



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104279/2024

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Held in Glasgow by Cloud Video Platform (CVP) on 29 August 2024

Employment Judge S Cowen

10 **Mr C Dolan**

**Claimant
Represented by:
Mr J Lawson -
Solicitor**

15 **Prestwick Aircraft Management Limited**

**Respondent
Represented by:
Mr E Smith –
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the Claimant was a disabled person within the meaning of s.6 Equality Act 2010 during the period of his employment with the Respondent.

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REASONS

Introduction

1. This is a claim of disability discrimination. The issue of whether the claimant was a disabled person in terms of section 6 of the Equality Act 2010 (“the Equality Act”) was to be determined as a preliminary issue at this hearing.

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2. The claimant gave evidence on his own behalf. Andrew Hood (the training site lead) gave evidence for the respondent. There were some issues with Mr Hood’s connection to the call, but he gave evidence by telephone connection and I was satisfied that Mr Hood was who he claimed to be and was relevant to the proceedings. A bundle of productions was sent to the Tribunal and all the parties and witnesses had access to it.

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Relevant law

3. Section 6 of the Equality Act provides a definition of “disability” as follows:

(1) *A person (P) has a disability if:*

(a) *P has a physical or mental impairment, and*

5 (b) *the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.*

4. S212(1) of the Equality Act provides that “substantial” means more than minor or trivial.

5. Schedule 1 of the Equality Act gives further details on the determination of a disability. For example, Schedule 1 para 2(1) provides that the effect of an
10 impairment is long term is it has lasted for at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected.

6. Para (5) provides that an impairment is to be treated as having a substantial
15 adverse effect on the ability of the person concerned to carry out normal day to day activities if measures are being taken to correct it and but for that, it would be likely to have that effect.

7. The Tribunal must take into account Statutory Guidance on the definition of Disability (2011) which stresses that it is important to consider the things that
20 a person cannot do, or can only do with difficulty (B9). This is not offset by things that the person can do. This is also confirmed in **Aderemi v London and South Eastern Railway Ltd** 2013 ICR 391. Day to day activities are things people do on a regular or daily basis such as shopping, reading, watching TV, getting washed and dressed, preparing food, walking, travelling and social
25 activities. This includes work related activities such as interacting with colleagues, using a computer, driving, keeping to a timetable etc (Guidance D2 – D7)

Issues

8. The Respondent did not contest the Claimant's diagnosis of Dyslexia, but did not concede that it amounted to a disability as defined by s.6 Equality Act 2010.

The Tribunal therefore had to consider whether:

- 5 (i) The claimant's dyslexia had an adverse effect on his ability to carry out normal day to day activities.
- (ii) If so, was that effect substantial (as in more than minor or trivial)?
- (iii) If so, was the effect long term?
- 10 (iv) If the impairment had ceased to have a substantial adverse effect at the relevant time, was the substantial adverse effect likely to recur?

Findings in fact

9. The Tribunal makes the following findings in fact:

15 9.1 The Respondent carries out heavy maintenance for aircraft operated by Ryanair. It employs 600 people in Prestwick. The Claimant joined the Trainee Aircraft Mechanic course. This is a 16 week course which provides knowledge and application of aircraft mechanics, producing qualified and safe technicians to work on aircraft maintenance. A job is almost guaranteed at the end of the course to those who pass. During the course, students are employed by the Respondent.

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25 9.2 The Claimant was diagnosed whilst in primary school as being dyslexic, when he struggled to read aloud. He had additional support from an English teacher and was allowed to sit his exams with the use of a computer and someone to read to him. He passed some school exams and moved on to Dundee College.

9.3 The Claimant uses a variety of coping mechanisms to assist him, particularly with reading and writing. The Claimant described having no 'inner voice' and therefore needs to read aloud in order to absorb

5 reading material. He therefore struggles to read information quickly and process it. He also struggles to tell the time and to follow directions without the help of visual aids such as a map. He relies heavily on this mobile phone to take notes, list reminders of directions, or time. He described talking to himself as a way of guiding himself and maintaining concentration.

9.4 When he attended Dundee College, he was provided with a dyslexia plan and was allowed to speak out when reading.

10 9.5 The Tribunal was shown a report by Elizabeth Brown, a qualified specialist teacher who holds a Specialist Learning and Dyslexia Assessment Practising Certificate. It was written in 2019 and remains a fair reflection of the Claimant's problems with his dyslexia. It refers to substantial weakness in cognitive processing, very slow reading and handwriting speed and weak long term memory. It described that the claimant found it difficult to take notes in lectures, to read complex material and to read under time pressure. It also affected his ability to revise as his working memory is less efficient than others.

15 9.6 The claimant began working for the respondent in September 2023 after a successful application and interview process. The Claimant has a BSC in Aircraft Engineering and has completed AST training as part of his degree, which is specific to aircraft maintenance. He was sent a health questionnaire to complete which asked about a number of conditions, but did not ask whether the applicant had dyslexia. In any event, Mr Hood was not shown this questionnaire and would not have had the relevant information even if the questionnaires were given to him. Mr Hood was not told by HR that the Claimant was dyslexic.

20 9.7 The training course was split into different sections. The first 2 weeks were an academic foundation; further skills are then taught and two-thirds of the course was about applying the skills and

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5 gaining experience. The academic work was carried out in a classroom, 8.30am - 5.30pm each day and each section was examined at the end of the topic. Written notes were provided for each topic. The claimant spoke of reading over the course material repeatedly at home in order to absorb it.

9.8 Assessment of the students was carried out by a multiple choice exam, which was sat in exam conditions in a classroom, with no notes or aids and was invigilated by a member of staff. No-one was allowed to talk or to refer to their mobile phones. Trainees were allowed three attempts to pass the exams which had a 75% pass mark.

9.9 Prior to the first exam the Claimant told Mr Hood that he was nervous as he was dyslexic. The Claimant requested that the exam be printed in red but this was not done for him as it was requested at short notice. Further exams were also not printed in red either. Mr Hood said that the Claimant was offered extra time if he needed it, but never asked for it

9.10 The Claimant sat 6 exams and passed all of them. During the exams he spoke to himself quietly as he read the papers. He needed to resit one exam in order to pass. He also undertook online learning where he had to complete a small test at the end of each section in order to move on. He was able to do the online tests at home, and therefore able to speak aloud and refer to notes. The Claimant was also able to gain pass marks by using the knowledge he had from his degree and AST courses. Where online tests were sat at work, he gained some assistance from others in his class. Some of the exams he sat were 'open book' and the Claimant candidly told the Tribunal that he also was given assistance by some of the instructors on the course, during the exam. The Claimant was able to pass all the required tests until approximately week 8 of the course.

9.11 After around week 4 of the course, the Respondent stopped the Claimant from using his phone. This led to a gradual reduction in the coping mechanisms which the Claimant was allowed to use. As the course progressed, without these coping mechanisms, the Claimant found the course more difficult to pass. There were complaints about his behaviour from staff and other trainees.

9.12 At a review meeting, the Claimant told Mr Hood about his coping mechanisms, including talking aloud to himself, but was told this was a problem in the live maintenance environment.

10 **Observations on the evidence**

10. Mr Hood gave clear and honest evidence from his perspective as the site lead for training. He believed that as the Claimant had been able to achieve good results in the various tests, his dyslexia was not holding him back. He acknowledged that the report writer Ms Brown would have a greater knowledge and understanding of dyslexia than him.

11. The Claimant also gave open and honest answers to the questions asked of him. This was particularly clear where he admitted that during some exams, he was able to manipulate the online system, or that collusion between trainees and/or staff occurred.

12. The Tribunal accepted the Claimant's evidence on the effect of his dyslexia and in particular that he had struggled with memory, processing, reading and writing since his primary school education. By the time he reached employment with the Respondent he had developed coping mechanisms that allowed his intellect to be shown in standard examinations. These are adjustments which the Claimant was making to his own way of life in order to reduce the impact and intrusion of his dyslexia on his day to day activities.

Respondent's submissions

13. The Respondent's submission was essentially that if the Claimant was able to pass the exams during the academic phase of the training, then his dyslexia cannot have had a substantial impact on his day to day activities.

He suggested that a dyslexic who is able to succeed in a high functioning job, such as a lawyer or doctor, does not have a disability under s.6 Equality Act 2010.

- 5 14. The Respondent asserted that the course involved a large amount of reading material and online courses and that the Claimant had been able to cope with these and passed the relevant tests, which relied on short and/or long term memory, the ability to concentrate and to analyse and read the questions in his head, under time pressure. They also relied on the fact that the Claimant did not use the extra time available to him and that he managed to pass the exams without the red print.
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15. The Respondent therefore asserted that the Claimant's dyslexia did not meet the requirement of a 'substantial' impairment and therefore did not amount to a disability within the meaning of s.6 Equality Act 2010.

Claimant's submissions

- 15 16. The claimant relied on the diagnosis of dyslexia in 2019 which the Claimant said remained valid at the time of his employment. It was submitted that 'substantial' means 'more than minor or trivial' and that the Tribunal should assess what the Claimant could not do, or only do with difficulty.
- 20 17. The Claimant also said that the Tribunal should assess the impact of the dyslexia on the Claimant without the measures to treat or correct it, i.e. his coping mechanisms. This meant the difficulty with reading which is a day to day activity, along with lack of speed in writing. The Claimant submitted that just because he passed exams does not mean he is not disabled.

Decision

25 *Did the claimant have an impairment?*

18. It is accepted by the parties and I find that the evidence supports the fact that the Claimant had dyslexia which is an impairment.

Did that impairment have an adverse effect on her ability to carry out normal day-to-day activities?

19. The effect of that impairment was that it affected the Claimant's ability to read and process written materials, particularly at speed and in quiet, exam
5 conditions. He also struggled to take notes of lectures and instructions which were given to him.

20. The Tribunal is satisfied that these are normal day to day activities. Furthermore, the Tribunal also accepted that the Claimant had problems with
10 telling the time and following directions without visual aids. All of these amount to day to day activities which most people do regularly as part of their normal lives.

Was that effect substantial?

21. The seriousness of the effects is the key issue in this case. To consider those, the Tribunal must consider the effect of the dyslexia without any of the coping
15 mechanisms or adjustments that the Claimant put in place. The Respondent's submissions overlooked this very significant aspect of the test. Given that when the Respondent removed some of the Claimant's coping mechanisms he was not as capable of keeping up with the course or carrying out the tasks he had been given, it appears to be self evident that the effect of the dyslexia
20 was significant.

22. The requirement by the Claimant to read aloud to himself or talk to himself to follow directions is not a common position amongst the general population. Without this, the Claimant struggled to absorb the information or follow the instruction.

23. The claimant's inability to read 'internally' and the slow speed of his reading and writing were more than minor or trivial interruptions of day to day activities such as reading and writing. The Tribunal therefore concluded that the affect
25 of the dyslexia was substantial.

Was the substantial adverse effect long term?

24. The Tribunal then had to consider whether the substantial adverse effect was “long term”. The Claimant was first diagnosed at primary school. This led to assistance being given. A formal report was written in 2019 and stated that
5 the dyslexia was present at that time. This case focuses on the period of the Claimant’s employment from September 2023 to 9 November 2023. The Tribunal was satisfied that the claimant continued to have adverse effects on his reading, writing and memory due to his dyslexia at that time.

25. In conclusion, the Tribunal considered that the claimant did have a disability
10 and the claim can proceed.

Further procedure

26. The Tribunal will contact the parties separately about further procedure in this claim. For the avoidance of doubt, the findings in fact in this judgment relate only to the issue of disability status. They would not bind a future tribunal
15 dealing with the merits of the claim and considering issues such as knowledge of the respondent.

20 **Employment Judge: S Cowen**
Date of Judgment: 20 September 2024
Entered in register: 24 September 2024
and copied to parties.

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