claimant became fractious. That is the type of help that partners often give at such times.
45. I accept that the claimant struggled to use his PDA as the respondent wanted and had difficulties with his short term memory.

46. I note that there is no formal evidence that the claimant has received a diagnosis of dyslexia but I am satisfied that he has some sort of mental impairment (to use the legal phrase) which affects his ability to read and understand written information.
47. I am satisfied that the impairment affects the claimant's normal day-to-day activities insofar as it affects his ability to read long emails and statements which are anything other than short. I find that the impairment in this case also affects the claimant's ability to take part fully in meetings and social interactions, particularly if he thinks he will be asked to read something. It affected his short term memory at work, he struggled with lists of instructions because of "too much information overload" and struggled to use his PDA.
48. The effect is more than minor or trivial, it is therefore substantial.
49. The respondent does not dispute that the effect is a long term.
50. In the circumstances I find that the claimant is disabled by reason of dyslexia and was while he was employed by the respondent.

Employment Judge Dawson

Date 3 September 2024

JUDGMENT SENT TO THE PARTIES ON

20 September 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.

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